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Hon. John F. Kerry
Chair, U.S. Senate Committee on Foreign Relations
446 Dirksen Senate Office Building
Washington, DC 20510-6225

Hon. Richard G. Lugar
Ranking Member, U.S. Senate Committee on Foreign Relations
446 Dirksen Senate Office Building
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Hon. Charles Schumer
U.S. Senate Committee on the Judiciary
Chairman, Subcommittee on Immigration, Refugees and Border Security
224 Dirksen Senate Office Building
Washington, DC 20510

Hon. John Cornyn
U.S. Senate Committee on the Judiciary
Ranking Member, Subcommittee on Immigration, Refugees and Border Security
224 Dirksen Senate Office Building
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Hon. Elton Gallegly
House Committee on the Judiciary
Chairman, Subcommittee on Immigration Policy and Enforcement
2138 Rayburn House Office Building
Washington, DC 20515

Hon. Zoe Lofgren
House Committee on the Judiciary
Ranking Member, Subcommittee on Immigration Policy and Enforcement
2138 Rayburn House Office Building
Washington, DC 20515

Re: Immigration Reform

Dear Senators and Representatives:

On behalf of the New York City Bar Association, I write to urge your respective Congressional Committees and Subcommittees strongly to advance the case for federal legislation that will bring about comprehensive and effective immigration reform and to oppose Arizona Revised Statutes known as S.B. 1070¹ (as amended by Arizona Session Laws known as H.B. 2162², “SB 1070”), and similar immigration laws under consideration by various state legislatures throughout the country (“State Immigration Laws”).

The New York City Bar Association is one of the oldest lawyer associations in the United States, with over 23,000 members nationwide and worldwide. It was founded in 1870. The Association and its members are very interested in legal developments in other countries as well as those in our country that affect other countries.

Our Committees on Inter-American Affairs and on Immigration and Nationality Law have carefully studied SB 1070³ and have concluded that it and similar State Immigration Laws impermissibly interfere with U.S. foreign relations and intrude upon Congress’s supreme authority to regulate immigration and international trade. SB 1070 and similar State Immigration Laws create an atmosphere of hostility and distrust between the people of the United States and Latin America, and create an environment for unlawful harassment and racial profiling of Latinos and other ethnic minorities regardless of their citizenship or immigration status.

Interference With National Powers For Foreign Relations

SB 1070 and similar State Immigration Laws may be motivated by domestic concerns, but they impermissibly compromise international affairs and foreign relations between the United States and other countries in the Americas. The Constitution places the power over foreign affairs, including immigration, solely within the authority of the federal government, and the Supreme Court has stricken state immigration laws where they encroach on Congress’s authority in the area of international relations.⁴ In the preamble to SB 1070, the Arizona legislature expressly states that the intent of the law is “to make *attrition through enforcement the public policy of all state and local government agencies in Arizona.*” (emphasis added.) However, by seeking to supplant the balanced goals and priorities of federal immigration policy with Arizona’s policy, Arizona’s enactment of SB 1070 intrudes upon Congress’s constitutional authority in this area.⁵

¹ Senate Bill 1070, 2010 Arizona Session Laws, Chapter 113.

² House Bill 2162, 2010 Arizona Session Laws, Chapter 211.

³ See Committee on Immigration & Nationality Law of the New York City Bar Association, “Report on the Constitutionality of Arizona Immigration Law S.B. 1070”, July 2010, available at <http://www.nycbar.org/pdf/report/uploads/20071951-ReportonArizonaImmigrationLawSB1070.pdf>.

⁴ See Hines v. Davidowitz, 312 U.S. 52, 62-63, 74 (1941) (concluding that the supremacy of national power in the general field of foreign affairs includes the power over immigration, naturalization and deportation, and stating that under Article VI of the Constitution, the “Federal Government . . . is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties”).

⁵ Harisiades v. Shaughnessy, 342 U.S. 580, 588-89 (1952) (“[A]ny policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations”); see Plyler v. Doe, 457 U.S. 202, 225 (1982) (Congress enacts immigration laws drawing upon its constitutional authority in the field and upon its plenary authority with respect to foreign relations and international commerce.).

