No. 11-182

IN THE

Supreme Court of the United States

STATE OF ARIZONA, *et al.*,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* ANTI-DEFAMATION LEAGUE IN SUPPORT OF RESPONDENT

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CASES

United States v. State of Arizona,
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United States v. State of Arizona,
703 F. Supp. 2d 980 (D. Ariz. 2010) 10, 11

CONSTITUTIONS, STATUTES, REGULATIONS, AND RULES

18 U.S.C. § 249 . . . . . 2, 8

A.R.S. § 11-1051 . . . . . 9, 10

A.R.S. § 13-701 . . . . . 2, 8

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A.R.S. § 13-2928 11

A.R.S. § 13-3883 11

A.R.S. § 41-1750 . . . . . 2, 8

Phoenix Municipal Code, Part II, §§ 8-12 and 39 . . 10

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OTHER AUTHORITIES

ADL, *ADL and Law Enforcement: Fighting Terror before 9/11 and Beyond*, http://www.adl.org/learn/adl_law_enforcement/911_adl_law_enforcement.htm?L 1

ADL, *ADL Holds A Milestone Twentieth Advanced Training School Session*, http://www.adl.org/learn/adl_law_enforcement/ats_counterterrorism_training_20.htm?LEARN_Cat=Training&LEARN_SubCat=Training_News 1

ADL, *Hate Crimes Laws*, http://www.adl.org/99hatecrime/intro.asp 2, 9

ADL, *Immigrants Targeted: Extremist Rhetoric Moves into the Mainstream*, http://www.adl.org/civil_rights/anti_immigrant/ 4

ADL, *Law Enforcement and Society: Lessons of the Holocaust* (Mar. 19, 2009), http://www.adl.org/learn/adl_law_enforcement/LEAS+3-09.htm?LEARN_Cat=Training&LEARN_SubCat=Training_News 1-2

ADL, *Law Enforcement Training*, http://www.adl.org/learn/adl_law_enforcement/default.htm 1

Cited Authorities

Page

ADL, *Model Legislation*, http://www.adl.org/99hatecrime/text_legis.asp2 2

ADL, *Ten Year Comparison of FBI Hate Crime Statistics* (updated June 2011), http://www.adl.org/combating_hate/HCSA_10year.asp..... 7

Randal C. Archibold, *In Border Violence, Perception Is Greater Than Crime Statistics*, N.Y. Times, June 20, 2010, at A16 *available at* http://query.nytimes.com/gst/fullpage.html?res=9505E0D61E31F933A15755C0A9669D8B63.. 5

Ariz. Association of Chiefs of Police, *Statement on Senate Bill 1070*, http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf..... 12

Ariz. Senate Bill 1070, www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf..... 9, 17

Ariz. Dep't of Public Safety, *2009 Crime in Arizona Report*, http://www.azdps.gov/About/Reports/docs/Crime_In_Arizona_Report_2009.pdf. 7

Ariz. Dep't of Public Safety, *2010 Crime in Arizona Report*, at 127, 129, http://www.azdps.gov/About/Reports/docs/Crime_In_Arizona_Report_2010.pdf 7

Cited Authorities

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Joe Arpaio and Len Sherman, *Joe's Law: America's Toughest Sheriff Takes on Illegal Immigration, Drugs, and Everything Else that Threatens America* (American Management Association 2008). 5-6

Federal Bureau of Investigation, Hate Crime Statistics 2010, Table 1, http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2010/tables/table-1-incidents-offenses-victims-and-known-offenders-by-bias-motivation-2010.xls 6

Federal Bureau of Investigation, *A Different Kind of Training: What New Agents Learn from the Holocaust* (May 30, 2010), http://www.fbi.gov/page2/mar10/leas_033010.html. . . . 2

Latino Decisions, *Political Implications of Immigration in 2010: Latino Voters in Arizona* (May 14, 2010), http://latinodecisions.files.wordpress.com/2010/05/ld-nclr-presentation-may11.pdf. 16

Major Cities Chiefs Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agenices (June 2006), available at https://www.majorcitieschiefs.com/pdf/MCC_Position_Statement.pdf. 14

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Major Cities Chiefs Association Revised Immigration Position (October 2011), available at https://www.majorcitieschiefs.com/pdf/news/ immigration_position102311.pdf 14

E.J. Montini, *Is SB 1070 the End or the beginning?*, Ariz. Republic, May 16, 2010, at B1 *available at* http://www.azcentral.com/arizonarepublic/local/articles/2010/05/16/20100516immigration-law-montini.html#ixzz0rUl5AcUz 4

