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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

VALLE DEL SOL, *et al.*,  
Plaintiffs,  
v.  
MICHAEL B. WHITING, *et al.*,  
Defendants.

NO. CV-10-01061-PHX-SRB

**DECLARATION OF  
CHIEF ROBERTO VILLASEÑOR**

Hon. Susan R. Bolton

## **DECLARATION OF CHIEF ROBERTO VILLASEÑOR**

Pursuant to 28 U.S.C. 1746, I, Roberto Villaseñor, declare and state as follows:

1. I am currently the Chief of Police for the Tucson Police Department. I have held this position for three years. Before assuming this position, I served in the Tucson Police Department for over 29 years.
2. As the Chief of Police for Tucson, I am responsible for protecting the public safety of all people living and traveling within my jurisdiction regardless of their immigration status. Currently, the City of Tucson is the second largest city in the state of Arizona and is located approximately 60 miles from the U.S.-Mexico border. It is estimated that over 861,000 immigrants live in the state of Arizona and, a large share live in Tucson. Moreover, the population of Pima County, in which Tucson sits, is 35 percent Latino according to the latest Census numbers. I have previously expressed my concerns about Arizona's law, SB 1070 and the impact on Arizona law enforcement officers, the immigrant community, and the public at large, through a declaration filed in *United States v. Arizona*, 10-1413, Doc. 27-9. These concerns include: the law's potential negative impact on community policing efforts; the diversion of scarce police resources away from the primary law enforcement responsibility of protecting the public against serious and violent crime; and the stripping of police chief and sheriff authority over agency

priorities through the mandatory prioritization, under threat of suit, that SB 1070 imposes.

3. The problems with SB 1070 that I identified in my previously filed declaration have not been cured by the training produced by the Arizona Peace Officer Standards Training (“AZ POST”) materials from 2010 or by the supplemented materials we have received from AZ POST following the Supreme Court’s decision in *Arizona v. United States*. I viewed this training when it was originally released in 2010, as well as the recent supplemental materials.
4. I do not believe the training materials provide sufficient guidance on how to implement the “reasonable suspicion” provision under Section 2(B). The training video devotes almost the entire first 20 minutes warning against racial profiling, recognizing the implications this law will have in that regard. When the video does discuss the aspects of the law, it does not provide clear guidance in establishing reasonable suspicion of unlawful presence. The summary of the Supreme Court decision that AZ POST recently circulated also does not provide adequate guidance. This is not a fault of AZ POST, but it is because of the complicated nature of federal immigration laws that encompass both civil and criminal violations, a fact unknown to most local police officers.
5. Section 2(B) of SB 1070, for example, requires law enforcement officers to verify the immigration status of any person they have “reasonable suspicion” to believe is

unlawfully present in this country. Although my officers are well acquainted with the concept of “reasonable suspicion” in order to effectuate a *Terry* stop, that is a concept that concerns criminal *actions*, which can be observed through sight or other tangible means. My officers are not trained in the concept of “reasonable suspicion” with respect to determining a person’s immigration status. And none of the AZ POST training materials clearly explain how officers can form reasonable suspicion of unlawful status without resorting to reliance on inappropriate factors such as race and ethnicity.

6. SB 1070 also creates a private cause of action under which a city or law enforcement agency may be sued for “adopt[ing] or implement[ing] a policy that limits or restricts the enforcement of federal immigration laws...to less than the full extent permitted by federal law.” Section 2(H). Any city or county in the state can be ordered to pay court costs and attorney fees that may be ordered by a court in such a lawsuit for failing to enforce civil immigration violations. Therefore, Arizona law enforcement officers will be under intense pressure to enforce the provisions of SB 1070 even though they lack the appropriate training and resources to do so. To my knowledge, this restriction on agencies’ policies regarding enforcement is unique under Arizona law, which otherwise generally grants law enforcement agencies the discretion to set their own enforcement priorities, for example, to focus on combatting violent crime in our community.

7. When you combine the presumption that officers must enforce Section 2 of SB 1070 to the maximum extent permitted under federal law with the complexity and difficulty that making the determinations that Section 2(B) requires, the combination is very dangerous, and may lead to accusations that officers resort to consideration of racial or ethnic indicators to determine who to arrest and when to verify immigration status. Moreover, these two provisions undermine the other protections in SB 1070, specifically the language cautioning officers from “consider[ing] race, color or national origin in implementing [Section 2 of SB 1070]” except to the “extent permitted by the United states or Arizona Constitution,” and the language cautioning that Section 2 is to “be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.” What an officer on the street is likely to understand is simply that it is mandatory that he check immigration status to the full extent now allowed by law. For all of the reasons discussed above, I believe SB 1070 will force police officers to consider race and ethnicity to enforce the law.
8. I am also concerned about the lack of guidance either in SB 1070 or the AZ POST training materials about when my officers can extend detention of individuals solely for the purposes of verifying immigration status as required under Section 2(B). By my reading of Section 2(B), my officers are required to verify the immigration

status of individuals they would usually cite and release rather than booking them into jail. This verification can only be made by an ICE or Customs and Border Patrol Agent, and those agencies have already stated they will not install additional methods of contact or additional staff to handle this new workload. In my department, we make approximately 36,000 of these “cite in lieu of detention” arrests in a year. As a result, investigating immigration status under 2(B) will lead to the detention of thousands of individuals a year based solely on Section 2(B), because immigration verification may not be possible considering the stance taken by the federal government concerning their assistance and participation in this regard.

9. Under Section 2(B) if we cannot get immediate confirmation from federal officials of the immigration status of these arrestees, we will have to extend their detentions in the field until we get a status determination from federal officials, or book them into jail to await these results. Either situation will result in extended detention of thousands of individuals—even if it is for brief periods of time. This will result in enormous costs to the Tucson Police Department and divert scarce departmental resources.
10. Even before SB 1070, my officers attempted to cooperate with federal immigration officials in identifying undocumented immigrants. It is already the practice of my department to contact the appropriate immigration officials for verification of

immigration status. Absent any clear guidance to the contrary from AZ POST - and there has been none to date - I expect that status checks under Section 2(B) will operate the following way, both in my department and in other departments: once we make the request mandated under Section 2(B), we will wait to hear back from federal immigration officials before releasing the person. Considering the mandates of SB 1070 and other relevant factors (including the number of arrests and other detentions made each year), I believe that this could equate to 500,000 inquiries to the federal government each year that are not now being made. It is unclear how the federal government will handle this additional workload, and it is clear that this will put an impossible mandate upon local law enforcement.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

A handwritten signature in black ink, appearing to read "Roberto A. Villaseñor", written over a horizontal line.

Chief Roberto A. Villaseñor

Executed the 16th day of July, 2012 in  
Tucson, Arizona