

**COPY**

JUN 06 2024



CLERK OF THE SUPERIOR COURT

DEPUTY CLERK

*J. Gagantha*

1 D. Andrew Gaona (028414)  
Austin C. Yost (034602)  
2 **COPPERSMITH BROCKELMAN PLC**  
2800 North Central Avenue, Suite 1900  
3 Phoenix, Arizona 85004  
T: (602) 381-5486  
4 [agaona@cblawyers.com](mailto:agaona@cblawyers.com)  
[ayost@cblawyers.com](mailto:ayost@cblawyers.com)

5 Jared G. Keenan (027068)  
6 **ACLU FOUNDATION OF ARIZONA**  
P.O. Box 17148  
7 Phoenix, Arizona 85011  
T: (602) 773-6021  
8 [jkeenanacluaz.org](mailto:jkeenanacluaz.org)

9 *Attorneys for Plaintiffs*

10 **ARIZONA SUPERIOR COURT**

11 **MARICOPA COUNTY**

CV2024-014340

12 PODER IN ACTION, INC., an Arizona )  
nonprofit corporation; PHOENIX LEGAL )  
13 ACTION NETWORK, an Arizona nonprofit )  
corporation; and FLORENCE IMMIGRANT & )  
14 REFUGEE RIGHTS PROJECT, INC., an )  
Arizona nonprofit corporation, )

15 Plaintiffs, )

16 v. )

17 STATE OF ARIZONA, a body politic; and )  
18 ADRIAN FONTES, in his official capacity as )  
Arizona Secretary of State, )

19 Defendants. )  
20 )  
21 )

No. \_\_\_\_\_

**VERIFIED COMPLAINT**

(Tier 2)

Expedited Election Challenge  
Pursuant to A.R.S. § 19-161(B)

22 For their Verified Complaint against Defendants, Plaintiffs allege as follows:

23 **Overview**

24 1. This is an action under A.R.S. § 19-161(A) seeking to enjoin an unconstitutional  
25 legislative referral that threatens to cause great harm to the State of Arizona and its residents.  
26

1           2.     Article IV, part 2, § 13 of the Arizona Constitution imposes important limitations  
2 on bills passed by the Legislature and referred to the People for a vote. As relevant here, these  
3 legislative acts can cover only one subject. This is known as the single subject requirement.

4           3.     This legislative session (indeed, mere days ago), the Legislature passed House  
5 Concurrent Resolution 2060 (“HCR 2060”), which – absent court order – will be submitted to  
6 the People for their consideration on the November 2024 general election ballot. A true and  
7 correct copy of HCR 2060 is attached as **Exhibit 1**.

8           4.     HCR 2060’s official title states that it is “AN ACT . . . RELATING TO  
9 RESPONSES TO HARMS RELATED TO AN UNSECURED BORDER.” HCR 2060’s short  
10 title is the “Secure the Border Act.”

11          5.     HCR 2060, in its final form, originated in the Arizona State Senate. A Senate Fact  
12 Sheet explains that its purpose is as follows: “Subject to voter approval, statutorily makes it  
13 unlawful for a person who is an unlawful immigrant to enter Arizona from a foreign nation at  
14 any location other than a lawful port of entry. Outlines requirements for the issuance of an order  
15 to return to a foreign nation, civil immunity and enforceability of unlawful immigration laws.  
16 Prohibits natural persons from submitting false documents when applying for public benefits or  
17 employment.” A true and correct copy of the Senate Fact Sheet is attached as **Exhibit 2**.

18          6.     In sum, HCR 2060’s substantive provisions: (a) make it unlawful for a person who  
19 is an unlawful immigrant to enter or attempt to enter Arizona directly from a foreign nation at  
20 any location other than a lawful port of entry; (b) allow a court, at any time before a person is  
21 convicted of or adjudicated for an illegal entry violation, to dismiss the charge pending against  
22 the person and issue an order to return to a foreign nation; (c) require a judge, on a person’s  
23 conviction of an illegal entry offense, to enter an order that requires the person to return to the  
24 foreign nation from which the person entered or attempted to enter the United States; and (d)  
25 create new crimes related to the submission of false documents or information by a person who  
26 is not lawfully present in the United States in seeking employment or public benefits.



1 Maricopa County to racially profile residents, exposing them to an increased potential for police  
2 violence and family separation, whether through incarceration or deportation. [*Id.* ¶ 4]

3 13. For example, the Maricopa County Sheriff’s Office has been under a court order  
4 and monitoring after years of racially profiling Latine residents. The Phoenix Police Department  
5 has been under investigation by the United States Department of Justice for nearly three years  
6 for multiple potential civil rights violations, including excessive use of force and discriminatory  
7 policing. This history underscores why Poder believes that HCR 2060 will – if it goes into effect  
8 – only embolden Arizona law enforcement agencies to engage in behavior that violates the civil  
9 rights of people living, working, and traveling in the State. [*Id.* ¶ 5]

10 14. HCR 2060 would thus significantly harm Poder’s organizational mission. [*Id.* ¶ 4]

11 15. What’s more, if HCR 2060 were to be implemented, Poder would need to  
12 significantly increase the amount of resources that it currently allocates to community outreach,  
13 particularly to ensure that community members know their rights when interacting with law  
14 enforcement. Poder currently hosts a monthly community outreach event, where it must account  
15 for several logistics. Since the beginning of discussion of HCR 2060, these events have doubled  
16 in size, logistics, and requests. Poder is planning to host more events, more frequently, which  
17 has resulted in an unexpected budget allocation. [*Id.* ¶ 6]

18 16. Poder currently has one staff member dedicated to answering crisis calls from  
19 community members. These calls include, but are not limited to, supporting community  
20 members after experiences of police violence or discrimination; supporting in accessing health,  
21 housing, and legal resources; and helping to find loved ones who are incarcerated or held in an  
22 United States Immigration and Customs Enforcement (“ICE”) detention center. If HCR 2060  
23 were implemented, then Poder expects that it will need to hire additional staff members to handle  
24 the increased volume of calls that Poder expects to receive related to discrimination by law  
25 enforcement, the negative impacts on household stability if a family is separated, and the need  
26 to find loved ones who have been detained. [*Id.* ¶ 7]

1           17. HCR 2060 would also negatively impact Poder’s staff and members who are  
2 people of color, particularly Latine. Poder believes that these individuals would be at heightened  
3 risk of racial profiling, violence, and interrogation at the hands of law enforcement. If arrested,  
4 Poder’s members that qualify for Deferred Action for Childhood Arrivals could be jailed for  
5 days or weeks until they are given the opportunity to establish an affirmative defense in court.  
6 The stability of the neighborhoods Poder’s members live in would be in peril as families are  
7 separated through incarceration and deportation, and people leave the State out of fear. [*Id.* ¶ 8]

8           18. Plaintiff Phoenix Legal Action Network (“PLAN”) is an Arizona nonprofit  
9 organization that works in solidarity with our local immigrant community to reimagine justice  
10 in Arizona. [**Exhibit 4** (Declaration of Rekha Nair) (“Nair Decl.”) ¶ 2]

11           19. PLAN’s primary focus is legal support. It provides free immigration legal services  
12 to low income, non-detained immigrants facing deportation in Maricopa County or with cases  
13 before the Phoenix Immigration Court. [*Id.*]

14           20. Due to PLAN’s provision of these highly-specialized legal services to members of  
15 the community, it knows that HCR 2060 – if it goes into effect – will not only impose more  
16 criminal penalties on immigrants in Arizona, but also substantially interfere with and harm  
17 PLAN’s ability to accomplish its mission. That’s because HCR 2060 would create significant  
18 confusion for PLAN’s lawyers about the rights and legal remedies available to immigrants as  
19 numerous provisions contradict or undermine federal immigration law and make Arizona an  
20 inhospitable place for our immigrant community. [*Id.* ¶ 8]

21           21. For example, HCR 2060 states that a grant of “lawful presence” from the federal  
22 government serves as an affirmative defense to prosecution, but it defines lawful presence very  
23 narrowly. *See* § 13-4295.01(B)(1). It does not include immigrants who receive a Form I-220A  
24 order of release on own recognizance, a Form I-220B order of supervision, or those released on  
25 bond. *See id.* [Nair Decl. ¶ 13]

1           22. Immigrants released on parole remain at risk too because § 13-4295.01(E) restricts  
2 the types of parole that qualify as lawful presence and states that, despite any grant of parole  
3 from the federal government, a non-citizen continues to lack lawful presence for the purposes of  
4 the statute if the non-citizen is “required to be detained under the Immigrant & Nationality Act  
5 but was not detained and instead was paroled into the United States.” § 13-4295.01(E)(2). Non-  
6 citizens apprehended by immigration officials within one hundred miles of the border and within  
7 fourteen days of unlawful entry are subject to expedited removal. 87 Fed. Reg. 16022 (Mar. 21,  
8 2022). The INA provides these immigrants, “shall be detained for further consideration of the  
9 application for asylum,” and can only be released under a grant of parole from ICE. *See* INA §  
10 235(b)(1)(B)(ii); *accord Matter of M-S*, 27 I&N Dec. 509, 510 (A.G. 2019). [Nair Decl. ¶ 14]

11           23. PLAN also believes that proposed A.R.S. § 13-4295.03 raises significant concerns  
12 for its attorneys and clients. That section requires state criminal court judges to issue an “order  
13 of return” to Mexico if they determine that the person illegally entered the United States. The  
14 order “requires the person to return to the foreign nation from which the person entered or  
15 attempted to enter the United States.” A.R.S. § 13-4295.03(C). It takes effect “on completion of  
16 any term of incarceration or imprisonment.” *Id.* It also authorizes state or law enforcement to  
17 effectuate this order of return by transporting the non-citizen to a border port-of-entry. In short,  
18 it gives the State of Arizona authority to expel a non-citizen back to Mexico if the State finds  
19 that they unlawfully entered the country. The statute does not limit this authority in any way  
20 even when the non-citizen is currently in removal proceedings or when they have a pending or  
21 colorable claim to immigration status. [Nair Decl. ¶ 16]

22           24. Most of PLAN’s clients subject to prosecution under HCR 2060 would not have  
23 an affirmative defense of lawful presence, despite having pending claims for immigration status,  
24 because immigration processing delays mean many are left without status for years. As a result,  
25 if PLAN’s clients do not have the affirmative defense of lawful presence, then the inevitable  
26 result would be an order of return to Mexico. If they comply with the order and allow authorities

1 to return them to Mexico, then they would be unable to appear for their scheduled immigration  
2 court hearings. And if they do not appear at their final hearing because they were returned to  
3 Mexico, then they would receive in absentia removal order. *See Matter of Sanchez-Herbert*, 26  
4 I&N Dec. 43 (BIA 2012) (explaining that the immigration court retains jurisdiction to hold an  
5 in absentia hearing and should issue a removal order where proper notice of the hearing and  
6 removability are established). [Nair Decl. ¶ 17]

7 25. Unlike some immigration remedies that can be requested by a non-citizen outside  
8 the United States—like a U visa or a family-based or employment-based application—some  
9 forms of relief—like asylum, the T visa for survivors of trafficking, and Special Immigrant  
10 Juvenile Status (“SIJS”) for children who have been abused, abandoned, or neglected—can only  
11 be requested inside the United States. INA § 208(a)(1) (defining those eligible to seek asylum  
12 as any non-citizen “who is physically present in the United States or who arrives in the United  
13 States (whether or not at a designated port of arrival . . .)”); INA § 101(a)(13)(T)(i)(II) (requiring  
14 survivors of trafficking to be “physically presented in the United States” to obtain a T visa); INA  
15 § 101(a)(13)(J) (stating that SIJS requires “an immigrant who is present in the United States”).  
16 Thus, if the State sends immigrants back to Mexico, many will lose their opportunity to obtain  
17 asylum, a T visa, SIJS, or other forms of relief. In addition, departing the United States may  
18 trigger additional grounds of inadmissibility, like the unlawful presence bars in INA §  
19 212(a)(9)(B), that could affect their eligibility for immigration relief. [Nair Decl. ¶¶ 18-19]

20 26. HCR 2060 would thus interfere with and harm PLAN’s organizational mission  
21 because PLAN would lose the opportunity to work with many of its clients and advance their  
22 claims here in the community. HCR 2060 also may require PLAN to expend more resources to  
23 overcome new grounds of inadmissibility based on a conviction or order of return. [*Id.* ¶ 20]

24 27. To avoid these outcomes, the immigrants that PLAN serves will have two options,  
25 both of which will expose them to additional criminal penalties and potential immigration  
26 consequences. First, they could refuse to comply with the order of return, but they would then