Thomas E. Perez, Letter to Maricopa County Attorney Bill Montgomery (Dec. 15, 2011), http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf..... 14

Police Foundation, *Law Enforcement Leaders to Discuss How Local Immigration Enforcement Challenges Public Safety Mission* (May 20, 2009), http://www.policefoundation.org/pdf/strikingRelease.pdf 12-13

U.S. Department of Justice, Civil Rights Division, *The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009*, http://www.justice.gov/crt/about/crm/matthewshepard.php (last visited Mar. 23, 2012)..... 8

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Dennis Wagner, *Violence Is Not up on Arizona Border: Mexico Crime Flares, but Here, Only Flickers*, Ariz. Republic, May 2, 2010, at A1 *available at* http://www.azcentral.com/arizonarepublic/news/articles/2010/05/02/20100502arizona-border-violence-mexico.html#ixzz0rUoV3Vu6) 5

INTEREST OF THE *AMICUS CURIAE*[1]

The Anti-Defamation League ("ADL") is a non-profit organization that fights anti-Semitism and other forms of bigotry, defends democratic ideals and protects civil rights. ADL works closely with federal, state and local law enforcement agencies on issues involving extremist and hate groups in the United States, and on the investigation and prosecution of hate crimes. ADL trains thousands of law enforcement officers annually on how to identify hate crimes and investigate them properly and sensitively.[2] With the United States Holocaust Memorial Museum, ADL has trained more than 45,000 law enforcement professionals in *Law*

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party to this dispute authored this brief in whole or in part, and no person or entity other than *amicus curiae* and its counsel has made a monetary contribution to the preparation or submission of this brief. All parties have consented to the filing of this brief. Letters reflecting this blanket consent have been lodged with the Court.

[2] ADL, *ADL and Law Enforcement: Fighting Terror before 9/11 and Beyond*, http://www.adl.org/learn/adl_law_enforcement/911_adl_law_enforcement.htm?L (last visited Mar. 23, 2012) (in 2010, ADL trained more than 10,500 law enforcement officers from all over the country on issues concerning domestic terrorism, extremism, hate groups and hate crimes); ADL, *Law Enforcement Training*, http://www.adl.org/learn/adl_law_enforcement/default.htm (last visited Mar. 23, 2012); ADL, *ADL Holds A Milestone Twentieth Advanced Training School Session*, http://www.adl.org/learn/adl_law_enforcement/ats_counterterrorism_training_20.htm?LEARN_Cat=Training&LEARN_SubCat=Training_News (last visited Mar. 23, 2012).

Enforcement and Society: Lessons of the Holocaust, a program that provides increased understanding of the relationship between law enforcement professionals and the communities they serve, and the role of law enforcement as protectors of the United States Constitution.[3]

ADL also has unmatched expertise concerning the development of federal and state hate crimes legislation. In 1981, ADL drafted a model state hate crimes law,[4] and Arizona is among 45 states and the District of Columbia that have enacted statutes based on or similar to ADL's model.[5] ADL was a leading advocate for the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 ("HCPA"), 18 U.S.C. § 249. Moreover, ADL has advocated for federal and state laws mandating the collection of hate crimes statistics.

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[3] ADL, *Law Enforcement and Society: Lessons of the Holocaust* (Mar. 19, 2009), http://www.adl.org/learn/adl_law_enforcement/LEAS+3-09.htm?LEARN_Cat=Training&LEARN_SubCat=Training_News; Federal Bureau of Investigation, *A Different Kind of Training: What New Agents Learn from the Holocaust* (May 30, 2010), http://www.fbi.gov/page2/mar10/leas_033010.html.

[4] ADL, *Hate Crimes Laws*, http://www.adl.org/99hatecrime/intro.asp (last visited Mar. 23, 2012); *ADL Model Legislation*, http://www.adl.org/99hatecrime/text_legis.asp (last visited Mar. 23, 2012).

[5] Arizona's hate crimes laws are codified at A.R.S. §§ 13-701(D)(15) and 41-1750(A)(3).

In light of ADL's expertise with hate crimes issues, the League is uniquely situated to assist the Court in evaluating the public consequences of Arizona Senate Bill 1070, as amended ("S.B. 1070"), particularly concerning the reporting and prevention of hate crimes.[6] As shown below, if the preliminary injunction is lifted, S.B. 1070 will undermine the enforcement of hate crimes legislation in Arizona by driving a sharp wedge between law enforcement officers and the communities whom such laws are intended to protect.