The law unavoidably interferes with international affairs and foreign relations due to the interests of Mexico and other Latin American countries in protecting the human and civil rights of their citizens under U.S. and international law.⁶ As a result, Mexico and numerous other Latin American countries opposing SB 1070 filed *amicus* briefs in Friendly House v. Whiting and U.S. v. Arizona (two of the lawsuits filed in opposition to SB 1070). Mexico issued a travel advisory warning its nationals of the negative political environment in Arizona for all Mexican visitors and of possible harassment and questioning without further cause at any time.⁷ Mexican President Felipe Calderón strongly criticized SB 1070 in his speech to the U.S. Congress in May 2010. Further, the heads of government of the Union of South American Nations (“UNASUR”), which includes Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela, issued a statement condemning the law noting the deep concerns generated by SB 1070 “because of the obvious racist consequences which are against the respect for human rights.”⁸ Similar condemnations have also been made by the Central American Parliament (“PARLACEN”),⁹ whose member states include Guatemala, Honduras, Nicaragua, El Salvador, Panama and Dominican Republic, and by the Southern Common Market (“MERCOSUR”),¹⁰ whose member states include Argentina, Brazil, Paraguay and Uruguay.

SB 1070 is also interfering with international relations by straining international cooperation between the United States and Mexico relating to drug-trafficking, arms and human trafficking, border security and immigration issues.¹¹ For example, Mexican state governors boycotted the 2010 annual border governors’ conference in Arizona after the enactment of SB 1070.¹² Other, less public strains in the day-to-day relations essential to border management are certain to develop. Effective collaboration in these and other areas will be further impaired if other states follow Arizona’s lead in enacting their own State Immigration Laws that may conflict not only with federal immigration law and foreign policy but also with each other.

Interference With International Commerce

SB 1070 is also unconstitutional in that it impermissibly interferes with international trade and commerce, whose regulation rests within the authority of the federal government (U.S. Constitution, Art. I, Sec. 8, clause 3). With Mexico as the United States’ third largest trading partner and the second largest purchaser of U.S. exports, the U.S. and Mexican economies are more interdependent now than they have been for decades and in recent years both countries have made

⁶ See Brief of Amicus Curiae United Mexican States at 1, Friendly House v. Whiting (D. Az. 2010) (Case No. 2:10-cv-01061-SRB) (citing the Vienna Convention on Consular Relations, art. 5, Apr. 24, 1963, 596 U.N.T.S. 261).

⁷ Secretaría de Relaciones Exteriores, “Travel alert,” (April 27, 2010), available at http://www.sre.gob.mx/csocal/contenido/comunicados/2010/abr/cp_121eng.html.

⁸ See “Declaration of the Council of Heads of State and Government of the Union of South American Nations (UNASUR),” (May 4, 2010), at http://cdsunasur.org/index.php?option=com_content&task=view&id=344&lang=en.

⁹ Parlamento Centroamericano (PARLACEN), “Rechazo y condena a la Ley Antiinmigrantes en Arizona”, at <http://www.parlacen.org.gt/Noticias/Abril%202010/noticias%208%20Abril%202010.html>.

¹⁰ Mercado Común del Sur (MERCOSUR), “Comunicado Conjunto de los Estados Partes del Mercosur y Estados Asociados”, paragraph 11, at http://www.mercosur.org.uy/innovaportal/file/2331/1/CMC_2010_ACTA01_COMUNICADO_ES_EE.PP%20y%20EE.AA.pdf.

¹¹ See Secretaría de Relaciones Exteriores, “Remarks by Foreign Secretary Patricia Espinosa on the Signing of Arizona Law SB 1070,” (April 23, 2010) available at http://portal3.sre.gob.mx/english/index.php?option=com_content&task=view&id=529&Itemid=9.

¹² Letter from Mexican state border governors to Governor Janice Brewer, dated June 9, 2010, at http://graphics8.nytimes.com/packages/pdf/national/07governors/20100607_CARTA_GOBERNADORES.pdf.

significant progress in improving economic and cultural relations.¹³ The enactment of SB 1070, however, has created an atmosphere of distrust and conflict that will damage trade relations and international commerce. For example, the local Chambers of Commerce of the Mexican border states of Sonora and Tamaulipas called on Mexican citizens to boycott Arizona upon the enactment of SB 1070¹⁴, and in August 2010, the Mexico City chapter of the Mexican Employers' Association ("Confederación Patronal de la República Mexicana" or "Coparmex") refused to meet with Arizona state officials visiting Mexico City seeking to develop trade relations due to the enactment of SB 1070.¹⁵ One need look no further than Mexico's advisory to its nationals that a negative political environment for migrant communities and for all Mexicans exists in Arizona.¹⁶ Such damage in trade relations and commerce will likely have a detrimental impact on the Arizona economy and that of the United States as a whole.

Interference With National Control of Immigration

SB 1070 and other similar State Immigration Laws also impermissibly intrude upon Congress's supreme authority to regulate immigration, as provided in Article I, Sec. 8, clause 4 of the U.S. Constitution. This authority has long been recognized by the Supreme Court. For example, in Hines v. Davidowitz, the Supreme Court struck a state statutory scheme under which Pennsylvania required annual registration by aliens, concluding that "where the federal government . . . has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulation."¹⁷ SB 1070 impermissibly constitutes additional state regulation that complements, and that creates independent state crimes based on the violation of, federal immigration law. It also requires Arizona state law enforcement officers to make determinations as to immigration status, which under federal law falls within the exclusive purview of federal agencies and judicial bodies. Further, SB 1070 and other similar State Immigration Laws threaten Congress's supreme authority to regulate immigration by establishing diverse legal frameworks for independent state immigration enforcement, which would threaten to derail any congressional efforts at comprehensive and effective solutions within the context of national immigration policy.

Racial Profiling, Harassment and Discrimination

In addition to preempting Congress's powers, SB 1070 and other similar State Immigration Laws create an environment for racial profiling, harassment and discrimination of Latinos and other

¹³ M. Angeles Villarreal, U.S.-Mexico Economic Relations: Trends, Issues, and Implications, Congressional Research Service, at 1 (November 9, 2010) available at <http://www.fas.org/sgp/crs/row/RL32934.pdf>.

¹⁴ Marcelo Beyliss and Roberto Aguilar, "Hoy, boicot contra Arizona", EL UNIVERSAL (May 13, 2010), at <http://www.eluniversal.com.mx/estados/75898.html>.

¹⁵ "Coparmex cancela reunión con funcionarios de Arizona", EL UNIVERSAL (August 23, 2010), at <http://www.eluniversal.com.mx/notas/703512.html>; Chris Hawley and Sergio Solache, "Arizona immigration law thwarts trade talk," THE ARIZONA REPUBLIC (August 27, 2010), at <http://www.azcentral.com/arizonarepublic/local/articles/2010/08/27/20100827arizona-immigration-law.html>.

¹⁶ Secretaría de Relaciones Exteriores, "Travel alert," supra note 7.

¹⁷ 312 U.S. 52, 66-67; see Truax v. Raich, 239 U.S. 33, 42 (1915); Matthews v. Diaz, 426 U.S. 67, 84 (1976) (holding that "it is the business of the political branches of the Federal Government, rather than that of either the States or the Federal Judiciary, to regulate the condition of entry and residence of aliens."); Chae Chan Ping v. U.S., 130 U.S. 581, 609 (1889) ("The power of exclusion of foreigners being an incident of sovereignty belonging to the [federal government] as a part of those sovereign powers delegated by the Constitution, the right to its exercise . . . cannot be granted away or restrained on behalf of any one."); Plyler v. Doe, 457 U.S. at 225 ("The States enjoy no power with respect to the classification of aliens.").

ethnic minorities in the United States by line law enforcement officials attempting to make immigration status decisions, under the pressure of law enforcement activities, unskilled and without federal authority. Enforcement of these laws will increase the occurrence of violations of due process, equal protection and other civil rights when some officers make decisions based on stereotypes that associate race, ethnicity, national origin and native language with presumed unlawful presence, regardless of an individual's actual citizenship or immigration status. These laws disproportionately impact those who are deemed to look foreign or speak with an accent or appear Latino, as do large numbers of U.S. citizens who are ethnic minorities, legal residents, visa holders and foreign tourists. The inevitable racial profiling, harassment, and discrimination is certain to foster divisions between Latinos and other ethnic minorities and the rest of the U.S. population.

The enactment of SB 1070 and the consideration of other similar State Immigration Laws clearly stem from a frustration with the federal government's long failure to enact comprehensive immigration reform. Therefore, the solution to these misguided state initiatives is for the federal government to address these long-neglected issues as effectively and as quickly as possible.

The New York City Bar Association therefore strongly urges your respective Committees and Subcommittees to assert their exclusive jurisdiction, to craft and promote federal legislation that will bring about comprehensive and effective immigration reform and to forcefully oppose SB 1070 and the enactment of similar laws by other states.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. W. Seymour', with a long horizontal flourish extending to the right.

Samuel W. Seymour