1 face class 4 felony criminal charges. § 13-4295.02. Or they could try to re-enter the United States  
2 to attend their immigration court hearing. In the best-case scenario, the United States Department  
3 of Homeland Security (“DHS”) would agree to parole them in to attend their hearings, but DHS  
4 may not exercise its parole power or—because of backlogs at the border—they may not be able  
5 to timely obtain parole from DHS. Thus, they may feel compelled to once again unlawfully enter  
6 the United States to attend their court hearing and pursue federal immigration relief, once again  
7 subjecting them to prosecution under § 13-4295.01, this time felony prosecution as repeat  
8 offenders, § 13-4295.01(D), and another order of return. [Nair Decl. ¶ 21]

9       28. Essentially, immigrants eager to vindicate their rights under federal immigration  
10 law could end up in an endless loop of entries and prosecutions in the hope that somehow, in  
11 between prosecutions, they can gain the status necessary to finally have a viable affirmative  
12 defense. § 13-4295.01(B)(1). [Nair Decl. ¶ 22]

13       29. This type of endless loop would not only interrupt and jeopardize the path to legal  
14 status for many non-citizens, but it would also drain PLAN’s resources. For example, if any  
15 person finds themselves unable to re-enter the United States in time for a court hearing, but enters  
16 thereafter, PLAN may need to file additional motions, like a motion to reopen, to preserve their  
17 opportunity to obtain immigration status in the United States. [*Id.* ¶ 23]

18       30. In addition, PLAN’s services are currently limited to non-detained immigrants. Its  
19 standard retainer agreement provides that if its clients are detained or incarcerated, it can  
20 withdraw from the representation. In Arizona, individuals in the custody of the Arizona  
21 Department of Corrections, Rehabilitation & Reentry often must continue with their removal  
22 proceedings while in custody. There is no organization in Arizona currently providing free legal  
23 services to this population. Thus, PLAN may need to terminate representation in cases in which  
24 it has invested time and resources to prepare and its clients, who are low income and generally  
25 cannot afford private counsel, would likely find themselves proceeding pro se. [*Id.* ¶ 24]

26



1           31. PLAN also works with undocumented immigrants who have lived in our  
2 community for decades. Almost half of the immigrants PLAN served in 2023 had been residing  
3 in the United States for more than ten years. PLAN believes that HCR 2060 and the racial  
4 profiling it will likely bring will impact these immigrants in many ways too. [*Id.* ¶ 25]

5           32. PLAN believes that HCR 2060 will likely further embolden local law enforcement  
6 to unlawfully prolong traffic stops for immigration investigations. While law enforcement may,  
7 in the end, find that the immigrant entered Arizona from Mexico before the relevant provision  
8 becomes enforceable, § 13-4295.01(D), or beyond the one-year statute of limitations for first-  
9 time offenders or the seven-year status of limitations for repeat offenders, A.R.S. § 13-107, they  
10 will have already contacted ICE thus putting more of PLAN’s clients and community members  
11 on the road to deportation. This will lead to an increased number of our undocumented  
12 community members being placed in immigration removal proceedings and an increased  
13 demand for PLAN’s legal services, straining PLAN’s limited resources. [Nair Decl. ¶¶ 28-29]

14           33. In addition, PLAN represents individuals seeking immigration status affirmatively  
15 with United States Citizenship and Immigration Services (“USCIS”). Even after these  
16 individuals’ applications are submitted, they do not receive lawful presence in the United States,  
17 but rather remain undocumented often for years until their applications are approved. Given that  
18 PLAN reasonably expects that HCR 2060 will lead to racial profiling and prolongation of traffic  
19 stops for immigration enforcement, more of these PLAN clients will also be placed in  
20 immigration court proceedings. This will require PLAN to expend more resources to provide  
21 additional representation in immigration court to stop their deportation and allow them the  
22 benefit of their affirmative claims for immigration relief. This will thus result in a reduction in  
23 the number of people that PLAN can serve in our community. [*Id.* ¶¶ 30-31]

24           34. Plaintiff Florence Immigrant & Refugee Rights Project, Inc. (“FIRRP”) is an  
25 Arizona nonprofit organization dedicated to providing free legal and social services to the  
26 thousands of detained adults and children facing immigration removal proceedings in Arizona

1 on any given day. As the only 501(c)(3) nonprofit organization in Arizona dedicated to providing  
2 free legal services to people in immigration detention, FIRRPP's vision is to ensure that all  
3 immigrants facing removal have access to counsel, understand their rights under the law, and are  
4 treated fairly and humanely. [Exhibit 5 (Declaration of Laura St. John) ¶¶ 1-2]

5 35. To achieve its mission of providing free legal and social services to detained adults  
6 and unaccompanied children facing removal proceedings, FIRRPP provides regular group legal  
7 orientations, or Know Your Rights presentations, and individualized legal orientations for all  
8 people who are facing possible deportation while detained in ICE or, in the case of  
9 unaccompanied immigrant children, with the United States Department of Health and Human  
10 Services' Office of Refugee Resettlement ("ORR") custody. FIRRPP's group orientations educate  
11 detained immigrants about their legal rights and the immigration court process and explain  
12 potential defenses to deportation and how to seek release from custody while in removal  
13 proceedings for those who are eligible. FIRRPP seeks to empower people through these legal  
14 orientations to make informed decisions about their cases. In addition, FIRRPP's individual  
15 orientations help identify individuals whose cases may be able to benefit from pro bono or  
16 limited scope representation, which is allowed under Immigration Court rules. [*Id.* ¶ 5]

17 36. FIRRPP also provides representation to a significant number of individuals who are  
18 no longer detained by ICE or ORR, but who are released to the community in Arizona. This  
19 includes, but is not limited to, cases involving unaccompanied children who are released to  
20 sponsors in the Phoenix or Tucson areas and adult clients for whom FIRRPP is appointed as  
21 counsel because the Immigration Court has found that the individual is incompetent to represent  
22 themselves in removal proceedings as a result of a serious mental health condition. [*Id.* ¶ 7]

23 37. HCR 2060 will – if it goes into effect – fundamentally and seriously interfere with  
24 FIRRPP's ability to accomplish its mission of providing free legal and social services to people  
25 who are detained and facing removal from the United States. [*Id.* ¶ 9]

26

1           38.     First, by folding authority to remove (i.e., deport people) into certain criminal court  
2 proceedings, HCR 2060 will create significant confusion for immigration lawyers like those who  
3 work at FIRRPP about the rights and legal remedies available to immigrants at any given time.  
4 This is particularly true because numerous provisions of HCR 2060 fundamentally controvert  
5 federal immigration law, and the legal remedies potentially available to non-citizens to avoid  
6 deportation will change based on the venue of the proceedings – state or federal court. [*Id.* ¶ 10]

7           39.     Specifically, HCR 2060 includes only a very narrow list of affirmative defenses to  
8 the criminal charges and removal provisions, but these affirmative defenses in the state system  
9 do not account for the numerous potential forms of relief that may be available to individuals in  
10 federal immigration removal proceedings. For example, while it is an affirmative defense to  
11 HCR 2060’s illegal entry provisions to have been *granted* asylum, there is no defense that allows  
12 one to apply for asylum (or withholding of removal or protection under the United Nations  
13 Convention Against Torture) to avoid removal as would be the case in federal immigration court.  
14 This will create confusion and result in people being illegally returned or refouled to countries  
15 where they face harm in violation of U.S. international treaty obligations. [*Id.*]

16           40.     Second, by removing people from the normal, federal system and instead placing  
17 them into a secondary, shadow deportation system in state court, FIRRPP would no longer be able  
18 to rely on the systems, relationships, and structures it has established over decades to identify  
19 and engage with people who are detained and facing removal in the federal immigration systems.  
20 FIRRPP would instead be faced with a choice to either undermine its mission by electing not to  
21 serve people in this secondary system in state court, or to significantly expand its use of resources  
22 to attempt to reach people throughout Arizona in state courts and jails where it has not  
23 traditionally had or needed access. [*Id.* ¶ 11]

24           41.     Third, by creating this alternative part-criminal and part-deportation process in  
25 state courts, HCR 2060 will impose massive new burdens on immigration lawyers, like many at  
26 FIRRPP, who are admitted to practice federally before the immigration court, but not before

1 Arizona state courts. Specifically, many immigration attorneys, including many at FIRRP, will  
2 simply not be able to represent individuals in these state court proceedings because of the  
3 different licensure requirements. [*Id.* ¶ 12]

4 42. And fourth, because HCR 2060 provisions purport to create an alternative  
5 definition of who “lacks lawful presence” in the U.S. to include some people who were lawfully  
6 granted parole into the U.S. by federal immigration authorities, HCR 2060 will interfere with  
7 FIRRP’s ability to provide accurate guidance to its clients regarding if their release from custody  
8 will or will not protect them from potential arrest, prosecution, and removal under this secondary,  
9 state court removal process. This could well lead to the potential targeting of FIRRP’s released  
10 clients as well as clients who it encounters in ICE custody and help secure release under federal  
11 law, but who remain vulnerable to prosecution and removal under the state scheme. [*Id.* ¶ 13]

12 43. Plaintiffs all have an interest in ensuring that the Legislature complies with its  
13 constitutional obligations and that Arizonans are not required to vote on an unconstitutional  
14 legislative referral that, if enacted, will cause great harm to many communities in this State.

15 44. Defendant State of Arizona is a body politic.

16 45. Defendant Adrian Fontes serves as the Arizona Secretary of State (“Secretary”).  
17 He is named in his official capacity only because he is (a) responsible for ensuring that HCR  
18 2060 appears on the general election ballot in all 15 Arizona counties and (b) directed by HCR  
19 2060 to place the measure on the November 2024 general election ballot.

20 46. Jurisdiction over this action is proper under article VI, § 14 of the Arizona  
21 Constitution and A.R.S. §§ 12-123, 12-1831, and 19-161. *See also Hoffman v. Reagan*, 245 Ariz.  
22 313, 315 ¶ 7 (2018) (holding that courts can consider pre-election challenges to legislative  
23 referrals under the Arizona Constitution’s single subject requirement).

24 47. Venue is proper in Maricopa County under A.R.S. § 19-161(C).

25 48. A pre-election challenge to a legislative referral like this one “shall be advanced  
26 on the calendar and heard and decided by the court as soon as possible.” A.R.S. § 19-161(B).

1 **Factual Allegations**

2 **I. The Single Subject Rule.**

3 49. Article IV, part 2, § 13 of the Arizona Constitution requires that every act passed  
4 by the Legislature “embrace but one subject and matters properly connected therewith[.]”

5 50. Legislative acts can therefore cover only one subject.

6 51. This single subject requirement is “meant to prevent ‘log-rolling,’ or combining  
7 different measures into one bill so that a legislator must approve a disfavored proposition to  
8 secure passage of a favored proposition.” *Ariz. Sch. Bds. Ass’n v. State* (“ASBA”), 252 Ariz. 219,  
9 227 ¶ 33 (2022) (quoting *Hoffman*, 245 Ariz. at 316 ¶ 14). In fact, a “bill that deals with multiple  
10 subjects creates a serious ‘logrolling’ problem because an individual legislator ‘is thus forced,  
11 in order to secure the enactment of the proposition which he considers the most important, to  
12 vote for others of which he disapproves.’” *Bennett v. Napolitano*, 206 Ariz. 520, 528 ¶ 37 (2003)  
13 (quoting *Kerby v. Luhrs*, 44 Ariz. 208, 214-15 (1934)).

14 52. The “subject” of legislation includes “all matters having a logical or natural  
15 connection.” *ASBA*, 252 Ariz. 219 at 227 ¶ 34 (quoting *Litchfield Elementary Sch. Dist. No. 79*  
16 *of Maricopa Cnty. v. Babbitt*, 125 Ariz. 215, 224 (App. 1980)). And this subject “must be  
17 essential to the accomplishment of one main objective.” *Id.*

18 53. Thus, to comply with the single subject rule, “all matters treated . . . should fall  
19 under some one general idea, be so connected with or related to each other, either logically or in  
20 popular understanding, as to be parts of, or germane to, one general subject.” *Id.* (quoting  
21 *Litchfield*, 125 Ariz. at 224). A legislative act “violates the rule if it includes ‘dissimilar and  
22 discordant subjects that by no fair intendment can be considered as having any legitimate  
23 connection with or relation to each other.’” *Id.* (quoting *Litchfield*, 125 Ariz. at 224).