SUMMARY OF ARGUMENT

All persons should be afforded access to police protection if they become victims of hate crimes. Yet the core provisions of S.B. 1070 that the lower courts preliminarily enjoined will impede that access for Latinos and immigrant communities in Arizona, including U.S. citizens and lawful residents. As the record shows, the state immigration-enforcement scheme at issue will deter members of Latino and immigrant communities from reporting crimes or serving as witnesses in criminal investigations. This *amicus* brief provides additional context about a particular and devastating consequence of the rupture in police-community trust that an unrestrained S.B. 1070 (and similar state laws around the country) will cause – the creation of an

[6] ADL maintains an office in Phoenix, Arizona, which serves as the headquarters of its Arizona Region; from that office, ADL monitors hate crimes in and around Arizona, and works with law enforcement agencies to protect citizens from hate crimes.

underclass uniquely vulnerable to increased hate crimes and violence. That consequence is fundamentally at odds with the strong Federal and Arizona policies embodied in hate crimes legislation, and it demonstrates that the public interest strongly supports affirming the District Court and the Ninth Circuit.

ARGUMENT

I. Federal and State Laws Expressly Prohibit the Commission of Hate Crimes Against People of Color and Immigrants.

ADL has monitored and exposed the increasingly anti-immigrant, anti-Latino and anti-Mexican rhetoric that has surrounded the national debate on immigration reform.[7] S.B. 1070 was passed against this backdrop of anger and hostility in Arizona. The bill's principal sponsor, former State Senator Russell Pearce, reportedly called for the mass deportation of undocumented immigrants, and praised a similar 1954 effort as "a successful program."[8] Pearce was further quoted as follows: "The far left always tells you, 'Russell, you can't deport 12 million people.' I

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[7] *See, e.g.*, ADL Report, *Immigrants Targeted: Extremist Rhetoric Moves into the Mainstream*, http://www.adl.org/civil_rights/anti_immigrant/ (last visited Mar. 23, 2012).

[8] E.J. Montini, *Is SB 1070 the End or the beginning?*, Ariz. Republic, May 16, 2010, at B1 *available at* http://www.azcentral.com/arizonarepublic/local/articles/2010/05/16/20100516immigration-law-montini.html#ixzz0rUl5AcUz.

say, 'Yes, you can, if you have the will.'"[9] Other supporters of S.B. 1070 invoked fears of widespread border violence, "beheadings" in the desert and other criminal activity as reasons for the law – even though those fears have been thoroughly debunked by widely-reported criminal statistics showing that border violence is at historic lows.[10]

This language built on an increasing frenzy of anti-immigrant rhetoric in Arizona. For example, a 2008 memoir of another S.B. 1070 supporter, Maricopa County Sheriff Joe Arpaio, stated that Arpaio's "parents, like all other immigrants *exclusive of those from Mexico*, held to certain hopes and truths," and warned of "[a] growing movement among not only Mexican nationals but also some Mexican-Americans contend[ing] that . . . massive immigration over the border will speed and guarantee the *reconquista*" of formerly Mexican territories.[11] Indeed, Arpaio claimed that other

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[9] *Id.*

[10] *See, e.g.*, Randal C. Archibold, *In Border Violence, Perception Is Greater Than Crime Statistics*, N.Y. Times, June 20, 2010, at A16 *available at* http://query.nytimes.com/gst/fullpage.html?res=9505E0D61E31F933A15755C0A9669D8B63; Dennis Wagner, *Violence Is Not up on Arizona Border: Mexico Crime Flares, but Here, Only Flickers*, Ariz. Republic, May 2, 2010, at A1 *available at* http://www.azcentral.com/arizonarepublic/news/articles/2010/05/02/20100502arizona-border-violence-mexico.html#ixzz0rUoV3Vu6).

[11] Joe Arpaio and Len Sherman, *Joe's Law: America's Toughest Sheriff Takes on Illegal Immigration, Drugs, and* (Continued …)

immigrant groups settled throughout the country and quickly assimilated, "*in stark contrast to the exceptional concentration of Mexicans*" in Southwestern communities, and asserted that large-scale Mexican immigration "continues to this day, and promises to continue indefinitely – *unless we do something*."[12]

In this climate, it is critically important that law enforcement officers be able to police fully the laws against the commission of hate crimes directed at Latinos and immigrant communities. Yet, as shown below, laws like S.B. 1070 undercut hate crimes legislation by impeding the reporting and prosecution of hate crimes perpetrated against Latinos and other immigrants.

The issue of hate crimes is far from theoretical. According to the Federal Bureau of Investigation, 6,628 hate crimes were reported nationally in 2010 (the most recent year for which statistics are available).[13] Of those, 534 were motivated by the actual or perceived Hispanic ethnicity of the victim –

Everything Else that Threatens America, at 48 (American Management Association 2008) (emphasis added).

[12] *Id.* at 48-49 (emphasis added).

[13] Federal Bureau of Investigation, Hate Crime Statistics 2010, Table 1, *http://www.fbi.gov/about-us/cjis/ucr/hate-crime/2010/tables/table-1-incidents-offenses-vic*tims-and-known-offenders-by-bias-motivation-2010.xls (last visited Mar. 23, 2012)

an increase from the 483 reported in 2009.[14] In the past ten years, between 400 and 600 hate crimes against Hispanics have been reported nationally each year.[15]

In Arizona, according to the annual reports of the Arizona Department of Public Safety, there were 226 hate crimes offenses reported in 2009.[16] Forty-four of the offenses were based on ethnicity, with 37 "Anti-Hispanic" crimes.[17] In 2010, 242 total offenses were reported, with 26 being "Anti-Hispanic" – raising concerns that such crimes were being underreported in Arizona in the wake of S.B. 1070's passage.[18]

Federal law evinces a strong Congressional policy against the commission of hate crimes. The Hate Crimes Prevention Act of 2009, for example,

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[14] *Id.*; ADL, *Ten Year Comparison of FBI Hate Crime Statistics* (updated June 2011), http://www.adl.org/combating_hate/HCSA_10year.asp.

[15] ADL, *Ten Year Comparison of FBI Hate Crime Statistics* (updated June 2011), http://www.adl.org/combating_hate/HCSA_10year.asp.

[16] Arizona Department of Public Safety, *2009 Crime in Arizona Report*, at 127, http://www.azdps.gov/About/Reports/docs/Crime_In_Arizona_Report_2009.pdf.

[17] *Id.* at 129.

[18] Arizona Department of Public Safety, *2010 Crime in Arizona Report*, at 127, 129, http://www.azdps.gov/About/Reports/docs/Crime_In_Arizona_Report_2010.pdf.

gives federal prosecutors the power to investigate and prosecute violent crimes where the perpetrator selects the victim because, *inter alia*, of the person's actual or perceived race, color or national origin. 18 U.S.C. § 249.[19] Arizona's criminal statutes likewise include stringent prohibitions against the commission of hate crimes. A.R.S. § 13-701(D)(15), for instance, states that an aggravating factor in criminal sentencing includes "[e]vidence that the defendant committed the crime out of malice toward a victim because of the victim's identity in a group listed in § 41-1750, subsection A, paragraph 3, or because of the defendant's perception of the victim's identity in a group listed in § 41-1750, subsection A, paragraph 3." A.R.S. § 41-1750(A)(3) concerns "prejudice based on race, color, religion, national origin, sexual orientation, gender or disability."

These laws provide that crimes committed out of hatred towards a victim because of his or her actual or perceived membership in one of the protected classes are especially offensive to public policy – and warrant aggravated criminal penalties. They also recognize that when a bias-motivated crime is committed, the victim's entire community may be left feeling victimized, vulnerable, fearful, isolated and unprotected by the law. The impact of the crime

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[19] *See* U.S. Department of Justice, Civil Rights Division, *The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009*, http://www.justice.gov/crt/about/crm/matthewshepard.php (last visited Mar. 23, 2012).

spreads far beyond the already terrible consequences for the individual victim.[20]

II. S.B. 1070 Undermines Immigrant Communities' Trust in Law Enforcement, Eviscerating the Police's Ability to Enforce Federal and State Hate Crimes Laws.

A. S.B. 1070 Transforms All State, County and Local Law Enforcement Officers Into Immigration Agents.

The enjoined provisions of S.B. 1070 create an enforcement regime that turns police *against* immigrants and their communities, in furtherance of the statute's declared goal of promoting "attrition through enforcement."[21]

First, Section 2(B) requires immigration status determinations, when practicable, "for any lawful stop, detention or arrest" made "in the enforcement of *any other law or ordinance of a county, city or town* . . . where reasonable suspicion exists that the person is an alien and unlawfully present in the United States." A.R.S. § 11-1051(B) (emphasis added). The extraordinary sweep of this immigration check provision cannot be overstated. It means that law enforcement officers, if they possess "reasonable suspicion" of "unlawful presen[ce]," are *required* to

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[20] ADL, *Hate Crimes Laws*, http://www.adl.org/99hatecrime/intro.asp (last visited Mar. 23, 2012).