24 54. While the single subject rule is interpreted “liberally so as not to impede or  
25 embarrass the legislature,” it is not interpreted “so ‘foolishly liberal’ as to render the  
26 constitutional requirements nugatory.” *Id.* ¶ 33 (quoting *Hoffman*, 245 Ariz. at 316 ¶ 14).

1           55.    When a legislative act violates the single subject rule, the act is “entirely void  
2 because no mechanism is available for courts to discern the primary subject of the act.” *Id.* ¶ 34;  
3 *see also, e.g., Litchfield*, 125 Ariz. at 226 (such an act is “infected by reason of the combination  
4 of its various elements rather than by any invalidity of one component,” and so it “must fall”).

5           56.    This constitutional requirement is critical to a representative democracy. It ensures  
6 that, to pass substantive policy, legislators must gather enough votes from representatives of the  
7 majority of constituents who support the policy – not slip them into unrelated legislation.

8 **II.    HCR 2060.**

9           57.    On June 4, the Legislature passed HCR 2060 and filed it in the Secretary’s Office.

10          58.    A Senate Fact Sheet explains that HCR 2060’s purpose is as follows: “Subject to  
11 voter approval, statutorily makes it unlawful for a person who is an unlawful immigrant to enter  
12 Arizona from a foreign nation at any location other than a lawful port of entry. Outlines  
13 requirements for the issuance of an order to return to a foreign nation, civil immunity and  
14 enforceability of unlawful immigration laws. Prohibits natural persons from submitting false  
15 documents when applying for public benefits or employment.” [Exhibit 2]

16          59.    In short, HCR 2060’s substantive provisions: (a) make it unlawful for a person  
17 who is an unlawful immigrant to enter or attempt to enter Arizona directly from a foreign nation  
18 at any location other than a lawful port of entry; (b) allow a court, at any time before a person is  
19 convicted of or adjudicated for an illegal entry violation, to dismiss the charge pending against  
20 the person and issue an order to return to a foreign nation; (c) require a judge, on a person’s  
21 conviction of an illegal entry offense, to enter an order that requires the person to return to the  
22 foreign nation from which the person entered or attempted to enter the United States; and (d)  
23 create new crimes related to the submission of false documents or information by a person who  
24 is not lawfully present in the United States in seeking employment or public benefits.

1           60.     Separate and apart from these new offenses that turn on individuals’ unlawful entry  
2 to and presence in the United States and how those individuals can (and cannot) seek  
3 employment and public benefits, HCR 2060 also creates a new drug crime.

4           61.     Specifically, HCR 2060 establishes that a person who is at least 18 years old  
5 commits the new crime of “sale of lethal fentanyl,” if the person knowingly commits transporting  
6 a narcotic drug for sale, and if both the following apply: (a) the person knows that the drug being  
7 sold contains fentanyl; and (b) the fentanyl causes the death of another person. HCR 2060 also  
8 creates an affirmative defense to this crime if the fentanyl and its precursor chemicals were either  
9 manufactured in the United States or were lawfully imported into the United States.

10          62.     But the Legislature’s attempt to impose state law consequences for those  
11 immigrants who do not enter the country and State through a legal port of entry or who submit  
12 false documents or information in applying for employment or public benefits has nothing to do  
13 with imposing criminal liability on every adult who commits the “sale of lethal fentanyl.”

14          63.     HCR 2060 thus “includes ‘dissimilar and discordant subjects that by no fair  
15 intendment can be considered as having any legitimate connection with or relation to each  
16 other.’” *ASBA*, 252 Ariz. 219 at 227-28 ¶ 34 (quoting *Litchfield*, 125 Ariz. at 224).

17          64.     As a result, HCR 2060 violates article IV, part 2, § 13 of the Arizona Constitution.

18          65.     Absent entry of an injunction, HCR 2060 will be submitted to the People for their  
19 consideration on the November 2024 general election ballot.<sup>1</sup>

20  
21 \_\_\_\_\_  
22 <sup>1</sup> Plaintiffs would also be remiss to not point out that HCR 2060 violates article IX, § 23(A) of  
23 the Arizona Constitution. That provision—known as the Revenue Source Rule—provides that a  
24 “referendum measure that proposes a mandatory expenditure of state revenues for any purpose,  
25 establishes a fund for any specific purpose or allocates funding for any specific purpose must  
26 also provide for an increased source of revenues sufficient to cover the entire immediate and  
future costs of the proposal. The increased revenues may not be derived from the state general  
fund or reduce or cause a reduction in general fund revenues.” Though challenges under the  
Revenue Source Rule can be brought only post-election, *see League of Arizona Cities & Towns*  
*v. Brewer*, 213 Ariz. 557, 562 ¶ 28 (2006), and Plaintiffs thus do not raise such a challenge here,

1 **Count I**

2 **(Declaratory Judgment – Violation of the Single Subject Rule)**

3 66. Plaintiffs incorporate all the above paragraphs.

4 67. This Court has the power to “declare rights, status, and other legal relations  
5 whether or not further relief is or could be claimed.” A.R.S. § 12-1831.

6 68. As explained above, HCR 2060 affects every Plaintiffs’ “rights, status or other  
7 legal relations.” A.R.S. § 12-1832.

8 69. Article IV, part 2, § 13 of the Arizona Constitution requires that every act passed  
9 by the Legislature “embrace but one subject and matters properly connected therewith[.]”

10 70. HCR 2060 contains multiple subjects that have no “logical or natural connection”  
11 to each other. *Litchfield*, 125 Ariz. at 224 (citation omitted). Its provisions do not “fall under  
12 some one general idea,” and they are not “connected with or related to each other, either logically  
13 or in popular understanding, as . . . parts of, or germane to, one general subject.” *ASBA*, 252  
14 Ariz. 219 at 227 ¶ 34 (quoting *Litchfield*, 125 Ariz. at 224). Rather, HCR 2060 “includes  
15 ‘dissimilar and discordant subjects that by no fair intendment can be considered as having any  
16 legitimate connection with or relation to each other.’” *Id.* (quoting *Litchfield*, 125 Ariz. at 224).

17 71. An actual and justiciable controversy exists about the constitutionality of HCR  
18 2060 because it was submitted to the Secretary’s Office on June 4, 2024 and will appear on the  
19 November 2024 general election ballot absent a court order.

20 72. Plaintiffs request a declaration that HCR 2060 violates the single subject  
21 requirement in article IV, part 2, § 13 of the Arizona Constitution.

22 **Count II**

23 **(Injunctive Relief – Violation of the Single Subject Rule)**

24 73. Plaintiffs incorporate all the above paragraphs.

25 \_\_\_\_\_  
26 Arizonans should be aware that the Legislature has knowingly referred to them for approval a  
dangerous measure that is not only bad public policy, but also blatantly unconstitutional.





1 RESPECTFULLY SUBMITTED this 6th day of June, 2024.

2 **COPPERSMITH BROCKELMAN PLC**

3 

4 By \_\_\_\_\_  
5 D. Andrew Gaona  
6 Austin C. Yost

7 **ACLU FOUNDATION OF ARIZONA**

8 Jared G. Keenan

9 *Attorneys for Plaintiffs*

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

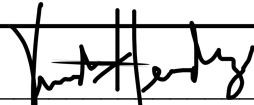
### Verification

I, Viridiana Hernandez, declare under penalty of perjury and as permitted by Arizona Rule of Civil Procedure 80(c) as follows:

1. Poder In Action, Inc. (Poder) is a 501(c)(3) nonprofit organization based in Phoenix, Arizona. I am authorized to sign this Verification on Poder's behalf.
2. Poder is a Plaintiff in this lawsuit.
3. I have read the foregoing Verified Complaint and know the contents thereof.
4. To the best of my knowledge, information, and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 05 day of June 2024.



---

Viridiana Hernandez

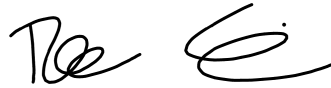
### **Verification**

I, Rekha Nair, declare under penalty of perjury and as permitted by Arizona Rule of Civil Procedure 80(c) as follows:

1. I am the Executive Director of the Phoenix Legal Action Network (PLAN) and am authorized to sign this Verification on PLAN's behalf.
2. PLAN is a Plaintiff in this lawsuit.
3. I have read the foregoing Verified Complaint and know the contents thereof.
4. To the best of my knowledge, information, and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day of June 2024.



---

Rekha Nair


## Verification

I, Laura St. John, declare under penalty of perjury and as permitted by Arizona Rule of Civil Procedure 80(c) as follows:

1. I am the Legal Director of the Florence Immigrant & Refugee Rights Project (FIRRP) and am authorized to sign this Verification on FIRRP's behalf.
2. FIRRP is a Plaintiff in this lawsuit.
3. I have read the foregoing Verified Complaint and know the contents thereof.
4. To the best of my knowledge, information, and belief, the statements made therein are true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of June 2024.

DocuSigned by:  
  
9469D708C24A451...

Laura St. John

# **EXHIBIT 1**

~~lawful presence; e-verify program; penalties~~  
(now: border; benefits; fentanyl; illegal entry)

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **HOUSE CONCURRENT RESOLUTION 2060**

### A CONCURRENT RESOLUTION

ENACTING AND ORDERING THE SUBMISSION TO THE PEOPLE OF A MEASURE RELATING  
TO RESPONSES TO HARMS RELATED TO AN UNSECURED BORDER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it resolved by the House of Representatives of the State of Arizona,  
2 the Senate concurring:

3 1. Under the power of the referendum, as vested in the Legislature,  
4 the following measure, relating to responses to harms related to an  
5 unsecured border, is enacted to become valid as a law if approved by the  
6 voters and on proclamation of the Governor:

7 AN ACT

8 AMENDING TITLE 1, CHAPTER 5, ARTICLE 1, ARIZONA REVISED  
9 STATUTES, BY ADDING SECTIONS 1-503 AND 1-504; AMENDING TITLE  
10 13, CHAPTER 34, ARIZONA REVISED STATUTES, BY ADDING SECTION  
11 13-3424; AMENDING TITLE 13, CHAPTER 38, ARIZONA REVISED  
12 STATUTES, BY ADDING ARTICLE 35; AMENDING TITLE 23, CHAPTER 2,  
13 ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-215;  
14 RELATING TO RESPONSES TO HARMS RELATED TO AN UNSECURED  
15 BORDER.

16 Be it enacted by the Legislature of the State of Arizona:

17 Section 1. Short title

18 This act may be cited as the "Secure the Border Act".

19 Sec. 2. Findings and declaration of purpose

20 A. The people of the State of Arizona find and declare  
21 as follows:

22 1. Due to weaknesses in immigration enforcement, a  
23 public safety crisis is occurring in Arizona, caused by  
24 transnational cartels engaging in rampant human trafficking  
25 and drug smuggling across this state's southern border.

26 2. From 2021 to 2023, United States Customs and Border  
27 Protection encountered nearly seven million immigrants  
28 illegally entering the United States through the southwest  
29 border. This number does not include an estimated two million  
30 "gotaways" who evaded encounters with border officials  
31 entirely.

32 3. From 2021 to 2023, United States Customs and Border  
33 Protection encountered two hundred eighty-two individuals on  
34 the terrorist watchlist illegally entering the southwest  
35 border between ports of entry. This is a 3033% increase over  
36 the prior three years when only nine such individuals were  
37 encountered.

38 4. From 2021 to 2023, the number of unaccompanied  
39 minors illegally crossing the southwest border skyrocketed to  
40 over four hundred thousand. Studies have shown that a  
41 majority of these children are victims of human trafficking.

42 5. From 2021 to 2023, the amount of fentanyl seized at  
43 the southwest border almost tripled, amounting to billions of  
44 doses of fentanyl. Illicit fentanyl, which is primarily  
45 produced in foreign nations and smuggled across the southwest



1 border, is a synthetic opioid fifty times stronger than  
2 heroin. Even a single dose can be lethal. Synthetic opioids  
3 like fentanyl have now become the leading cause of overdose  
4 deaths in the United States. Transnational cartels fund their  
5 operations by trafficking this deadly drug across the  
6 southwest border.

7 6. In 2022, the Arizona Department of Health Services  
8 reported that illicit fentanyl is primarily responsible for an  
9 increasing number of overdose deaths in Arizona and that  
10 opioid overdose data demonstrates the continued urgency to  
11 address the drug overdose crisis in Arizona through  
12 comprehensive and collaborative approaches.

13 7. Many individuals who enter the United States  
14 unlawfully are enticed by smugglers with promises of economic  
15 incentives, including employment and taxpayer-funded benefits.  
16 Human smuggling is a gateway crime for additional offenses,  
17 including identity theft, document fraud and benefit fraud,  
18 harming Arizona taxpayers. Unchecked and unauthorized  
19 employment causes economic hardship to Arizona workers who may  
20 face unfair labor competition, wage suppression and reduced  
21 working conditions or opportunities.

22 8. A holistic approach is required to deter human  
23 trafficking and drug smuggling into Arizona by:

- 24 (a) Empowering law enforcement to protect the public.
- 25 (b) Reducing the incentives for illegal immigration.
- 26 (c) Punishing criminals who fuel the crisis at  
27 Arizona's southern border.

28 B. Based on the facts outlined in subsection A of this  
29 section, the state of Arizona is being "actually invaded" as  
30 defined in article I, section 10 of the United States  
31 Constitution. The determination of invasion made in this  
32 subsection may only be revoked by referendum or by legislation  
33 that is duly enacted by the legislature and signed by the  
34 governor.

35 C. Based on these findings, the people of Arizona's  
36 purpose in adopting the Secure the Border Act includes  
37 protecting the public and responding to the harms related to  
38 an unsecured border by:

39 1. Empowering law enforcement to protect the public by  
40 arresting aliens who fail to enter Arizona's southern border  
41 through official ports of entry.

42 2. Reducing the incentive for illegal immigration by  
43 creating criminal offenses for a person to knowingly present  
44 false documents to obtain public benefits or to evade  
45 workplace eligibility detection through the e-verify program.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44

3. Strengthening Arizona's laws that require documentation of a person's lawful presence in the United States in order to receive public benefits by requiring agencies and political subdivisions of this state to use the systematic alien verification for entitlements program to verify benefit eligibility and validity of documents for people who are not citizens or nationals of the United States.

4. Increasing punishments for criminals who fuel the crisis at the southern border by selling fentanyl that causes the death of another person.

Sec. 3. Title 1, chapter 5, article 1, Arizona Revised Statutes, is amended by adding sections 1-503 and 1-504, to read:

1-503. Federal, state and local public benefits; false documents; violation; classification; definitions

A. NOTWITHSTANDING ANY OTHER STATE LAW AND TO THE EXTENT ALLOWED BY FEDERAL LAW, ANY NATURAL PERSON WHO IS NOT LAWFULLY PRESENT IN THE UNITED STATES SHALL NOT KNOWINGLY APPLY FOR A FEDERAL PUBLIC BENEFIT OR A STATE OR LOCAL PUBLIC BENEFIT BY SUBMITTING A FALSE DOCUMENT TO ANY ENTITY THAT ADMINISTERS THE FEDERAL PUBLIC BENEFIT OR THE STATE OR LOCAL PUBLIC BENEFIT.

B. ANY NATURAL PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS GUILTY OF A CLASS 6 FELONY.

C. FOR THE PURPOSES OF THIS SECTION:

1. "FEDERAL PUBLIC BENEFIT" HAS THE SAME MEANING PRESCRIBED IN SECTION 1-501.

2. "STATE OR LOCAL PUBLIC BENEFIT" HAS THE SAME MEANING PRESCRIBED IN SECTION 1-502.

1-504. Document verification; applicants for public benefits; definitions

A. IF A NATURAL PERSON WHO APPLIES FOR ANY FEDERAL PUBLIC BENEFIT PURSUANT TO SECTION 1-501 OR ANY STATE OR LOCAL PUBLIC BENEFIT PURSUANT TO SECTION 1-502 IS NOT A CITIZEN OR NATIONAL OF THE UNITED STATES, THE AGENCY OR POLITICAL SUBDIVISION OF THIS STATE THAT ADMINISTERS THE PUBLIC BENEFIT SHALL USE THE SYSTEMATIC ALIEN VERIFICATION FOR ENTITLEMENTS PROGRAM THAT IS MAINTAINED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, OR ANY SUCCESSOR PROGRAM THAT IS DESIGNATED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, IN ORDER TO VERIFY THE VALIDITY OF THE DOCUMENTS PROVIDED BY THE APPLICANT AND TO VERIFY THE APPLICANT'S ELIGIBILITY FOR BENEFITS.

1 B. THIS SECTION DOES NOT RELIEVE A NATURAL PERSON OF  
2 ANY REQUIREMENT TO SUBMIT DOCUMENTATION THAT IS REQUIRED FOR  
3 ANY FEDERAL PUBLIC BENEFIT PURSUANT TO SECTION 1-501 OR ANY  
4 STATE OR LOCAL PUBLIC BENEFIT PURSUANT TO SECTION 1-502.

5 C. FOR THE PURPOSES OF THIS SECTION:

6 1. "FEDERAL PUBLIC BENEFIT" HAS THE SAME MEANING  
7 PRESCRIBED IN SECTION 1-501.

8 2. "STATE OR LOCAL PUBLIC BENEFIT" HAS THE SAME MEANING  
9 AS PRESCRIBED IN SECTION 1-502.

10 Sec. 4. Title 13, chapter 34, Arizona Revised Statutes,  
11 is amended by adding section 13-3424, to read:

12 13-3424. Sale of lethal fentanyl; affirmative defense;  
13 classification

14 A. A PERSON WHO IS AT LEAST EIGHTEEN YEARS OF AGE  
15 COMMITS SALE OF LETHAL FENTANYL IF THE PERSON KNOWINGLY SELLS  
16 FENTANYL IN VIOLATION OF SECTION 13-3408, SUBSECTION A,  
17 PARAGRAPH 7 AND BOTH OF THE FOLLOWING APPLY:

18 1. THE PERSON KNOWS THAT THE DRUG BEING SOLD CONTAINS  
19 FENTANYL.

20 2. THE FENTANYL CAUSES THE DEATH OF ANOTHER PERSON.

21 B. IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE BROUGHT  
22 UNDER THIS SECTION THAT THE FENTANYL AND ITS PRECURSOR  
23 CHEMICALS WERE EITHER MANUFACTURED IN THE UNITED STATES OR  
24 WERE LAWFULLY IMPORTED INTO THE UNITED STATES.

25 C. SALE OF LETHAL FENTANYL IS A CLASS 2 FELONY, EXCEPT  
26 THAT THE PRESUMPTIVE, MINIMUM AND MAXIMUM SENTENCES SHALL BE  
27 INCREASED BY FIVE YEARS.

28 Sec. 5. Title 13, chapter 38, Arizona Revised Statutes,  
29 is amended by adding article 35, to read:

30 ARTICLE 35. ILLEGAL ENTRY INTO THIS STATE

31 13-4295. Definitions

32 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

33 1. "ALIEN" MEANS A PERSON WHO IS NOT A CITIZEN OR  
34 NATIONAL OF THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES  
35 CODE SECTION 1101.

36 2. "PORT OF ENTRY" MEANS A PORT OF ENTRY IN THE UNITED  
37 STATES AS DESCRIBED IN 19 CODE OF FEDERAL REGULATIONS SECTION  
38 101.1.

39 13-4295.01. Illegal entry from foreign nation;  
40 affirmative defense; probable cause to  
41 arrest; prospective applicability;  
42 classification

43 A. IT IS UNLAWFUL FOR A PERSON WHO IS AN ALIEN TO ENTER  
44 OR ATTEMPT TO ENTER THIS STATE DIRECTLY FROM A FOREIGN NATION  
45 AT ANY LOCATION OTHER THAN A LAWFUL PORT OF ENTRY.

1           B. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF  
2 SUBSECTION A OF THIS SECTION IF EITHER OF THE FOLLOWING  
3 APPLIES:

4           1. THE FEDERAL GOVERNMENT HAS GRANTED THE DEFENDANT  
5 LAWFUL PRESENCE IN THE UNITED STATES OR ASYLUM UNDER 8 UNITED  
6 STATES CODE SECTION 1158.

7           2. THE DEFENDANT'S CONDUCT DOES NOT CONSTITUTE A  
8 VIOLATION OF 8 UNITED STATES CODE SECTION 1325(a).

9           C. A PERSON MAY NOT BE ARRESTED FOR A VIOLATION OF THIS  
10 SECTION WITHOUT PROBABLE CAUSE, WHICH SHALL BE ESTABLISHED BY  
11 ANY OF THE FOLLOWING:

12           1. A LAW ENFORCEMENT OFFICER WHO WITNESSES THE  
13 VIOLATION.

14           2. A TECHNOLOGICAL RECORDING OF THE VIOLATION.

15           3. ANY OTHER CONSTITUTIONALLY SUFFICIENT INDICIA OF  
16 PROBABLE CAUSE.

17           D. THIS SECTION MAY ONLY BE ENFORCED  
18 PROSPECTIVELY. THIS SECTION DOES NOT APPLY RETROACTIVELY AND  
19 SHALL NOT BE CONSTRUED TO APPLY TO THE CONDUCT OF ANY PERSON  
20 WHO ENTERED THIS STATE UNLAWFULLY FROM A FOREIGN NATION AT ANY  
21 TIME BEFORE THIS SECTION BECOMES ENFORCEABLE.

22           E. AN ALIEN LACKS LAWFUL PRESENCE UNDER THIS SECTION IF  
23 THE ALIEN WAS EITHER:

24           1. PAROLED PURSUANT TO A PROGRAMMATIC GRANT OF PAROLE,  
25 INCLUDING UNDER ANY PAROLE PROGRAM NOT CREATED UNDER  
26 NOTICE-AND-COMMENT RULEMAKING THAT ESTABLISHES SPECIFIC  
27 CHARACTERISTICS UNDER WHICH AN ALIEN WOULD BE ENTITLED TO  
28 PAROLE AND THAT HAS BEEN APPLIED TO MORE THAN ONE HUNDRED  
29 ALIENS DURING ONE CALENDAR YEAR.

30           2. REQUIRED TO BE DETAINED UNDER THE IMMIGRATION AND  
31 NATIONALITY ACT BUT WAS NOT DETAINED AND INSTEAD WAS PAROLED  
32 INTO THE UNITED STATES.

33           F. A VIOLATION OF THIS SECTION IS A CLASS 1  
34 MISDEMEANOR, EXCEPT THAT IT IS A CLASS 6 FELONY IF THE PERSON  
35 HAS BEEN PREVIOUSLY CONVICTED OF A VIOLATION OF THIS  
36 SECTION. THE PERSON IS NOT ELIGIBLE FOR PROBATION, PARDON,  
37 COMMUTATION OR SUSPENSION OF SENTENCE OR RELEASE ON ANY OTHER  
38 BASIS UNTIL THE PERSON HAS SERVED A TERM OF INCARCERATION AS  
39 DETERMINED BY THE COURT.

40           13-4295.02. Refusal to comply with order to return to a  
41 foreign nation; classification

42           A. A PERSON WHO IS AN ALIEN COMMITS REFUSAL TO COMPLY  
43 WITH AN ORDER TO RETURN TO A FOREIGN NATION IF ALL OF THE  
44 FOLLOWING OCCUR:

1           1. THE PERSON IS CHARGED WITH OR CONVICTED OF AN  
2 OFFENSE UNDER THIS ARTICLE.

3           2. A COURT, AS APPLICABLE, ISSUES AN ORDER PURSUANT TO  
4 SECTION 13-4295.03 FOR THE PERSON TO RETURN TO THE FOREIGN  
5 NATION FROM WHICH THE PERSON ENTERED OR ATTEMPTED TO ENTER THE  
6 UNITED STATES OR THE PERSON'S NATION OF ORIGIN.

7           3. THE PERSON REFUSES TO COMPLY WITH THE ORDER.

8           B. A VIOLATION OF THIS SECTION IS A CLASS 4 FELONY.

9           13-4295.03. Order to return to foreign nation

10          A. AT ANY TIME BEFORE A PERSON IS CONVICTED OF OR  
11 ADJUDICATED FOR A VIOLATION OF SECTION 13-4295.01, A COURT MAY  
12 DISMISS THE CHARGE PENDING AGAINST THE PERSON AND ISSUE A  
13 WRITTEN ORDER IN ACCORDANCE WITH SUBSECTION B OF THIS SECTION.

14          B. A WRITTEN ORDER AUTHORIZED BY SUBSECTION A OF THIS  
15 SECTION SHALL DISCHARGE THE PERSON AND REQUIRE THE PERSON TO  
16 RETURN TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR  
17 ATTEMPTED TO ENTER THE UNITED STATES OR THE PERSON'S NATION OF  
18 ORIGIN AND MAY BE ISSUED IF ALL OF THE FOLLOWING APPLY:

19           1. THE PERSON AGREES TO THE ORDER.

20           2. THE PERSON HAS NOT PREVIOUSLY BEEN CONVICTED OF AN  
21 OFFENSE UNDER THIS ARTICLE OR PREVIOUSLY OBTAINED A DISCHARGE  
22 UNDER AN ORDER ISSUED PURSUANT TO THIS SECTION.

23           3. THE PERSON IS NOT CHARGED WITH ANOTHER CLASS 1  
24 MISDEMEANOR OR ANY FELONY OFFENSE.

25           4. BEFORE THE ISSUANCE OF THE ORDER, THE ARRESTING LAW  
26 ENFORCEMENT AGENCY DOES BOTH OF THE FOLLOWING:

27           (a) COLLECTS ALL IDENTIFYING INFORMATION OF THE PERSON,  
28 WHICH MUST INCLUDE TAKING FINGERPRINTS FROM THE PERSON AND  
29 USING OTHER APPLICABLE PHOTOGRAPHIC AND BIOMETRIC MEASURES TO  
30 IDENTIFY THE PERSON.

31           (b) CROSS-REFERENCES THE COLLECTED INFORMATION WITH ALL  
32 RELEVANT LOCAL, STATE AND FEDERAL CRIMINAL DATABASES AND  
33 FEDERAL LISTS OR CLASSIFICATIONS THAT ARE USED TO IDENTIFY A  
34 PERSON AS A THREAT OR POTENTIAL THREAT TO NATIONAL SECURITY.

35          C. ON CONVICTION OF AN OFFENSE UNDER THIS ARTICLE, THE  
36 JUDGE SHALL ENTER AN ORDER THAT REQUIRES THE PERSON TO RETURN  
37 TO THE FOREIGN NATION FROM WHICH THE PERSON ENTERED OR  
38 ATTEMPTED TO ENTER THE UNITED STATES OR THE PERSON'S NATION OF  
39 ORIGIN. AN ORDER ISSUED UNDER THIS SUBSECTION TAKES EFFECT ON  
40 COMPLETION OF ANY TERM OF INCARCERATION OR IMPRISONMENT.

41          D. AN ORDER THAT IS ISSUED UNDER THIS SECTION MUST  
42 INCLUDE AN AUTHORIZATION THAT ALLOWS A STATE OR LOCAL LAW  
43 ENFORCEMENT AGENCY TO TRANSPORT THE PERSON TO A PORT OF ENTRY  
44 OR TO ANY OTHER POINT OF TRANSFER INTO FEDERAL CUSTODY.

13-4295.04. Enforcement of article

NOTWITHSTANDING ANY OTHER LAW, THIS ARTICLE MAY NOT BE ENFORCED IN ANY MANNER UNTIL ANY PART OF SECTION 2 OF S.B. 4, 88TH LEG., 4TH CALLED SESS. (2023) THAT WAS ENACTED IN THE STATE OF TEXAS, OR ANY OTHER LAW OF ANY OTHER STATE SIMILAR THERETO, HAS BEEN IN EFFECT FOR A PERIOD OF SIXTY CONSECUTIVE DAYS AT ANY TIME ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE.

13-4295.05. Civil immunity for state and local public entities, officials, employees and contractors; other laws not affected

A. A STATE OR LOCAL GOVERNMENT ENTITY, OFFICIAL, EMPLOYEE OR CONTRACTOR IS IMMUNE FROM LIABILITY FOR DAMAGES ARISING FROM A CAUSE OF ACTION UNDER THE LAWS OF THIS STATE RESULTING FROM AN ACTION TAKEN BY THE STATE OR LOCAL GOVERNMENT ENTITY, OFFICIAL, EMPLOYEE OR CONTRACTOR TO ENFORCE THIS ARTICLE OR AN ORDER ISSUED PURSUANT TO THIS ARTICLE DURING THE COURSE AND SCOPE OF THE STATE OR LOCAL GOVERNMENT ENTITY'S OFFICIAL'S, EMPLOYEE'S OR CONTRACTOR'S OFFICE, EMPLOYMENT OR PERFORMANCE FOR OR ON BEHALF OF THIS STATE OR THE LOCAL GOVERNMENT.

B. THIS SECTION SHALL NOT AFFECT A DEFENSE, IMMUNITY OR JURISDICTIONAL BAR AVAILABLE TO THIS STATE OR A LOCAL GOVERNMENT OR AN OFFICIAL, EMPLOYEE OR CONTRACTOR OF THIS STATE OR A LOCAL GOVERNMENT.

13-4295.06. Incarceration authorization and agreements

NOTWITHSTANDING ANY OTHER LAW, IF A COUNTY OR LOCAL LAW ENFORCEMENT AGENCY DOES NOT HAVE THE CAPACITY TO HOLD A PERSON WHO IS ARRESTED FOR OR CONVICTED OF AN OFFENSE INCLUDED IN THIS ARTICLE, THE DIRECTOR OF THE STATE DEPARTMENT OF CORRECTIONS SHALL ACCEPT ARRESTED OR CONVICTED PERSONS WHO ARE CHARGED WITH OR CONVICTED OF AN OFFENSE INCLUDED IN THIS ARTICLE AT ANY FACILITY IN THIS STATE THAT HAS AVAILABLE CAPACITY.

Sec. 6. Title 23, chapter 2, article 2, Arizona Revised Statutes, is amended by adding section 23-215, to read:

23-215. Employment eligibility; e-verify program; false documents; violation; classification

A. ANY NATURAL PERSON WHO IS NOT LAWFULLY PRESENT IN THE UNITED STATES SHALL NOT KNOWINGLY SUBMIT FALSE INFORMATION OR DOCUMENTS TO AN EMPLOYER TO EVADE DETECTION OF EMPLOYMENT ELIGIBILITY UNDER THE E-VERIFY PROGRAM.

B. ANY NATURAL PERSON WHO VIOLATES SUBSECTION A OF THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR, EXCEPT THAT IT IS

1 A CLASS 6 FELONY IF THE PERSON HAS BEEN PREVIOUSLY CONVICTED  
2 OF A VIOLATION OF THIS SECTION. THE PERSON IS NOT ELIGIBLE  
3 FOR PROBATION, PARDON, COMMUTATION OR SUSPENSION OF SENTENCE  
4 OR RELEASE ON ANY OTHER BASIS UNTIL THE PERSON HAS SERVED A  
5 TERM OF INCARCERATION AS DETERMINED BY THE COURT.

6 Sec. 7. Right to intervene; lawsuit

7 A. The president of the senate, the speaker of the  
8 house of representatives, the minority leader of the senate or  
9 the minority leader of the house of representatives shall be  
10 allowed to file a lawsuit or intervene in any action  
11 concerning this act if the individual seeks to defend the  
12 constitutionality, validity or enforceability of this act.

13 B. Any settlement of a lawsuit challenging this act  
14 cannot be entered before service of a twenty-one-day notice to  
15 the president of the senate, speaker of the house of  
16 representatives, minority leader of the senate and minority  
17 leader of the house of representatives. The failure to comply  
18 with this subsection shall invalidate the settlement and  
19 constitutes a violation of section 38-443, Arizona Revised  
20 Statutes.

21 Sec. 8. Severability

22 If a provision of this act or its application to any  
23 person or circumstance is held invalid, the invalidity does  
24 not affect other provisions or applications of the act that  
25 can be given effect without the invalid provision or  
26 application, and to this end the provisions of this act are  
27 severable.

28 2. The Secretary of State shall submit this proposition to the  
29 voters at the next general election as provided by article IV, part 1,  
30 section 1, Constitution of Arizona.

PASSED by THE HOUSE FEBRUARY 22, 2024.

PASSED BY THE SENATE MAY 22, 2024.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 4, 2024.

# **EXHIBIT 2**





**ARIZONA STATE SENATE**  
*Fifty-Sixth Legislature, Second Regular Session*

**AMENDED**  
FACT SHEET FOR H.C.R. 2060

lawful presence; e-verify program; penalties  
(NOW: border; benefits; fentanyl; illegal entry)

Purpose

Subject to voter approval, statutorily makes it unlawful for a person who is an unlawful immigrant to enter Arizona from a foreign nation at any location other than a lawful port of entry. Outlines requirements for the issuance of an order to return to a foreign nation, civil immunity and enforceability of unlawful immigration laws. Prohibits natural persons from submitting false documents when applying for public benefits or employment.

Background

Statute requires any natural person who applies for a state or local public benefit, or any federal public benefit that requires participants to be citizens or legal residents of the United States or otherwise lawfully present in the United States, to submit at least one of the following documents demonstrating lawful presence in the United States: 1) an Arizona driver license issued after 1996 or an Arizona nonoperating identification license; 2) a birth certificate or delayed birth certificate issued in any state, territory or possession of the United States; 3) a U.S. certificate of birth abroad; 4) a U.S. passport; 5) a foreign passport with a U.S. visa; 6) an I-94 form with a photograph; 7) a U.S. citizenship and immigration services employment authorization document or refugee travel document; 8) a U.S. certificate of naturalization; 9) a U.S. certificate of citizenship; 10) a tribal certificate of Indian blood; or 11) a tribal or Bureau of Indian Affairs affidavit of birth. Any person applying for such benefits must sign a sworn affidavit stating under penalty of perjury that the documents presented are true, and failure to report discovered violations of federal immigration law by an employee of the state is a class 2 misdemeanor (A.R.S. §§ [1-501](#) and [1-502](#)).

E-Verify is a web-based system through which employers create cases based on information taken from an employee's Form I-9, which is then electronically compared to information available to the U.S. Department of Homeland Security and the Social Security Administration. Similarly, the Systematic Alien Verification for Entitlements (SAVE) Program is an online service that allows federal, state and local benefit-granting agencies to verify a benefit applicant's immigration status or citizenship and is administered by the U.S. Department of Homeland Security. After hiring an employee, every employer in Arizona must verify the employment eligibility of the employee through the E-Verify program and must keep a record of the certification for the duration of the employee's employment, or at least three years, whichever is longer. An employer must also be registered with and participate in the E-Verify program in order to receive an economic development incentive ([A.R.S. § 23-214](#)).

Any unlawful immigrant must be fined and imprisoned for not more than six months, or for not more than two years for a subsequent offense involving: 1) entering or attempting to enter the United States at any time or place other than as designated by immigration officers; 2) eluding examination or inspection by immigration officers; or 3) attempting to enter or obtain entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact ([8 U.S.C. § 1325](#)). Any unlawful immigrant who is physically present in the United States or who arrives in the United States, regardless of whether the unlawful immigrant enters through a designated port of arrival, and including an unlawful immigrant who is brought to the United States after having been interdicted in international or United States waters, may apply for asylum. In order to be granted asylum, the unlawful immigrant must demonstrate that they are a refugee as defined in federal statute, and that race, religion, nationality, membership in a particular social group or political opinion was or will be at least one central reason for persecuting the applicant ([8 U.S.C. § 1158](#)).

The federal Deferred Action for Childhood Arrivals (DACA) program allows qualified individuals without lawful immigration status to defer removal of the individual from the United States. Deferred action remains in effect for a period of two years, subject to renewal, and provides recipients with employment authorization. On July 16, 2021, the U.S. District Court for the Southern District of Texas issued a vacatur and a permanent injunction against the continued operation of the program, thereby enjoining the U.S. Department of Homeland Security from granting DACA status for new applicants ([U.S. Department of Homeland Security](#)).

A person is guilty of a class 2 felony if they knowingly transport a narcotic drug for sale. A class 2 felony for a non-dangerous offense carries a minimum sentence of 4 years, a presumptive sentence of 5 years and a maximum sentence of 10 years. A class 2 felony for a non-dangerous, repetitive offense carries a minimum sentence of 6 years, presumptive sentence of 9.25 years and a maximum sentence of 18.5 years (A.R.S. §§ [13-702](#); [13-703](#) and [13-3408](#)).

According to a Joint Legislative Budget Committee fiscal note issued for H.B. 2748, a bill with similar provisions to those contained in H.C.R. 2060, as amended, there may be a number of different fiscal impacts to state and local revenues if H.C.R. 2060 is approved by the voters, the magnitude of which cannot be determined in advance ([JLBC](#)).

### Provisions

#### ***Illegal Entry***

1. Makes it unlawful for a person who is an unlawful immigrant to enter or attempt to enter Arizona directly from a foreign nation at any location other than a lawful port of entry.
2. Outlines the following as affirmative defenses to *illegal entry*:
  - a) the federal government has granted the defendant lawful presence in the United States or asylum under federal law; and
  - b) the defendant's conduct does not constitute a violation of *improper entry by an alien* under federal law.
3. Prohibits the arrest of a person for a violation of *illegal entry* without probable cause.

4. States that probable cause for an *illegal entry* arrest is established by any of the following:
  - a) a law enforcement officer who witnesses the violation;
  - b) a technological recording of the violation; or
  - c) any other constitutionally sufficient indicia of probable cause.
5. Stipulates that provisions relating to *illegal entry* may only be enforced prospectively, do not apply retroactively, and must not be construed to apply to the conduct of any person who entered Arizona unlawfully from a foreign nation at any time before *illegal entry* provisions become enforceable.
6. States that an unlawful immigrant lacks lawful presence if the unlawful immigrant was either:
  - a) paroled pursuant to a programmatic grant of parole, including under any parole program not created under notice-and-comment rulemaking under which an unlawful immigrant would be entitled to parole and that has been applied to more than 100 unlawful immigrants during one calendar year; or
  - b) required to be detained under the federal Immigration and Nationality Act but was not detained and instead was paroled into the United States.
7. Classifies a violation of *illegal entry* as a class 1 misdemeanor, except that a violation is a class 6 felony if the person has previously been convicted of *illegal entry*.
8. Stipulates that a person convicted of *illegal entry* is not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until the person has served a term of incarceration as determined by the court.

#### ***Order to Return to a Foreign Nation***

9. Allows a court, at any time before a person is convicted of or adjudicated for an *illegal entry* violation, to dismiss the charge pending against the person and issue an order to return to a foreign nation.
10. Stipulates that an order to return to a foreign nation discharges the person and requires the person to return to the foreign nation from which the person entered or attempted to enter the United States or the person's nation of origin.
11. Allows an order to return to a foreign nation to be issued if:
  - a) the person agrees to the order;
  - b) the person has not previously been convicted of an *illegal entry* offense or previously obtained a discharge under an order;
  - c) the person is not charged with another class 1 misdemeanor or any felony offense; and
  - d) before issuance of the order, the arresting law enforcement agency has collected all identifying information of the person, including fingerprints and other applicable photographic and biometric identifiers, and all relevant federal, state and local criminal databases have been cross-referenced to determine if the person is a threat to national security.

12. Requires a judge, on a person's conviction of an *illegal entry* offense, to enter an order that requires the person to return to the foreign nation from which the person entered or attempted to enter the United States or the person's nation of origin.
13. States that an order issued after an *illegal entry* conviction takes effect on completion of the person's term of incarceration or imprisonment.
14. Requires an order to include an authorization that allows a state or local law enforcement agency to transport the person to a port of entry or any other point of transfer into federal custody.
15. States that a person commits *refusal to comply with an order to return to a foreign nation* if:
  - a) the person is charged with or convicted of an *illegal entry* offense;
  - b) an applicable court has issued an order to return to the foreign nation from which the person entered or attempted to enter the United States or the person's nation of origin; and
  - c) the person refuses to comply with the order.
16. Classifies a violation of *refusal to comply with an order to return to a foreign nation* as a class 4 felony.
17. Requires the Director of the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR), notwithstanding any other law, to accept persons arrested for or convicted of an *illegal entry* offense at any state facility that has available capacity, if the county or local law enforcement agency does not have the capacity to incarcerate the person.

#### ***Enforcement of Illegal Entry***

18. Prohibits the enforcement of provisions relating to *illegal entry* in any manner until any part of Section 2 of S.B. 4, 88<sup>th</sup> Legislature, 4<sup>th</sup> Called Session (2023) of the State of Texas, or any other law of any other state similar thereto, has been in effect for a period of 60 consecutive days at any time on or after the effective date of the *Secure the Border Act*.

#### ***Civil Immunity***

19. Immunizes a state or local government entity, official, employee or contractor from civil liability for damages arising from a cause of action under the laws of Arizona resulting from action taken by the entity, official, employee or contractor to enforce laws related to *illegal entry* or orders to return to a foreign nation during the course and scope of the office, employment, or performance for or on behalf of Arizona or the local government.
20. States that immunity provisions do not affect a defense, immunity or jurisdictional bar available to the state or a government official, or an official, employee or contractor of the state or local government.

#### ***Public Benefits and Employment Eligibility***

21. Prohibits, notwithstanding any other law and to the extent allowed by federal law, any natural person who is not lawfully present in the United States from knowingly applying for a federal, state or local public benefit by submitting a false document to any entity that administers the benefits.

22. States that any natural person who violates the prohibition against submitting false public benefits documents is guilty of a class 1 misdemeanor, except a that person who has committed a previous offense is guilty of a class 6 felony.
23. States that persons who commit false document violations are not eligible for probation, pardon, commutation or suspension of sentence or release on any other basis until they have served a term of incarceration as determined by the court.
24. Requires an agency or political subdivision that administers public benefits, if a natural person who applies for public benefits is not a citizen or national of the United States, to use the SAVE Program maintained by the U.S. Citizenship and Immigration Services, or any designated successor program, to verify the validity of the applicant's eligibility for benefits.
25. Stipulates that the requirement for public benefit administering agencies to utilize the SAVE Program as outlined does not relieve a natural person of any requirement to submit documentation that is required for any federal, state or local public benefit.
26. Prohibits any natural person who is not lawfully present in the United States from knowingly submitting false information for documents to an employer to evade detection of employment eligibility under the E-Verify program.
27. States that any natural person who violates the prohibition against submitting false employment eligibility documents is guilty of a class 6 felony.

#### ***Sale of Lethal Fentanyl***

28. Establishes that a person who is at least 18 years old commits the crime of *sale of lethal fentanyl*, if the person knowingly commits *transporting a narcotic drug for sale*, and if both of the following apply:
  - a) the person knows that the drug being sold contains fentanyl; and
  - b) the fentanyl causes the death of another person.
29. States that the penalty for *sale of lethal fentanyl* is a class 2 felony, except that the presumptive, minimum and maximum sentences must be increased by five years.
30. Establishes an affirmative defense to a charge of *sale of lethal fentanyl* if the fentanyl and its precursor chemicals were either manufactured in the United States or were lawfully imported into the United States.

#### ***Right to Intervene***

31. Provides the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate or the Minority Leader of the House of Representatives with the ability to file a lawsuit or intervene in any action concerning the *Secure the Border Act* if the individual seeks to defend the constitutionality, validity or enforceability of the *Secure the Border Act*.
32. Stipulates that any settlement of a lawsuit challenging the *Secure the Border Act* cannot be entered before service of a 21-day notice to the aforementioned entities, and that failure to comply with this requirement invalidates the settlement and constitutes an act of nonfeasance in public office.

*Miscellaneous*

33. Defines *alien* as a person who is not a citizen or national of the United States as described in federal law.
34. Defines *port of entry* as a port of entry in the United States as defined in federal regulation.
35. Defines *federal public benefit* and *state or local public benefit*.
36. Designates this legislation as the *Secure the Border Act*.
37. Contains a severability clause.
38. Contains a statement of legislative findings.
39. Requires the Secretary of State to submit the proposition to the voters at the next general election.
40. Becomes effective if approved by the voters and on proclamation of the Governor.

Amendments Adopted by Committee

1. Adopted the strike-everything amendment.
2. Stipulates that the requirement for public benefit administering agencies to utilize the SAVE Program as outlined does not relieve a person of any requirement to submit documentation that is required for any federal, state or local public benefit.
3. Establishes an affirmative defense to a charge of *sale of lethal fentanyl* if the fentanyl and its precursor chemicals were either manufactured in the United States or were lawfully imported into the United States.
4. Modifies criteria for establishing guilt for an offense involving *sale of lethal fentanyl* to state that the fentanyl must have caused the death of another person, rather than have been a substantial cause of the death of another person.
5. Allows the ADCRR to accept convicted and unconvicted persons charged with or convicted of an *illegal entry* offense pursuant to an agreement with a county sheriff or local chief law enforcement officer if the county or local law enforcement agency does not have the capacity to incarcerate the person.
6. Requires an order to return to a foreign nation to include an authorization that allows a state or local law enforcement agency to transport a person to a port of entry, rather than state the manner of the transportation.
7. Modifies the criteria used to determine when provisions relating to *illegal entry* may become enforceable.
8. Makes technical and conforming changes.

Amendments Adopted by Committee of the Whole

1. Specifies that being a DACA recipient is not an affirmative defense to illegal entry if the program is cancelled or a federal court has issued a final order determining that the program is unlawful, and any appeals of the final order have been exhausted.
2. States that an alien lacks lawful presence if the alien was either:
  - a) paroled pursuant to a programmatic grant of parole, including under any parole program not created under notice-and-comment rulemaking under which an alien would be entitled to parole and that has been applied to more than 100 aliens during one calendar year; or
  - b) required to be detained under the Immigration and Nationality Act but was not detained and instead was paroled into the United States.
3. Removes the overturning or abrogation of S.B. 1070 as a possible enforceability trigger for the illegal entry provisions of the *Secure the Border Act*.
4. Specifies that any other state law similar to Texas' S.B. 4 being in effect for 60 consecutive days may also trigger the enforceability of illegal entry provisions of the *Secure the Border Act*.
5. Requires a person who is convicted of illegal entry to serve a term of incarceration as determined by the court, rather than serve at least 30 days of incarceration.
6. Requires, rather than allows, the ADCRR to accept persons who are convicted, or arrested, for illegal entry offenses, and specifies that such persons can be held at any state facility that has available capacity.
7. Reduces the penalty for a first offense of evading E-Verify requirements from a class 6 felony to a class 1 misdemeanor, and adds that anyone who commits a violation is not eligible for probation, pardon, commutation or suspension of sentence or release on any basis until the person has served the term of incarceration imposed by the court.
8. Specifies that an order to return to a foreign nation may include an authorization that allows law enforcement to transport a person to any point of transfer into federal custody.
9. Removes the requirement that an order to return to a foreign nation include the name of the law enforcement officer or state agency that is responsible for monitoring compliance with the order.
10. Modifies provisions relating to the right to legal intervention.
11. Updates the legislative statement of findings.

Amendments Adopted by Additional Committee of the Whole

1. Removes language providing for an affirmative defense for DACA recipients entirely, including exceptions to the affirmative defense.
2. Prohibits a person from being arrested for an *illegal entry* offense without probable cause.

3. Outlines criteria for determining how probable cause is established for *illegal entry* offenses.
4. Specifies that an order to return to a foreign nation can require a person to return to the nation from which the person entered the United States, or the person's nation of origin.
5. Makes technical and conforming changes.

Senate Action

MAPS          5/8/24      DPA/SE      4-3-0

Prepared by Senate Research

May 22, 2024

ZD/cs



# **EXHIBIT 3**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECLARATION OF VIRIDIANA HERNANDEZ

I, Viridiana Hernandez, declare under penalty of perjury and as permitted by Arizona Rule of Civil Procedure 80(c) as follows:

1. Poder In Action, Inc. is a 501(c)(3) nonprofit organization based in Phoenix, Arizona. Poder In Action is a grassroots organization that builds the power of people of color and working-class communities to disrupt and dismantle systems of oppression and determine a liberated future in Arizona by developing organizers, civic advocacy, and movement building.
2. The staff and membership of our organization is majority Latine, many of whom are from families with mixed legal statuses and/or are immigrants themselves.
3. The staff and members of Poder In Action have been closely monitoring the progression of House Concurrent Resolution (“HCR”) 2060 during the 2024 Arizona legislative session. As many of us have been directly negatively impacted by the passage of Senate Bill 1070 in 2010, we have been watching HCR 2060 with deep concern.
4. Poder In Action’s work largely focuses on increasing equity for residents across Maricopa County who have been disproportionately impacted by police violence, racial profiling, and the historic failure of Valley cities to equitably invest in Black, immigrant, and low income neighborhoods. HCR 2060 would provide more incentives and tools for law enforcement agencies across Maricopa County to racially profile residents, exposing them to an increased potential for police violence and family separation, whether through incarceration or deportation. HCR 2060 would thus significantly harm Poder In Action’s organizational mission.
5. The Maricopa County Sheriff’s Office has been under a consent decree with the Department of Justice after years of racially profiling Latine residents. The Phoenix Police Department has been under investigation by the Department of Justice for nearly three years for multiple potential civil rights violations, including excessive use of force and discriminatory policing. HCR 2060 will – if it goes into effect – only embolden these law enforcement agencies to engage in behavior that violates the civil rights of people living, working, and traveling in Arizona.

Impact to Poder’s community outreach work and resource line

6. If HCR 2060 were to be implemented, Poder In Action would need to significantly increase the amount of resources we currently allocate to

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28


community outreach, particularly in ensuring community members know their rights when interacting with law enforcement. We currently host a monthly community outreach event, where we have to account for several logistics. Since the beginning of discussion of HCR 2060, these events have doubled in size, logistics and requests. We are planning to host more events, more frequently, which was an unexpected budget allocation.

- 7. We currently have one staff member dedicated to answering crisis calls from community members. These calls include, but are not limited to, supporting community members after experiences of police violence or discrimination, supporting in accessing health, housing, and legal resources, and helping to find loved ones who are incarcerated or held in an ICE detention center. If HCR 20260 were implemented, we expect the need to hire an additional staff member to handle the increased volume of calls we will receive related to discrimination by law enforcement, the negative impacts on household stability if a family is separated, and the need to find loved ones who have been taken.
- 8. HCR 2060 would also negatively impact the staff and membership of Poder In Action who are people of color, particularly Latine. The majority of our staff and members would be at heightened risk of racial profiling, violence, and interrogation at the hands of law enforcement. If arrested, our staff and community members that qualify for Deferred Action for Childhood Arrivals (DACA) could be jailed for days or weeks until they are given the opportunity to provide an affirmative defense in court. The stability of the neighborhoods our members live in would be in peril as families are separated through incarceration and deportation, and people leave the state out of fear.

I declare under penalty of perjury that the foregoing is true and correct.

6

Executed this \_\_\_\_\_ day of June 2024.

DocuSigned by:  
  
 602C05D2CF52493...

Viridian Hernandez

# **EXHIBIT 4**



- 1 7. During my nearly ten years of practice, I have supported dozens of  
2 immigrants either maintain or obtain immigration status despite their  
3 criminal arrest and convictions. However, this work often requires years in  
4 removal proceedings, years of appeals, and/or years of processing time with  
5 USCIS due, in part, to the regularly shifting legal landscape on what  
6 constitutes an offense that affects a non-citizen's immigration status.  
7  
8 8. House Concurrent Resolution (HCR) 2060, passed by the Legislature, will –  
9 if it goes into effect – not only impose more criminal penalties on immigrants  
10 in Arizona, but also substantially interfere with and harm PLAN's ability to  
11 accomplish our mission of providing free immigration legal services to low  
12 income, non-detained immigrants facing deportation and actualize our vision  
13 of making Arizona a place where immigrants are safe, welcome, and valued.  
14 That is because HCR 2060 will create significant confusion for immigration  
15 lawyers like me about the rights and legal remedies available to immigrants  
16 as numerous provisions contradict or undermine federal immigration law and  
17 make Arizona an inhospitable place for our immigrant community.  
18  
19 9. HCR 2060 will not only affect recently arriving immigrants, but also  
20 immigrants with a long history in our community. PLAN works with both  
21 communities.

### 15 **Impact on PLAN's Work with Recently Arrived Immigrants**

- 16 10. In my experience, recently arriving immigrants who enter the United States  
17 unlawfully through the southern border are predominantly released by U.S.  
18 Border Patrol or Immigration & Customs Enforcement (ICE) with one of  
19 four different types of status and paperwork:  
20 - Form I-94 and/or Interim Notice of Authorizing Parole  
21 - Form I-220A, Order of Release on Own Recognizance  
22 - Form I-220B, Order of Supervision  
23 - On payment of bond set either by ICE or the Immigration Judge  
24  
25 11. After release, these immigrants generally have ongoing immigration court  
26 proceedings, many also have periodic check-ins with ICE, and some even  
27 have ankle monitors and/or other forms of electronic surveillance. PLAN  
28 represents several recently arrived asylum seekers in immigration court  
proceedings before the Phoenix Immigration Court and/or before U.S.  
Citizenship & Immigration Services (USCIS).  
12. HCR 2060 would put all of these clients at risk of arrest, conviction,  
incarceration, and return to Mexico in the United States. *See* § 13-  
4295.01(A).

- 1 13. For example, HCR 2060 states that a grant of “lawful presence” from the  
2 federal government serves as an affirmative defense to prosecution but  
3 defines lawful presence very narrowly. *See* § 13-4295.01(B)(1). It does not  
4 include immigrants who receive a Form I-220A order of release on own  
5 recognizance, a Form I-220B order of supervision, or those released on bond.  
6 *See id.*
- 7 14. Immigrants released on parole remain at risk too. Section 13-4295.01(E)  
8 restricts the types of parole which qualify as lawful presence and further  
9 states that despite any grant of parole from the federal government, a non-  
10 citizen continues to lack lawful presence for the purposes of the statute if the  
11 non-citizen is “required to be detained under the Immigrant & Nationality  
12 Act but was not detained and instead was paroled into the United States.” §  
13 13-4295.01(E)(2). Non-citizens apprehended within one hundred miles of  
14 the border and within fourteen days of unlawful entry are subject to expedited  
15 removal. 87 Fed. Reg. 16022 (Mar. 21, 2022). The INA provides that  
16 immigrants in expedited removal, “shall be detained for further consideration  
17 of the application for asylum,” and can only be released pursuant to a grant  
18 of parole from ICE. *See* INA § 235(b)(1)(B)(ii); *accord Matter of M-S*, 27  
19 I&N Dec. 509, 510 (A.G. 2019).
- 20 15. In short, most recently arrived immigrants, despite possessing federal  
21 immigration paperwork that permits them to remain in the United States,  
22 would still be subject to prosecution and an order of return under HCR2060.  
23 Prosecution of recently arriving immigrants under § 13-4295.01 of HCR  
24 2060 would have several negative consequences for them and for PLAN.
- 25 16. Section 13-4295.03 raises the most significant concerns because it requires  
26 state criminal court judges to issue an order of return to Mexico if the person  
27 illegally entered the United States. § 13-4295.03(C). It is a mandatory  
28 provision, “the judge shall enter an order,” and provides no exceptions. *Id.* It  
also authorizes state or law enforcement to effectuate this order of return by  
transporting the non-citizen to a border port-of-entry. § 13-4295.03(D). Thus,  
HCR2060 gives the state of Arizona authority to expel a non-citizen back to  
Mexico if the non-citizen unlawfully entered the country even when the non-  
citizen is currently in removal proceedings or when they have a pending or  
colorable claim to immigration status.
17. Most of PLAN’s clients, if subject to prosecution under this law, would not  
have an affirmative defense of lawful presence despite having pending  
claims for immigration status as immigration processing delays mean many  
are left without status for years. Thus, the inevitable result would be a  
conviction, incarceration, and an order of return to Mexico. *See* §§ 13-  
4295.01, 13-4295.03. If they comply with the order of return, they would not

1 be physically able to appear for future immigration court hearings and would  
2 receive removal orders in absentia and lose their chance to apply for  
3 immigration status. *See Matter of Sanchez-Herbert*, 26 I&N Dec. 43 (BIA  
4 2012) (explaining that the immigration court retains jurisdiction to hold an  
5 in absentia hearing and should issue a removal order where proper notice of  
6 the hearing and removability are established).

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
18. Unlike some immigration remedies that can be requested by a non-citizen  
outside of the United States, like a U visa or a family-based or employment-  
based application, some forms of relief like asylum, the T visa for survivors  
of trafficking, and Special Immigrant Juvenile Status (SIJS) for children who  
have been abused, abandoned, or neglected can only be requested inside of  
the United States. *See* INA § 208(a)(1) (defining those eligible to seek  
asylum as any non-citizen “who is physically present in the United States or  
who arrives in the United States (whether or not at a designated port of arrival  
. . .)”); INA § 101(a)(13)(T)(i)(II) (requiring survivors of trafficking to be  
“physically presented in the United States” to obtain a T visa); INA §  
101(a)(13)(J) (stating that SIJS requires “an immigrant who is present in the  
United States”). Thus, if the state of Arizona sends immigrants back to  
Mexico, many will lose their opportunity to obtain asylum, a T visa, SIJS, or  
other forms of relief.

19. Departing the United States may also trigger certain additional grounds of  
inadmissibility, such as the unlawful presence bars in INA § 212(a)(9)(B),  
that could affect their eligibility for immigration relief.

20. The potential far-reaching impacts of HCR2060 would interfere with and  
harm PLAN’s organizational mission because PLAN would lose the  
opportunity to work with many of its clients and to advance their claims here  
in the community. It may require PLAN to expend more resources to  
overcome new grounds of inadmissibility based on the conviction and/or  
order of return.

21. To avoid these outcomes, the immigrants we serve will have two options,  
both of which expose them to additional criminal penalties and potential  
immigration consequences as well. First, they could refuse to comply with  
the order of return, but they would then face class 4 felony criminal charges.  
*See* § 13-4295.02. Or they could choose to accept the order of return and  
thereafter attempt to re-enter the United States to attend their immigration  
court hearing. In the best-case scenario, DHS would agree to parole them in  
to attend their hearings, but DHS may not be inclined to exercise their parole  
power under these circumstances or, because of backlogs at the border, they  
may not be able to obtain parole from DHS in a timely manner. Thus they  
may feel compelled to unlawfully re-enter to the United States to attend their



1 court hearing and pursue federal immigration relief for which they qualify,  
2 once again opening themselves up to prosecution under § 13-4295.01, this  
3 time felony prosecution as repeat offenders, § 13-4295.01(D), and another  
4 order of return.

5 22. Essentially, immigrants eager to vindicate their rights under federal  
6 immigration law could end up in an endless loop of entries and prosecutions  
7 in the hope that somehow, in between prosecution, they can gain the status  
8 necessary to finally have a viable affirmative defense. § 13-4295.01(B)(1).

9 23. This type of endless loop would not only interrupt and jeopardize the path to  
10 legal status for many non-citizens, but also drain PLAN's resources. For  
11 example, if any person finds themselves unable to re-enter the United States  
12 in time for a court hearing, but enters thereafter, PLAN may need to file  
13 additional motions, like a motion to reopen, to preserve their opportunity to  
14 obtain immigration status in the United States.

15 24. Moreover, PLAN's services are currently limited to non-detained  
16 immigrants. Our retainer agreement provides that if our clients are detained  
17 or incarcerated, we can withdraw. In Arizona, individuals in the custody of  
18 the Department of Corrections often must continue with their removal  
19 proceedings while in custody. There is no organization in Arizona currently  
20 providing free legal services to this population. Thus, PLAN would have to  
21 terminate representation in cases in which it has invested time and resources  
22 and our clients, who are low income and generally cannot afford private  
23 counsel, would likely find themselves proceeding pro se.

### 24 **Impact on PLAN's Work with Long Time Undocumented Immigrants**

25 25. PLAN also works with undocumented immigrants who have lived in our community  
26 for decades. Almost half of the immigrants we served in 2023 had been residing in  
27 the United States for more than ten years. HCR 2060 and the racial profiling it will  
28 inevitably bring will impact them in many ways too.

29 26. Over my career, I have represented and/or consulted with several immigrants racially  
30 profiled by law enforcement during traffic stops for the purposes of civil  
31 immigration enforcement. Local law enforcement regularly prolong traffic stops for  
32 ICE to arrive and/or turns individuals over to ICE after a traffic stop. Most  
33 notoriously, the Maricopa County Sheriff's Office under Sheriff Arpaio regularly  
34 engaged in this practice.

35 27. Moreover, in 2018, I requested and obtained data from the Arizona Department of  
36 Safety (DPS) through a Freedom of Information Act requests for all stops from April  
37 2018-July 2018 where Maricopa County where DPS contacted ICE. The data  
38

1 showed that DPS regularly unlawfully prolonged traffic stops for immigration status  
2 checks.

3 28. HCR 2060 will likely further embolden local law enforcement to unlawfully prolong  
4 traffic stops for immigration investigations. While law enforcement may, in the end,  
5 discover that that the immigrant entered Arizona from Mexico before HCR2060  
6 became enforceable, *see* § 13-4295.01(D), or beyond the one-year statute of  
7 limitations for first-time offenders or the seven-year statute of limitations for  
8 repeated offenders, *see* A.R.S. § 13-107, they will have already contacted ICE.

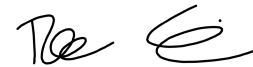
9 29. This will lead to an increased number of our undocumented community members  
10 being put on the road to deportation and placement in immigration removal  
11 proceedings. This would result in increased demand for PLAN's legal services and  
12 strain PLAN's already limited staff and resources.

13 30. Finally, PLAN represents both individuals currently in removal proceedings and  
14 those seeking immigration status affirmatively with USCIS. Our affirmative work  
15 with USCIS predominantly consists of longtime undocumented individuals eligible  
16 for a U visa as survivors of crime who cooperated with law enforcement and non-  
17 citizens eligible for VAWA as survivors of domestic violence perpetrated by certain  
18 U.S. citizen or lawful permanent resident family members.

19 31. Even when immigrants have pending U visa and VAWA applications, they do not  
20 receive lawful presence in the United States but remain undocumented often for  
21 years until their applications are approved. If, as expected, HCR2060 results in racial  
22 profiling and prolongation of traffic stops for immigration enforcement, more of  
23 these PLAN clients will also be placed in immigration court proceedings. This will  
24 require PLAN to expend more resources to provide additional representation in  
25 immigration court to stop their deportation and allow them the benefit of their  
26 affirmative claims for immigration relief. Because our resources are finite and we  
27 will need to expend more resources on each client, this will result in a reduction in  
28 the number of people PLAN can serve in our community.

29 I declare under penalty of perjury that the foregoing is true and correct.

30 Executed this 5<sup>th</sup> day of June 2024.



31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
560  
561  
562  
563  
564  
565  
566  
567  
568  
569  
570  
571  
572  
573  
574  
575  
576  
577  
578  
579  
580  
581  
582  
583  
584  
585  
586  
587  
588  
589  
590  
591  
592  
593  
594  
595  
596  
597  
598  
599  
600  
601  
602  
603  
604  
605  
606  
607  
608  
609  
610  
611  
612  
613  
614  
615  
616  
617  
618  
619  
620  
621  
622  
623  
624  
625  
626  
627  
628  
629  
630  
631  
632  
633  
634  
635  
636  
637  
638  
639  
640  
641  
642  
643  
644  
645  
646  
647  
648  
649  
650  
651  
652  
653  
654  
655  
656  
657  
658  
659  
660  
661  
662  
663  
664  
665  
666  
667  
668  
669  
670  
671  
672  
673  
674  
675  
676  
677  
678  
679  
680  
681  
682  
683  
684  
685  
686  
687  
688  
689  
690  
691  
692  
693  
694  
695  
696  
697  
698  
699  
700  
701  
702  
703  
704  
705  
706  
707  
708  
709  
710  
711  
712  
713  
714  
715  
716  
717  
718  
719  
720  
721  
722  
723  
724  
725  
726  
727  
728  
729  
730  
731  
732  
733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747  
748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772  
773  
774  
775  
776  
777  
778  
779  
780  
781  
782  
783  
784  
785  
786  
787  
788  
789  
790  
791  
792  
793  
794  
795  
796  
797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817  
818  
819  
820  
821  
822  
823  
824  
825  
826  
827  
828  
829  
830  
831  
832  
833  
834  
835  
836  
837  
838  
839  
840  
841  
842  
843  
844  
845  
846  
847  
848  
849  
850  
851  
852  
853  
854  
855  
856  
857  
858  
859  
860  
861  
862  
863  
864  
865  
866  
867  
868  
869  
870  
871  
872  
873  
874  
875  
876  
877  
878  
879  
880  
881  
882  
883  
884  
885  
886  
887  
888  
889  
890  
891  
892  
893  
894  
895  
896  
897  
898  
899  
900  
901  
902  
903  
904  
905  
906  
907  
908  
909  
910  
911  
912  
913  
914  
915  
916  
917  
918  
919  
920  
921  
922  
923  
924  
925  
926  
927  
928  
929  
930  
931  
932  
933  
934  
935  
936  
937  
938  
939  
940  
941  
942  
943  
944  
945  
946  
947  
948  
949  
950  
951  
952  
953  
954  
955  
956  
957  
958  
959  
960  
961  
962  
963  
964  
965  
966  
967  
968  
969  
970  
971  
972  
973  
974  
975  
976  
977  
978  
979  
980  
981  
982  
983  
984  
985  
986  
987  
988  
989  
990  
991  
992  
993  
994  
995  
996  
997  
998  
999  
1000

Rekha Nair

# **EXHIBIT 5**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECLARATION OF LAURA ST. JOHN, ESQ.

I, Laura St. John, declare under penalty of perjury and as permitted by Arizona Rule of Civil Procedure 80(c) as follows:

1. I am the Legal Director of the Florence Immigrant & Refugee Rights Project (FIRRP). FIRRP is a 501(c)(3) tax-exempt Arizona nonprofit organization. Our business mailing address is PO Box 86299, Tucson, AZ 85754.
2. Founded in 1989, FIRRP is dedicated to providing free legal and social services to the thousands of detained adults and children facing immigration removal proceedings in Arizona on any given day. As the only 501(c)(3) nonprofit organization in Arizona dedicated to providing free legal services to people in immigration detention, our vision is to ensure that all immigrants facing removal have access to counsel, understand their rights under the law, and are treated fairly and humanely.
3. I have practiced as an immigration attorney in Arizona with FIRRP for over thirteen years. At FIRRP, I have worked as a Staff Attorney, Managing Attorney, and Legal Director, providing free legal services to people who are facing removal. My practice has largely involved representing adults facing removal before the Immigration Courts in Florence and Eloy, though I have also represented individuals on non-detained dockets in Phoenix and Tucson. I also represent individuals in applications to the United States Citizenship and Immigration Service (USCIS), appeals before the Board of Immigration Appeals (BIA), petitions for review to the Ninth Circuit Court of Appeals, and a variety of cases in the District Court of Arizona. I have served in my current position as Legal Director at FIRRP since December 2015.
4. During my time at FIRRP, I have personally provided free legal services, both direct representation and pro se support, to more than a thousand individuals facing removal in Arizona. Additionally, as Managing Attorney and Legal Director, I have supervised attorneys, accredited representatives, legal assistants, and social workers who have provided free legal services, both through direct representation and pro se support, to thousands more individuals facing removal in Arizona.
5. To achieve our mission of providing free legal and social services to detained adults and unaccompanied children<sup>1</sup> facing removal proceedings, FIRRP

---

<sup>1</sup> Under U.S. law, unaccompanied immigrant children are children under 18, who have no lawful immigration status, and who do not have a parent or legal guardian in the U.S. or do not have a parent or legal guardian in the U.S. available to provide care and physical custody. 6 U.S.C. § 279(g)(2). The unaccompanied immigrant children we serve are

1 provides regular group legal orientations, or Know Your Rights  
2 presentations, and individualized legal orientations for all people who are  
3 facing possible deportation while detained in Immigration and Customs  
4 Enforcement (ICE) or, in the case of unaccompanied immigrant children,  
5 with Health and Human Services' (HHS) Office of Refugee Resettlement  
6 (ORR) custody. We traditionally rely on immigration court docket  
7 information, detention information provided by U.S. government  
8 stakeholders, and individual requests for legal visits to identify individuals  
9 in custody who are newly detained and/or have an upcoming immigration  
10 court hearing in our effort to ensure we are meeting with all detained  
11 individuals facing potential deportation. FIRRPs group orientations educate  
12 detained immigrants about their legal rights and the immigration court  
13 process, as well as explain potential defenses to deportation and how to seek  
14 release from custody while in removal proceedings for those who are  
15 eligible. We seek to empower people through these legal orientations to make  
16 informed decisions about their cases. Additionally, FIRRPs individual  
17 orientations help identify individuals whose cases may be able to benefit  
18 from pro bono representation, or for limited scope representation, which is  
19 allowed under Immigration Court rules.

20 6. In addition to legal orientations, FIRRPs staff routinely represent individuals  
21 pro bono in removal proceedings before the Immigration Court, USCIS, and  
22 BIA. Generally, to be eligible to represent individuals before federal  
23 immigration agencies – the Immigration Court, USCIS, or BIA – attorneys  
24 must be members in good standing of the bar of the highest court of any state,  
25 possession, territory, or Commonwealth of the United States, or the District  
26 of Columbia. As such, FIRRPs employs many attorneys who are admitted to  
27 practice law and who are members in good standing with bars other than the  
28 State Bar of Arizona.

29 7. FIRRPs also provides representation to a significant number of individuals  
30 who are no longer detained by ICE or ORR, but who are released to the  
31 community in Arizona. This includes, but is not limited to, cases involving  
32 unaccompanied children who are released to sponsors in the Phoenix or  
33 Tucson areas and adult clients for whom FIRRPs is appointed as counsel  
34 because the Immigration Court has found that the individual is incompetent  
35 to represent themselves in removal proceedings as a result of a serious mental  
36 health condition.<sup>2</sup> Release to the community can occur through a variety of

---

37 apprehended by U.S. immigration officials, placed in the physical custody and care of the  
38 U.S. Department of Human Services' Office of Refugee Resettlement, and subject to  
removal proceedings before Immigration Courts. *See* 8 U.S.C. §§ 1232(c)(2), (a)(d).

<sup>2</sup> Representation in these cases occurs pursuant to both the National Qualified Representative Program and court order in *Franco-Gonzalez v. Holder*. *Franco-Gonzalez*

1 mechanisms, including through a grant of parole by ICE or the Immigration  
2 Judge or upon payment of bond.

3 8. FIRRPP is also known nationally for its creation of quality pro se materials,  
4 including legal resource guides on removal proceedings and forms of relief,  
5 that are designed to assist individuals who are facing removal proceedings  
6 without counsel navigate this complex system. These materials are publicly  
7 available on FIRRPP's website and our guides are distributed in detention  
8 centers and jails nationwide.

9 9. House Concurrent Resolution (HCR) 2060, passed by the Legislature, will –  
10 if it goes into effect – fundamentally and seriously interfere with FIRRPP's  
11 ability to accomplish our mission of providing free legal and social services  
12 to people who are detained and facing removal from the United States.

13 10. First, by folding authority to remove (i.e., deport people) into certain criminal  
14 court proceedings, HCR 2060 will create significant confusion for  
15 immigration lawyers like those who work at FIRRPP about the rights and legal  
16 remedies available to immigrants at any given time. This is particularly true  
17 because numerous provisions of HCR 2060 fundamentally controvert federal  
18 immigration law, and the legal remedies potentially available to non-citizens  
19 to avoid deportation will change based on the venue of the proceedings –  
20 state or federal court. Specifically, HCR 2060 includes only a very narrow  
21 list of affirmative defenses to the criminal charges and removal provisions,  
22 but these affirmative defenses in the state system do not account for the  
23 numerous potential forms of relief that may be available to individuals in  
24 federal immigration removal proceedings. For example, while it is an  
25 affirmative defense to the illegal entry provisions of HCR 2060 to have been  
26 *granted* asylum, there is no defense that allows one to apply for asylum (or  
27 withholding of removal or protection under the United Nations Convention  
28 Against Torture) to avoid removal as would be the case in federal  
immigration court. This will both create confusion and result in people being  
wrongfully and illegally returned or refouled to countries where they face  
harm in violation of U.S. international treaty obligations.

11. Second, by removing people from the normal, federal system and instead  
placing them into a secondary, shadow deportation system in state court,  
FIRRPP would no longer be able to rely on the systems, relationships, and  
structures we have established over decades to identify and engage with  
people who are detained and facing removal in the federal immigration

---

*v. Holder*, No. CV 10-02211, 2013 WL 8115423, at \*1 (C.D. Cal. Apr. 23, 2013) (Order Granting Preliminary Injunction); *Franco-Gonzalez v. Holder*, No. CV 10-0221, 2014 WL 5475097 (C.D. Cal. Oct. 29, 2014) (Implementation Order).

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

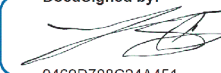
systems. FIRRPP would instead be faced with a choice to either undermine our mission by electing not to serve people in this secondary system in state court, or to significantly expand our use of resources to attempt to reach people throughout Arizona in state courts and jails where we have not traditionally had or needed access.

12. Third, by creating this alternative part-criminal and part-deportation process in state courts, HCR 2060 will impose massive new burdens on immigration lawyers, like many at FIRRPP, who are admitted to practice federally before the immigration court, but not before Arizona state courts. Specifically, many immigration attorneys, including many at FIRRPP, will simply not be able to represent individuals in these state court proceedings because of the different licensure requirements.

13. Finally, because provisions of HCR 2060 purport to create an alternative definition of who “lacks lawful presence” in the U.S. to include some people who were lawfully granted parole into the U.S. by federal immigration authorities, HCR 2060 will interfere with FIRRPP’s ability to provide accurate guidance to our clients regarding if their release from custody will or will not protect them from potential arrest, prosecution, and removal under this secondary, state court removal process. This could well lead to the potential targeting of our released clients as well as clients who we encounter in ICE custody and help secure release under federal law, but who remain vulnerable to prosecution and removal under the non-compatible state scheme.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6th day of June 2024.

DocuSigned by:  


9469D708C24A451...

Laura St. John