[21] S.B. 1070, Section 1, www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf.

check immigration status when enforcing hundreds or thousands of the even most minor civil infractions, such as neglecting to mow the lawn (Phoenix Municipal Code Part II, § 39-7(D)), failing to affix licensing tags to the collar of the family dog (*id.*, Part III, § 8-12) or not properly maintaining a residential pool (*id.*, Part II, § 39-7(C)) – as well as myriad civil traffic infractions and a seemingly infinite list of other state, county and city laws and ordinances.[22] The District Court correctly found that "[l]egal residents will certainly be swept up by this requirement," which also "imposes an unacceptable burden on lawfully-present aliens." *United States v. State of Arizona,* 703 F. Supp. 2d 980, 997 (D. Ariz. 2010).

Second, Section 2(B)'s requirement that *all* arrestees must have their immigration status determined before release (A.R.S. § 11-1051(B)) will inevitably burden U.S. citizens who lack ready access to proof of citizenship (including those who do not have entries in United States Department of Homeland Security databases). In addition, it will burden all lawfully-present aliens whose "liberty will be restricted while their status is checked." *United States,* 703 F. Supp. 2d at 995. *See also United States v. State of Arizona*, 641 F.3d 339, 348 n.7 (9th Cir. 2011) ("Detention, whether intended or not, is an unavoidable consequence of Section 2(B)'s mandate.").

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[22] The Phoenix City Code is available at http://www.codepublishing.com/az/phoenix/ (last visited Mar. 23, 2012). Arizona's traffic laws are contained in Title 28 of the Arizona Revised Statutes.

Third, Section 3, A.R.S. § 13-1509, which criminalizes the failure to comply with certain federal alien registration requirements, and Section 5, A.R.S. § 13-2928(C), which criminalizes working, applying for or soliciting work by undocumented immigrants, reinforce the broad mandate of S.B. 1070 to promote "attrition through enforcement." Fourth, the warrantless arrest provisions of Section 6 of S.B. 1070, A.R.S. § 13-3883(A), which require complex determinations of removability that typically are made only by federal judges, demonstrates the extent to which S.B. 1070 would transform all police officers in Arizona into full-time, all-purpose immigration agents. *United States*, 703 F. Supp. 2d at 1005-06.

B. Police Cannot Enforce the Law If Victims and Witnesses Are Unwilling to Come Forward.

The record is replete with evidence about the breach of trust that these statutes will engender if not preliminarily enjoined. Former Phoenix Police Chief Jack Harris testified that "[d]eterring, investigating and solving serious and violent crimes are the [Phoenix Police Department's] top priorities, and it would be impossible for us to do our job without the collaboration and support of community members, including those who may be in the country unlawfully." Joint Appendix ("J.A.") 51. Yet as Santa Cruz County Sheriff Tony Estrada testified, "[b]eing labeled an 'immigration officer' will have serious consequences for community policing": "[i]t will deter immigrants, including those who are here legally, and other individuals, particularly those in the

Latino community, from coming forward and interacting with the police, because they will fear being questioned about their status and possibly arrested for violating one of Arizona's new state immigration crimes." J.A. 85. This is particularly true for families that live in "mixed status" households, where some members are U.S. citizens or have legal immigration status, and others do not. *Id.* Consequently, the mandatory immigration check and related provisions of S.B. 1070 will "effectively undermin[e] our . . . ability to protect people from serious crime." *Id.* 85-86.

The Police Foundation, the International Association of Chiefs of Police, the Major Cities Chiefs Association and Arizona Association of Chiefs of Police have expressed similarly grave concerns that deputizing local law enforcement officers to enforce immigration law undermines the trust and cooperation of immigrant communities.[23] For example, a 2009 report by the Police Foundation states that "[i]mmigration enforcement by local police undermines their core public safety mission . . . and exacerbates fear in communities already distrustful of police."[24] According to Police Foundation President Hubert Williams:

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[23] See, *e.g.*, Arizona Association of Chiefs of Police, *Statement on Senate Bill 1070*, http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf.

[24] Police Foundation, *Law Enforcement Leaders to Discuss How Local Immigration Enforcement Challenges Public*

(Continued …)

> Police executives have felt torn between a desire to be helpful and cooperative with federal immigration authorities and a concern that their participation in immigration enforcement efforts will undo the gains they have achieved through community-oriented policing practices directed at gaining the trust and cooperation of immigrant communities. As one police chief pointed out during the project, "*How do you police a community that will not talk to you?*"[25]

The Major Cities Chiefs Association agrees. According to its 2006 Immigration Committee Recommendations:

> Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result

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Safety Mission (May 20, 2009), http://www.policefoundation.org/pdf/strikingRelease.pdf.

[25] *Id.* (emphasis added).

> in increased crime against immigrants and in the broader community, create a class of silent victims and *eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts*.[26]

These fears were realized, at least in part, when Sheriff Arpaio embarked on his own immigration enforcement program, which involved "crime suppression operations" or sweeps of certain areas initiated after the Sheriff "received complaints that described no criminal activity, but rather referred, for instance, to individuals with 'dark skin' congregating in one area, or individuals speaking Spanish at a local business."[27] During these

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[26] *Major Cities Chiefs Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies* (June 2006), available at https://www.majorcitieschiefs.com/pdf/MCC_Position_Statement.pdf at 6 (emphasis added). *See also Major Cities Chiefs Association Revised Immigration Position* (October 2011), available at https://www.majorcitieschiefs.com/pdf/news/immigration_position102311.pdf (Local police enforcement of federal immigration law "undermines the trust and cooperation with immigrant communities which are essential elements of community oriented policing.").

[27] Dec. 15, 2011 letter from Assistant U.S. Attorney General Thomas E. Perez to Maricopa County Attorney Bill Montgomery, at 3, http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf (reporting the findings of the U.S. Department of Justice Civil Rights Division's investigation into civil rights violations by the Maricopa County Sheriff's Office).

operations, "which one MCSO lieutenant referred to as 'round-ups of illegal aliens,' deputies are encouraged to make high-volume pretextual traffic stops in targeted locations."[28] The U.S. Department of Justice Civil Rights Division recently found "reasonable cause" to believe that these and other law enforcement practices of the Maricopa County Sheriff's Office ("MCSO") constituted "a pattern or practice of unconstitutional policing," including racial profiling of Latinos.[29] The Department of Justice specifically observed that MCSO's immigration enforcement program "has created a 'wall of distrust' between MCSO officers and Maricopa County's Latino residents – a wall of distrust that has significantly compromised MCSO's ability to provide police protection to Maricopa County's Latino residents."[30] If S.B. 1070's enjoined provisions are allowed to take effect, and law enforcement officers at all levels in the State are effectively transformed into immigration police, an even uglier "wall of distrust" inevitably will reach across Arizona.

C. S.B. 1070 Undercuts Effective Enforcement of the Laws Prohibiting Hate Crimes.

While close cooperation between local law enforcement and minority communities is essential to the successful reporting and prosecution of hate

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[28] *Id.* at 7.

[29] *Id.* at 2.

[30] *Id.*

crimes, Latinos and members of immigrant communities will be deterred from reporting or serving as witnesses regarding a range of criminal activities in the community, including hate crimes, if the core provisions of S.B. 1070 are allowed to go into effect. According to a May 2010 study of Latino registered voters in Arizona commissioned by the National Council of La Raza, 85% of Latinos who are legal immigrants or U.S. citizens fear that they will be racially profiled under S.B. 1070. Because of the new law, 47% report that in the future they would be less likely to report a crime or volunteer information to the police.[31] Moreover, these poll numbers do not reflect the attitudes of non-registered voters (including people who are more likely to be undocumented), suggesting that the chasm between police and the Latino community caused by S.B. 1070 likely is much wider than that reflected by the study itself.

The enjoined provisions of S.B. 1070 are contrary to the strong public policies against hate crimes embodied in Federal and Arizona law, and are inimical to the public's strong interest in advancing public safety and civil rights. Ironically, instead of making Arizona more secure, the "Support Our Law Enforcement and Safe Neighborhoods Act" will have

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[31] Latino Decisions, *Political Implications of Immigration in 2010: Latino Voters in Arizona*, (May 14, 2010), http://latinodecisions.files.wordpress.com/2010/05/ld-nclr-presentation-may11.pdf.

exactly the opposite effect, especially in Arizona's Latino and immigrant communities.[32]

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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[32] With an Orwellian flair, the sponsors of S.B. 1070 titled the bill the "Support Our Law Enforcement and Safe Neighborhoods Act." Senate Bill 1070, http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf.