

No. 11-182

IN THE
Supreme Court of the United States

STATE OF ARIZONA, *et al.*, *Petitioners*,

v.

UNITED STATES, *Respondent*.

On Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit

Brief *Amicus Curiae* of U.S. Border Control, U.S.
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Institute on the Constitution, The Lincoln Institute
for Research and Education, Conservative Legal
Defense and Education Fund, Gun Owners of
America, Inc., Gun Owners Foundation, English
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INTEREST OF *AMICI CURIAE*¹

The organizational *amici curiae* are educational organizations having mutual interests in proper construction of the Constitution and laws of the United States, and in securing the nation's borders. They believe that this brief will be of assistance to the Court, bringing to its attention relevant matter not fully addressed by the parties.

- **U.S. Border Control** (www.usbc.org) was incorporated in Virginia and is exempt from federal income tax under section 501(c)(4) of the Internal Revenue Code ("IRC").
- **U.S. Border Control Foundation** (www.usbcf.org) was incorporated in Virginia and is exempt under IRC section 501(c)(3).
- **Policy Analysis Center** was incorporated in Virginia and is exempt under IRC section 501(c)(3).
- **Institute on the Constitution** (www.theamericanview.com) was organized and is operating in Maryland.
- **The Lincoln Institute for Research and Education** (www.lincolnreview.com) was incorporated in Virginia and is exempt under IRC section 501(c)(3).
- **Conservative Legal Defense and Education Fund** (www.cldef.org) was incorporated in the District of Columbia and is exempt under IRC

¹ It is hereby certified that the parties have filed a blanket consent to the filing of *amicus* briefs, that no counsel for a party authored this brief in whole or in part, and no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

section 501(c)(3).

- **Gun Owners Of America, Inc.** (www.gunowners.org) was incorporated in California and is exempt under IRC section 501(c)(4).
- **Gun Owners Foundation** (www.gunowners.com) was incorporated in Virginia and is exempt under IRC section 501(c)(3).
- **English First** (www.englishfirst.org) was incorporated in Virginia and is exempt under IRC section 501(c)(4).
- **English First Foundation** (www.englishfirstfoundation.org) was incorporated in Virginia and is exempt under IRC section 501(c)(3).

The individual *amici curiae* are currently-serving state legislators who stand with Arizona's defense of the rights of sovereign states, seek to preserve the powers of the states from federal encroachment, and have concern about the burden that illegal immigration poses throughout the country to the political communities and economies of their various states:

- Virginia Delegate **Bob Marshall**,
- Oklahoma Representative **Charles Key**, and
- Wyoming Senator **Kit Jennings**.

SUMMARY OF ARGUMENT

As a sovereign and independent State, Arizona has the inherent power to regulate immigration into its own territory. This inherent power is secured by the Tenth Amendment, limited only by Article IV, Section 2 of the Constitution, and by the Privileges and Immunities Clause of the 14th Amendment, and by the inherent power of the federal government to regulate immigration into the United States.

S.B. 1070 is a constitutional exercise of Arizona's inherent power of self-preservation, the purpose of which is "attrition" of the numbers of illegal aliens living in Arizona. By sections 2(B) and 6, the state and local officials are authorized to assist federal officials in the enforcement of federal deportation statutes in full accord with federal immigration policy. By sections 3 and (5)(C), the State has adopted two independent measures, each of which is within its inherent power to preserve the political and economic integrity, and neither of which conflicts with federal immigration policy.

Additionally, S.B. 1070 is a constitutional exercise of Arizona's power, retained by Article I, Section 10, Clause 3, to "engage in war [when] actually invaded." Arizona is, and has been for years, under siege from a foreign-orchestrated invasion of aliens who have unlawfully entered and remained in the State. The elements of this alien force have occupied large swaths of Arizona territory in furtherance of an objective to take the land back for Mexico.

By enacting S.B. 1070, Arizona has engaged in a “war of attrition” against invading legal aliens residing inside Arizona’s borders, a strategy well within Arizona’s right of self-defense secured by Article I, Section 10, Clause 3.

According to Article IV, Section 4 of the Constitution, it is the duty of the federal government to “protect each [State] against invasion.” Instead of performing its constitutional duty to protect Arizona, the federal government has undermined the State, placing upon it unfunded mandates that attract illegal aliens into the State, and bestowing benefits upon illegal aliens for political reasons.

ARGUMENT

Petitioners in this case justify S.B. 1070 primarily on the premise that “Arizona officials have inherent authority to enforce federal law,” and that Congress has not preempted them from doing so. Pet. Br., pp. 23, 26. This is not the only constitutional predicate upon which S. B. 1070 may be based. There are two others.

First, an historical and textual examination of the Constitution demonstrates that Arizona has concurrent powers over immigration, separate and apart from the federal government’s authority, which this Court has mistakenly assumed to be exclusive. *See* Section I, *infra*.

Second, since Arizona has been “actually invaded,” pursuant to Article I, Section 10, Clause 3, it has

unusual, but expressly granted, constitutional authority to defend itself against the invasion. *See* Section II, *infra*.

Finally, both of the above arguments must be viewed in light of the federal government's longstanding abandonment of its constitutional duty under Article IV, Section 4 "to protect [the states] against invasion. " *See* Section III, *infra*.

**I. AS AN EXERCISE OF THE STATE'S
CONCURRENT POWER OVER
IMMIGRATION, ARIZONA'S S.B. 1070 IS NOT
PREEMPTED BY FEDERAL LAW.**

The power of Congress to regulate immigration into the United States is not among the powers expressly enumerated in the Constitution. To be sure, Article I, Section 9, Clause 1 contemplates that Congress possesses such a power, in that the Clause specifically "prohibited" Congress from banning "[t]he Migration or Importation of such Persons as any of the States now existing shall think proper to admit ... prior to the Year [1808]." This limitation is not, however, expressed as an exception to an explicit grant of power over immigration to Congress. What the language of the Clause does accomplish is to: (i) affirm the existence of a preexisting State power to make rules governing the "migration or immigration" of foreign persons into the United States, as the States "think proper to admit"; and (ii) imply that Congress is vested with a power to override any such state law, in that it was specifically prohibited from exercising such a power until 1808.

A. The Power of Congress to Regulate Immigration into the United States Is a Power Inherent in the Nation's Sovereignty, Not a Power Delegated by the Constitution.

It was not until the mid-nineteenth century that the Supreme Court would address the source and extent of the power of Congress to control immigration. The question arose in two combined cases, one challenging the constitutionality of a state law imposing a tax on foreign passengers coming into the United States to defray costs of health inspection and treatment, and the other challenging a state law requiring the posting of a bond for each foreign immigrant likely to become a public charge. *See Passenger Cases*, 48 U.S. (7 How.) 283 (1849). The question presented was whether Congress had the power to regulate immigration and, if so, whether that power was to the exclusion of the States. The Supreme Court ruled five-to-four that the grant of power to “regulate foreign commerce” empowered Congress to regulate immigration, and that the two state laws unconstitutionally encroached upon that exclusive power. Thus, the Court concluded that the power to regulate immigration was denied to the States. This ruling was unanimously affirmed 26 years later. *See Henderson v. Mayor of New York*, 92 U.S. 259, 271-72 (1875).

Just a few years after that, the Court ruled that a federal act excluding a Chinese alien from entering the country was constitutional, but not based on the Commerce Power. Instead, the Court concluded that

Congress had the power to regulate immigration on the ground that such power was implied in the several powers in the United States government over matters of foreign affairs. Chae Chin Ping v. United States, 130 U.S. 581, 609 (1889). Four years later, the Court stated more precisely the origin of this power:

It is an accepted maxim of international law, that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe. [Fong Yue Ting v. United States, 149 U.S. 698, 705 (1893).]

Because the Chinese exclusion cases directly addressed the constitutionality of a federal immigration statute, it has been generally assumed that “Congress does not derive its power to regulate immigration from a specific constitutional grant[,] [but] [i]t is simply regarded as a power inherent to a sovereignty.” J. Nowak, R. Rotunda & J. Young, Constitutional Law, § 14.11, p. 628, n.16 (3d ed., West: 1986). In 1976, however, this Court combined the foreign commerce rationale with the sovereignty principle, cited both lines of cases, and concluded that Congress’ “[p]ower to regulate immigration is unquestionably exclusively a federal power.” DeCanas v. Bica, 424 U.S. 351, 354-55 (1976). However, a closer look at the structure and text of the Constitution indicates that the States, as independent and sovereign entities, have a concurrent power to control

immigration within their respective dominions, unless expressly preempted by positive federal law, enacted pursuant to Congress' constitutionally permitted object of protecting the nation's international boundaries.

B. Arizona's Power to Regulate Immigration Is Reserved to Arizona by the Tenth Amendment, Subject to Article IV, Section 2 and the Fourteenth Amendment Privileges and Immunities Clause.

As a nation of dual sovereignty, one national and one state, the United States poses a unique challenge respecting those powers that are inherent in sovereignty. This Court has affirmed that, after the ratification of the Constitution, the States retained their existence as separate and independent sovereignties:

[T]he people of each State compose a State, having its own government, and endowed with **all the functions essential to separate and independent** existence.... [*Texas v. White*, 74 U.S. (7 Wall) 700 (1869).]

As an independent and sovereign state, Arizona too has all the powers "inherent in sovereignty," including the power of self-preservation. *Id.* Thus, Arizona necessarily has the power to regulate immigration unless (i) that power has been delegated by the Constitution to the United States; or (ii) that power has been prohibited by the Constitution.

First, the power of Congress to exclude or admit an

alien is not a power delegated outright to the United States. Whether its power is derived from the delegated power over foreign commerce, or is inherent in its national sovereignty, it is a power to regulate immigration across the nation's international boundaries. See Fong Yue Ting, 149 U.S. at 705. Although Congress may regulate such traffic as a means to regulate international immigration under the Necessary and Proper Clause, the inherent power of self-preservation of a State, including its power to protect its sovereign integrity, is not swallowed up by the nation's power to regulate international immigration. Therefore such power over a state's internal boundaries is reserved to the States by the Tenth Amendment.

Second, the Constitution contains no express prohibition against state laws on the immigration of citizens of foreign nations. Of course, Article IV, Section 2 of the Constitution limits the inherent power of a State to control immigration, but only if a person is a citizen of another State. See Edwards v. California, 314 U.S. 160, 181 (1941) (Douglas, J., concurring). Additionally, the Fourteenth Amendment's Privileges and Immunities Clause limits the State's inherent power over a person who is a citizen of the United States. *Id.* However, neither limitation applies to a citizen of a foreign state. To the contrary, both constitutional provisions imply that if a person is not a citizen either of a State or the United States, the State has the inherent power to control the immigration of a foreign citizen into the geographic boundaries of that State. Thus, it may be inferred that the States retain the power to govern immigration of

persons not citizens of a State in the Union, that power having been exercised before the ratification of the Constitution. *See Passenger Cases*, 48 U.S. at 524-29 (Woodbury, J., dissenting).

To be sure, this Court has held that the Equal Protection Clause prohibits a state from discriminating against lawfully-admitted aliens. *See Graham v. Richardson*, 403 U.S. 365 (1971); *see also Sugarman v. Dougall*, 413 U.S. 634 (1973). But this case involves aliens who either unlawfully entered the country, or are otherwise unlawfully present in the United States. Further, *Graham* and *Sugarman* have been severely limited by *Ambach v. Norwick*, 441 U.S. 68 (1979) and *Foley v. Connelie*, 435 U.S. 291 (1978), in the latter of which this Court affirmed “a State’s historical power to exclude aliens from participation in its democratic political institutions’ ... as part of the **sovereign’s** obligation ‘to preserve the basic conception of a **political community.**” *Foley*, 435 U.S. at 295-96 (emphasis added). Moreover, the Court did not address in either *Graham* or *Sugarman*² the question whether the States retain any of their inherent power

² In dissent in *Sugarman*, then-Justice Rehnquist cast serious doubt upon the Court’s use of the Equal Protection Clause to strike down state laws discriminating against aliens in favor of citizens. While the majority would allow such discrimination only with respect to participation in a state’s political community, Justice Rehnquist questioned the majority’s assumption that alienage is “inherently suspect” as a class, in light of the “numerous classifications on the basis of citizenship that are set forth in the Constitution, [including] the very Amendment which the Court reads to prohibit classifications based on citizenship.” *Id.*, 413 U.S. at 652 (Rehnquist, J., dissenting).

to regulate immigration of foreign persons.

In sum, the States and the United States have concurrent power over the movement of foreign citizens amongst the several States. As this Court affirmed just this previous October term, “allocation of powers in our federal system preserves the integrity, dignity, and residual sovereignty of the States,” and “[t]he federal balance ... ensure[s] that States function as political entities in their own right.” Bond v. United States, 564 U.S. ___, 131 S.Ct. 2355, 2364 (2011). Because state regulation of the immigration of foreign persons is a power reserved by the Tenth Amendment, Arizona’s law is presumed to be a valid exercise of the State’s inherent power of self-preservation, and “not to be superseded by [federal immigration law] unless that was the clear and manifest purpose of Congress.” Wyeth v. Levine, 555 U.S. 555, 565 (2009).

C. S.B. 1070 Is Not Preempted by Federal Immigration Laws.

S.B. 1070 is predicated upon Arizona’s “compelling interest in the cooperative enforcement of federal immigration laws ... to **discourage and deter the unlawful entry and presence of aliens and economic activity** by persons **unlawfully present** in the United States.” (Emphasis added.) Both purposes are well within Arizona’s inherent authority of self-preservation by means of controlling the immigration into the State by persons of foreign citizenry.

The “unlawful entry and presence of aliens” in the

state threatens the integrity of Arizona as a political community. By its express terms, the Fourteenth Amendment guarantees State citizenship by residency if a person is a citizen of the United States. Unlawful aliens entering and residing in a State increase the risk that Arizona residents who are not United States citizens, and who flout the law governing naturalization, will unlawfully vote and fraudulently engage in other activities as if they were part of the State's political community. It is perfectly legitimate for Arizona to "make attrition through enforcement the public policy of all state and local government agencies in Arizona" to discourage and deter the unlawful entry and presence of illegal aliens. As this Court has recognized:

The exclusion of aliens from basic governmental processes is not a deficiency in the democratic system but a necessary consequence of the community's process of self-definition.... Aliens are by definition those outside of this community. [Cabell v. Chavez-Salido, 454 U.S. 432, 439-40 (1982).]

The participation in economic activity by persons unlawfully present in Arizona threatens the economic vitality of the State. By its express terms, Article IV, Section 2 opens the door for citizens of the other States to participate in the Arizona economy on an equal basis with Arizona citizens. See Toomer v. Witsell, 334 U.S. 385, 395 (1948). But there is no comparable explicit guarantee of nondiscriminatory access for unlawful aliens who are present in the United States. See Paul v. Virginia, 75 U.S. (Wall) 168, 180 (1869).

The presence of illegal aliens in Arizona creates a risk of decreased economic opportunities of Arizonans and their fellow Americans. Arizona, therefore, has a legitimate interest in ensuring that its citizens, the citizens of other States and of the United States have first priority opportunity in the State's economy. See Hicklin v. Orbeck, 437 U.S. 518 (1978).

Having established the presumption that the States have inherent powers to control immigration into their dominions, the only question is whether the particular means chosen by Arizona were preempted by the federal immigration laws.

1. Sections 2(B) and 6 of S.B. 1070 Are Not Preempted.

Both sections 2(B) and 6 of S.B. 1070 are designed to give state aid to federal immigration enforcement consistent with a federal policy of cooperative federalism. Section 2(B) does not require, but it more than encourages, state and local officials who reasonably suspect that a person, who has already been lawfully detained, is unlawfully in the State, to verify with federal authorities the person's immigration status. See Brief for Petitioners ("Pet. Br."), p. 31. Section 6 encourages the lawful arrests of persons who have committed crimes punishable by deportation. *Id.* at 41. Although the focus of both of these sections is "attrition" by the enforcement of federal deportation laws, that object is directly related to Arizona's inherent interest in protecting the integrity of its own boundaries.

With respect to section 2(B), Arizona's interest in protecting its own borders, although harmonious with the interest of the United States in protecting Arizona's international border with Mexico, is independent from the federal interest. In recognition of Arizona's sovereignty, it would be a mistake to read into the federal statutes an implied congressional intent that cooperative and systematic enforcement could take place **only** under the close supervision of the Attorney General of the United States. *See* Pet. Br., p. 34.

With respect to section 6, Arizona's inherent sovereign interest in protecting its own borders by arrests of aliens based upon their removability does not turn on whether the person arrested is subject to such removal on the basis of an act designated as criminal, or one designated as civil. The interest of Arizona in the integrity of its own borders is the same in either case. And the difference between criminal and civil offenses in federal immigration law is of little significance to the federal enforcement of such laws. *See* Pet. Br., pp. 45-46. There is, thus, no reason to impute to Congress an intent to distinguish the two kinds of arrests.

2. Section 3 of S.B. 1070 Is Not Preempted.

Section 3 makes it a state crime for willful failure to complete or carry an alien registration document, if required by federal law. *See* Pet. Br., p. 49. Such conduct is already forbidden by federal law. However, Arizona's interest is different from that of the United States. Because state citizenship depends upon United

States citizenship, Arizona has a legitimate interest in ensuring that citizens of foreign nations do not participate in those aspects of political life in the community that are open only to Arizona citizens, such as voting and jury service. That interest is directly related to Arizona's inherent and sovereign power of self-preservation, independent from any interest that the United States might have in national sovereignty.

3. Section 5(C) of S.B. 1070 Is Not Preempted.

Section 5(C) makes it a misdemeanor for any “unlawfully present” and “unauthorized” alien “to knowingly apply for work, solicit work in a public place or perform work’ in Arizona.” *See* Pet. Br., p. 53. Not only is the criminalizing of this type of act clearly within the police power of the state and for that reason presumptively valid (Pet. Br., pp. 53-54), it is squarely within the reserved power of Arizona to control the ingress of foreign citizens into Arizona. The fact that there is no comparable federal law may be due to the fact that there is no comparable federal interest in criminalizing such conduct. Article IV, Section 2 specifically requires Arizona to ensure that persons who are citizens of other States participate equally in the economic opportunities available in Arizona. *See Hicklin v. Orbeck, supra*. Arizona has a sovereign interest, independent from that of the United States, to preserve the public fiscal and economic vitality of the State. Additionally, Arizona has a strong interest in giving employment priority to its own citizens, citizens of other States, and United States citizens.

II. ARIZONA'S S.B. 1070 IS AN EXERCISE OF ITS CONSTITUTIONAL POWER TO ENGAGE IN WAR AGAINST AN ACTUAL INVASION.

A. The U.S. Constitution Grants to Arizona the Express Power to Defend Itself against an Actual Invasion.

Article I, Section 10, Clause 3 of the U.S. Constitution states that “[n]o State shall, without the Consent of Congress ... engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.”

There was little debate on this provision either at the Constitutional Convention or at the debates in the various state legislatures. In the Federalist 43, Madison wrote:

A protection against invasion, is due from every society, to the parts composing it. The latitude of the expression here used seems to secure each State, not only against foreign hostility, but against ambitious or vindictive enterprises of its more powerful neighbors. [The Federalist (G. Carey & J. McClellan, eds., Liberty Fund: 2001), p. 226.]

In the Virginia ratifying convention, Patrick Henry stated that “If you give this clause a fair construction, what is the true meaning of it? What does this relate to? Not domestic insurrections, but war. If the country be invaded, a state may go to war....” J. Elliot, Debates of the State Conventions on the Federal

Constitution, Vol. III, p. 392.

B. The Current Illegal Immigration into Arizona Constitutes an “Actual Invasion,” Against which Arizona Is Authorized to Engage in War.

In interpreting the Constitution, “[o]rdinarily courts do not construe words used in the Constitution so as to give them a meaning more narrow than one which they had in the common parlance of the times in which the Constitution was written.” United States v. South-Eastern Underwriters Ass'n, 322 U.S. 533, 539 (U.S. 1944). To interpret the document, courts turn to “the dictionaries, encyclopedias, and other books of the period.” *Id.*

Webster’s 1828 American Dictionary of the English Language defines ‘invasion’ as a “hostile entrance into the possessions of another,” and defines “invade” as “to enter a country, as an army with hostile intentions; to enter as an enemy, with a view to conquest or plunder; to attack.” “Actual” is defined as “[r]eal or effective, or that exists truly and absolutely ... opposed to that, which is *virtual* or *potential*.” (Italics original.) “Hostile,” in turn, is defined as “[a]dverse; opposite; unfriendly.” There is no question that the illegal immigration taking place in Arizona meets the criteria of an “actual invasion.”

1. The Illegal Immigration Is Fostered by the Policies of Foreign Nations.

The number of illegal aliens that have entered the United States through its southern border with Mexico ranks as the largest actual invasions in human history.³ See Pet. Br., pp. 2-3. This vast illegal immigration problem⁴ is obviously most serious along this nation's southern border, including in Arizona.

The government of Mexico, along with the governments of other central and south American countries, have long been in favor of exporting their

³ The "largest land invasion in world history" is thought to be the German conquest of the Soviet Union, codenamed Operation Barbarossa, which consisted of approximately three million invasion troops. "Stalin Stands Alone: Early Battles on the Eastern Front," <http://www.pbs.org/behindcloseddoors/in-depth/stalin-stands.html>.

⁴ The Department of Homeland Security puts the total number of illegal aliens in this country at 10.5 million. "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2005," August 2006, http://www.dhs.gov/xlibrary/assets/statistics/publications/ILL_PE_2005.pdf. Other estimates put that number as high as 20 million. R. Justich,, "The Underground Labor Force Is Rising To The Surface" (Jan. 3, 2005), <http://www.steinreport.com/BearStearnsStudy.pdf>.

poorest,⁵ sickest,⁶ least educated,⁷ and most violent⁸ citizens, so as not to have to deal with them. In this case, the court of appeals below conceded that “[t]he Presidents of Mexico, Bolivia, Ecuador, El Salvador, and Guatemala; the governments of Brazil, Colombia, Honduras, and Nicaragua; [and] the national assemblies in Ecuador and Nicaragua and the Central American Parliament ... have publicly criticized Arizona’s law.” *United States v. Arizona*, 641 F.3d 339, 353 (9th Cir. 2011). The court below also acknowledged that “[i]n addition to criticizing S.B. 1070, Mexico has taken affirmative steps to protest it.” *Id.* Some leaving these countries have traveled to

⁵ Federation for American Immigration Reform, “Characteristics of the Illegal Alien Population” (Nov. 2007), http://www.fairus.org/site/News2?page=NewsArticle&id=16667&security=1601&news_iv_ctrl=1007.

⁶ Federation for American Immigration Reform, “Illegal Immigration and Public Health” (2009), http://www.fairus.org/site/News2?page=NewsArticle&id=16742&security=1601&news_iv_ctrl=1007.

⁷ For example, of all immigrants to the United States from Mexico (legal and illegal), only 5.2 percent have an advanced degree or have graduated from college. Meanwhile, over 61 percent have not even graduated from high school. Pew Hispanic Center, *Statistical Portrait of the Foreign-Born Population in the United States, 2009*, p. 30, <http://www.pewhispanic.org/files/2011/02/2009-FB-Profile-Final.pdf>.

⁸ H. MacDonald, “Crime & the Illegal Alien: The Fallout from Crippled Immigration Enforcement,” Center for Immigration Studies (June 2004), <http://www.cis.org/articles/2004/back704.html>.

other countries, such as Canada,⁹ Chile,¹⁰ etc., but the vast majority have come to the United States. It is apparently the policy of the Mexican government to deport citizens that cannot survive under its suffocating economic policies, sending them to the United States — using deportation as a safety valve.

In 2005, the Mexican government printed and distributed a “how to” guide for illegal immigration, entitled “Guía del Migrante Mexicano,” or “Guide for the Mexican Migrant.”¹¹ Among other things, the Guide:

- instructs would-be illegal aliens on the safest and most efficient methods of crossing the border (when, where, and how to navigate, along with what supplies to bring);
- provides a list of the rights illegal aliens have if captured in the United States;
- instructs illegal aliens to surrender if pursued, noting that (at worst) they will be returned to Mexico (with the unstated assumption that they will simply try again); and
- includes guidelines for maintaining a low

⁹ M. Garcia, “Canada: A Northern Refuge for Central Americans,” Migration Information Source (Apr. 2006), <http://www.migrationinformation.org/Feature/display.cfm?id=390>.

¹⁰ P. Bonnefoy, “Chile’s changing demographics” (Jan. 28, 2011), <http://www.globalpost.com/dispatch/chile/110127/chile-immigration-demographics-peruvians-bolivians>.

¹¹ http://www.cfif.org/htdocs/legislative_issues/federal_issues/hot_issues_in_congress/immigration/mexican-booklet.pdf.

profile in the United States, to avoid detection and capture.

While Mexican officials may claim they were simply trying to prevent loss of life from those trying to cross the border, that does not explain why the Guide teaches illegal aliens how to avoid detection once they are safely in the United States.

Clearly, there is a concerted effort, at least on the part of the government of Mexico, to export would-be illegal aliens to the United States. Once here, Mexico need no longer worry about their welfare. Meanwhile, the United States government imposes on States the unfunded mandate to feed, educate, and provide illegal aliens with medical care. Furthermore, those who illegally do earn money here often send it south of the border, assisting the economy of Mexico.¹²

2. Illegal Immigration Is an Integral Part of an Occupying Force.

While illegal aliens have not invaded Arizona wearing military uniforms and carrying their national flags, that does not mean their entry does not constitute an invasion. In conducting the “war on terror,” the Bush and Obama Administrations have claimed that traditional notions of hostilities and combatants no longer apply. If it is possible to fight a war against the amorphous idea of “terrorism,” then it is certainly possible for the people of Arizona to take

¹² See, e.g., “Migration Can Deliver Welfare Gains,” The World Bank (Nov. 16, 2005), <http://go.worldbank.org/BOG8P0KVZ1>.

steps to protect themselves against the very real, visible illegal alien force that has invaded their State.

There even have been reports of Muslim extremists and others suspected of “terrorism” having used the Mexican border to gain illegal entry into this country.¹³ In 2010, the Department of Homeland Security issued a warning to Texas law enforcement to be on the lookout for Somali men alleged to have been linked to “terrorist” organizations.¹⁴ The Department of Homeland Security has a term for such aliens — “Special Interest Aliens.”¹⁵ In 2010, these Special Interest Aliens included dozens upon dozens of persons from nations that are considered to be “state sponsors of terrorism,” including Iran, Syria, Sudan, and Somalia.¹⁶ Several dozen other persons were apprehended from countries such as Afghanistan,

¹³ See, e.g., F. Klopott, “Va. man accused of helping smuggle Somalis into U.S.,” *The Examiner* (2010), <http://washingtonexaminer.com/news/nation/va-man-accused-helping-smuggle-somalis-us>; Chow, Shern-Min, “Homeland Security Alert: Terror suspect may be headed to Texas through Mexico,” *KVUE* (May 18, 2010), <http://www.kvue.com/news/Homeland-Security-Alert-Terror-suspect-may-be-headed-to-Texas-through-Mexico-94093684.html>.

¹⁴ J. Winter, “Feds Issue Terror Watch for the Texas/Mexico Border,” *FOXNews.com* (May 26, 2010), <http://www.foxnews.com/us/2010/05/26/terror-alert-mexican-border/>.

¹⁵ See, e.g., <http://www.hsdl.org/?view&did=11003>.

¹⁶ FOIA Response from Customs and Border Protection to Judicial Watch (Feb. 17, 2011), http://www.scribd.com/fullscreen/69609476?access_key=key-1btaijlnylsug9la3nqg.

Pakistan, Saudi Arabia, and Yemen.¹⁷ One is left to wonder how many such aliens are not even represented on this list, due to the fact that they made it across the border unnoticed.¹⁸

In fact, illegal aliens have already taken over large portions of the United States, the federal government essentially having surrendered the land to them. Signs are now posted in Arizona with warnings such as:

**DANGER — PUBLIC WARNING
TRAVEL NOT RECOMMENDED**

- Active Drug and Human Smuggling Area
- Visitors May Encounter Armed Criminals and Smuggling Vehicles Traveling at High Rates of Speed
- Stay Away From Trash, Clothing, Backpacks, and Abandoned Vehicles

...

¹⁷ “Judicial Watch Obtains New Border Patrol Apprehension Statistics for Illegal Alien Smugglers and ‘Special Interest Aliens,’” Judicial Watch (Mar. 9, 2011), <http://www.judicialwatch.org/press-room/press-releases/judicial-watch-obtains-new-border-patrol-apprehension-statistics-for-illegal-alien-smugglers-and-%E2%80%9Cspecial-interest-aliens%E2%80%9D/>.

¹⁸ If an illegal alien drug “mule” can so easily make it through our southern border carrying a backpack filled with marijuana, one would think it should be just as easy for a “terrorist” to cross the same border, carrying a backpack containing a “weapon of mass destruction.” Even the U.S. Department of Justice lists such an eventuality as one of its concerns involving border security. <http://www.justice.gov/ndic/pubs38/38661/swb.htm>.

- BLM Encourages Visitors To Use Public Lands North of Interstate 8.¹⁹

The National Park Service has gone so far as to close portions of some national parks to Americans, due to the danger posed to the public by illegal aliens and drug smugglers.²⁰

One Arizona sheriff has stated that “Mexican drug cartels literally do control parts of Arizona ... they literally control movement.... This is going on here in Arizona... This is 70 to 80 miles from the border — 30 miles from the fifth-largest city in the United States.”²¹ In many ways the federal government has sounded the bugle call of “retreat” in Arizona.

3. Illegal Immigration Includes a Foreign Political Vanguard.

Both by law and in practice, many illegal aliens do not become part of this country. They do not owe

¹⁹ See, e.g., <http://i113.photobucket.com/albums/n233/glasscottage/Politics/AZWarningSigns.jpg>.

²⁰ C. Nielsen, “Illegal immigrants bring problems to border parks,” *Our National Parks* (May 5, 2008), http://ournationalparks.us/index.php/site/story_issues/illegal_immigrants_bring_problems_to_border_parks/. (It is ironic that the only persons now free to enjoy some of America’s most beautiful lands are illegal aliens.)

²¹ J. Seper, “Signs in Arizona warn of smuggler dangers: Drivers advised to travel north,” *The Washington Times* (Aug. 31, 2010), <http://www.washingtontimes.com/news/2010/aug/31/signs-in-ariana-warn-of-smuggler-dangers/?page=all>.

allegiance to the United States. Rather, they retain their national identities. This often creates conflict between them, and American citizens and lawful immigrants.

A Zogby International poll in Mexico in May 2002 revealed that, by a margin of “two to one, more Mexican respondents agree (58%) than disagree (28%) that the territory of the **United States’ Southwest rightfully belongs to Mexico**. One in seven (14%) is not sure.”²²

Congressman Joe Bacca (D-CA) said that he was “reminded ... of a book that we all read about, Paul Revere, and when he said, ‘The British are coming; the British are coming.’ Well, the Latinos are coming; the Latinos are coming ... that’s what this agenda is about. It’s about ensuring that we increase our numbers.... You know we’re in a **civil war**.”²³ Mr. Bacca believes he and his people are at war with this country. The federal government may not yet have recognized this fact, but Arizona has.

It is characteristic of an invading army, once it has captured or occupied enemy territory, to lower the enemy’s flag, and raise its own flag in its place, as U.S.

²² Zogby Poll, “American Views of Mexico and Mexican views of the U.S.,” Part II (June 6, 2002), <http://www.numbersusa.com/text?ID=1149>.

²³ D. Sheehy, Fighting Immigration Anarchy, iUniverse (2009) pp. 169-170 (emphasis added).

Marines did upon invading Iwo Jima in 1945.²⁴ Likewise, in 2006, members of an illegal alien rally pushed back riot police, lowered an American flag that was flying over a Los Angeles, California post office, and raised a Mexican flag in its place.²⁵ L.A. police then had to retake the ground, under a barrage of bottles and rocks from the mob, and remove the invading flag.²⁶

One might believe that illegal aliens are unlike an invading force because they have no desire to conquer the invaded territory. Such a view would be mistaken. Mexican groups such as La Familia, La Raza, and others reportedly assert the view that a large portion of the southwestern United States, including Arizona, belongs to Mexico, and that it should be “repatriated.”²⁷ For those who ascribe to this view, U.S. citizens are the illegal aliens who need to be removed.

²⁴ See <http://www.aviewoncities.com/washington/iwojima/memorial.htm>.

²⁵ See “Mexican flag flies at U.S. post office: Old Glory stamped on in protest by backers of illegal immigration,” World Net Daily (Aug. 29, 2006), <http://www.wnd.com/2006/08/37688/>.

²⁶ See <http://www.youtube.com/watch?v=0Y721T9nX0k>.

²⁷ See, e.g., <http://www.youtube.com/watch?v=GIW-BZ8oLrk&feature=related>.

4. Illegal Aliens Are Equipped with Weapons of War, and Are Engaged in Counter-Intelligence.

Illegal aliens, particularly drug smugglers and gang members, often carry and use the types of weapons one would see employed by a hostile invasion force. Grenades,²⁸ rocket launchers, explosives,²⁹ and even anti-aircraft weapons³⁰ have been confiscated by Mexican and U.S. law enforcement on both sides of the border. When members of the Mexican military desert their posts to join the drug cartels, some take their military weapons with them.³¹ Mexican cartels south of the border have smuggled drugs using armor plated vehicles, reminiscent of those used on distant foreign battlefields, and requiring anti-tank weaponry to

²⁸ Associated Press, “Mexico Says U.S. Man Smuggled Grenade Parts for Sinaloa Cartel” (Sep. 6, 2011), <http://www.foxnews.com/world/2011/09/06/mexico-says-us-man-smuggled-grenade-parts-for-sinaloa-cartel/#ixzz1XFaFLbRs>.

²⁹ J. Taylor, “U.S. agents find rocket launcher near Mexico border,” Reuters (Sep. 14, 2011), <http://www.reuters.com/article/2011/09/14/us-usa-mexico-weapons-idUSTRE78D7HK20110914>.

³⁰ “Mexico police seize anti-aircraft weapon near US border,” Agence France-Presse (Apr. 14, 2009), <http://www.abs-cbnnews.com/world/04/14/09/mexico-police-seize-anti-aircraft-weapon-near-us-border>.

³¹ “Los Zetas called Mexico’s Most Dangerous Drug Cartel,” CNN (Aug. 6, 2009), http://articles.cnn.com/2009-08-06/world/mexico.drug.cartels_1_los-zetas-drug-cartels-drug-war?s=PM:WORLD.

combat.³² In short, the invasion force coming across this country's border with Mexico is generally better armed than any American law enforcement it encounters, and certainly better armed than the American public it terrorizes. *See* Pet. Br., p. 3.

Illegal aliens, smugglers, and gang members conduct the same type of intelligence gathering activities as would a hostile invasion force. They have stalked Border Patrol agents, monitoring their movements.³³ This is presumably done both to determine the best opportunities to smuggle drugs over the border, but also the best time to enter this country as an illegal alien.

Mexican snipers on the southern side of the border act as "lookouts" and gather data on the movements of American law enforcement.³⁴ Such snipers have attempted to murder Arizona law enforcement agents by shooting at them from across the border.³⁵ "They

³² W. Booth, "Mexican cartels now using 'tanks,'" *Washington Post* (June 7, 2011), http://www.washingtonpost.com/world/americas/mexican-cartels-now-using-tanks/2011/06/06/AGacrALH_story.html.

³³ J. Seper, "Armed illegals stalked Border Patrol," *The Washington Times* (Nov. 22, 2011), <http://www.washingtontimes.com/news/2011/nov/22/armed-illegals-stalked-border-patrol/?page=all>.

³⁴ "Snipers target border agents," *The Washington Times* (Feb. 3, 2005), <http://www.washingtontimes.com/news/2005/feb/3/20050203-125017-1369r/>.

³⁵ Breitbart TV "AZ Cops Threatened by Drug Cartel Snipers at Border" (June 22, 2010), <http://www.breitbart.tv/az-cops->

literally have scouts on the high points in the mountains and in the hills... They have radios, they have optics, they have night-vision goggles as good as anything law enforcement has.”³⁶ For an entire generation, drug smugglers have been using aerial assets to smuggle drugs, persons, etc. into the United States.³⁷ They have also used underground tunnels to move weapons, drugs, and illegal aliens across the border.³⁸

5. The Mexican Army Has Conducted Armed Incursions along Arizona’s International Border.

The invasion from Mexico is not limited to illegal aliens. Rather, armed units of the Mexican military have crossed the border illegally, to harass, threaten, and even fire upon American civilians and law

[threatened-by-drug-cartel-snipers-at-border/](#).

³⁶ J. Seper, “Signs in Arizona warn of smuggler dangers: Drivers advised to travel north,” *The Washington Times* (Aug. 31, 2010), <http://www.washingtontimes.com/news/2010/aug/31/signs-in-arizona-warn-of-smuggler-dangers/?page=all>.

³⁷ McDonnell, Patrick, “Customs ill-equipped to stop drug smugglers’ aerial invasion,” *Los Angeles Times* (Sep. 18, 1988), http://www.chron.com/CDA/archives/archive.mpl/1988_571268/customs-ill-equipped-to-stop-drug-smugglers-aerial.html.

³⁸ See T. Lichtenwald and F. Perri, “Smuggling Tunnels: The Need for a Transnational Analysis (Spring 2011) <http://www.all-about-forensic-science.com/support-files/tunnels.pdf> (showing that at least 51 tunnels discovered between Arizona and Mexico between 2005 and 2010).

enforcement. They operate with seeming impunity, invoking little to no response from the current Administration. In 2006 alone, the Department of Homeland Security confirmed 20 actual incursions onto U.S. soil by the Mexican military — 50 percent of which occurred in Arizona, and nearly every one which involved intentional, armed incursions.³⁹

Meanwhile, the federal government seeks to minimize reports of these incursions onto U.S. soil. Former Department of Homeland Security (“DHS”) Secretary Michael Chertoff blamed those who report on such incursions, stating: “I think to create the image that somehow there is a deliberate effort by the Mexican military to cross the border would be to traffic in scare tactics...”⁴⁰ Yet at the same time, DHS’ own report classified most incursions as “intentional.” DHS, Mexican Government Incidents, *supra*, pp. 7-15. DHS warned Border Patrol agents to be wary of Mexican troops in the United States who would “escape, evade and counterambush” law enforcement officers.⁴¹ “Give me a break’ said ... a 27-year Border Patrol veteran ...

³⁹ See Department of Homeland Security, Customs and Border Protection, Office of Border Patrol, Mexican Government Incidents, “2006 Fiscal Year Report,” <http://www.judicialwatch.org/archive/2008/FY2006MexicanIncursionReport.pdf>.

⁴⁰ See AP, “Chertoff downplays Mexican military incursions,” *The Salt Lake Tribune* (Jan. 19, 2006), <http://archive.sltrib.com/article.php?id=3416118&itype=NGPSID&keyword=&qtype=>.

⁴¹ See “Mexican military incursions reported,” *The Washington Times* (Jan. 17, 2006) <http://www.washingtontimes.com/news/2006/jan/17/20060117-121930-3169r/>.

‘[i]ntrusions by the Mexican military to protect drug loads happen all the time and represent a significant threat to the agents.’” *Id.*

C. Arizona’s “Policy of Attrition by Enforcement” Is a Proper Exercise of Its Express Power to Defend against an Actual Invasion.

Having established that Arizona has been actually invaded, the Constitution expressly reserves to Arizona the power to defend itself, even by “engaging in war,” if necessary. There is no requirement that the State first obtain the consent of Congress. Rather, Arizona is authorized to engage in hostilities against the invaders even if the federal government would prefer it did not.

The stated purpose of S.B. 1070 is a war of “attrition through enforcement” — “to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.”⁴² Section 2(B) requires state law enforcement to determine detainees’ immigration status by requesting such status from federal authorities who, by federal law, are required to give it. Section 3 makes it a state crime to be present in Arizona and in violation of the federal statute requiring aliens to possess certain documentation. Section 5(C) makes it a crime for unlawful entrants to seek work in Arizona. Section 6 allows warrantless

⁴² S.B. 1070, section 1, “Intent.”

arrest when there is probable cause to believe a person is removable from the United States.

Viewed as a war measure, Arizona has not legislated an immigration policy inconsistent with that of the federal government. S.B. 1070 does nothing to interfere with federal law. Arizona seeks only to encourage the self-deportation of unlawful aliens pursuant to a policy of self-defense.

III. THE FEDERAL GOVERNMENT HAS FAILED IN ITS DUTY UNDER ARTICLE IV, SECTION 4 TO PROTECT ARIZONA AGAINST INVASION.

Article IV, Section 4 of the United States Constitution provides that “[t]he United States shall... protect each of [the States] against Invasion....” As demonstrated in Section II, *supra*, Arizona has been invaded, yet the federal government continues to shirk its duty under the Constitution to provide its protection. Indeed, instead of protecting Arizona’s independent sovereignty, federal policy has undermined the political and economic vitality of the State.

Arizona is well aware of the cross-border violence that is on the rise in its State. Meanwhile, the federal government appears willing to passively watch Arizonans continue to be victimized by home

invasions,⁴³ kidnappings, torture,⁴⁴ rapes, and even murder.⁴⁵ See Pet. Br., p. 4. Instead, it has chosen to challenge Arizona's own efforts to defend itself in the instant litigation.

A. The Federal Government Imposes Unfunded Mandates on States that Operate as a Magnet to Illegal Aliens.

The federal government not only fails to pay the costs that Arizona incurs due to a porous border, it has mandated that States must pay expensive benefits for illegal aliens. Arizona estimates that, every year, some of the costs of providing for illegal aliens costs the state \$2.7 billion: "\$1.6 billion from Arizona's education system, \$694.8 million from health care services, \$339.7 million in law enforcement and court costs, \$85.5 million in welfare costs and \$155.4 million in other general costs."⁴⁶ Arizonans cannot choose to

⁴³ "Kidnappings, Home Invasions Sparked Ariz. Law," Newsmax, (Apr. 27, 2010), <http://www.newsmax.com/US/immigration-arizona-crime-kidnappings/2010/04/27/id/357099>.

⁴⁴ M. Alonzo, "Phoenix, Arizona: America's kidnapping capital is brutal," *Miami New Times* (Aug. 12, 2010), <http://www.miaminewtimes.com/2010-08-12/news/phoenix-arizona-america-s-kidnapping-capital-is-brutal/>.

⁴⁵ A. Dome, "Illegal immigrant to stand trial for murder, rape," (Aug. 13, 2010), <http://www.vvdailynews.com/articles/stand-21110-barstow-trial.html>.

⁴⁶ See E. Barnes, "Cost of Illegal Immigration Rising Rapidly in Arizona, Study Finds," Fox News (May 17, 2010), <http://www.foxnews.com/us/2010/05/17/immigration-costs-rising-rapidly-new>.

avoid these costs that are mandated by the federal government, as demonstrated by two examples.

In this Court’s decision in Plyler v. Doe, 457 U.S. 202 (1982), Justice Brennan applied the equal protection clause to require states to provide free education to the children of illegal aliens, not because they were a “suspect class” or because education was a “fundamental right,” but for no other reason than that they were “minor children” who he saw as “innocent ... victims.” *Id.* at 220, 223. In 1986, Congress enacted the Emergency Medical Treatment and Active Labor Act “to ensure public access to emergency services regardless of ability to pay.”⁴⁷ This requires hospitals to treat illegal aliens, without regard to their citizenship or immigration status.

B. Federal Government Policies Empower Illegal Aliens.

In Louisiana v. Bryson (U.S. Supreme Court No. 22, Original) currently pending before this Court, the State of Louisiana has sued the federal government, challenging the Census Bureau’s policy to count illegal aliens in the U.S. Census, and thereby allow their numbers to inflate the population counts of various states for apportionment of Representatives and members of the Electoral College. The United States Census Bureau maintains that the Bureau “is required

study-says/.

⁴⁷ Overview EMTALA, Centers for Medicare and Medicaid Services (Feb. 2, 2012), <https://www.cms.gov/EMTALA/>.

by the U.S. Constitution to count everyone living in this country, regardless of citizenship or immigrant status,” whether it be lawful or unlawful.⁴⁸ Such use of illegal aliens to gerrymander the House of Representatives and the Electoral College shifts the balance of political power in the United States. Such significant political consequences, in turn, affect the federal government’s policies to tolerate if not encourage illegal immigration.

In 1993, the National Voter Registration Act required states to allow drivers to register to vote whenever they applied for or renewed their drivers’ licenses.⁴⁹ Certain states have been found to allow illegal aliens to obtain driver’s licenses, and also registered to vote, even though they are not U.S. citizens.⁵⁰ Thus, illegal aliens exercise political power in the United States in the form of voting in federal and state elections, possibly influencing the outcome of certain elections,⁵¹ and shifting the balance of power in

⁴⁸ See 2010 Census Constituent FAQs, Q. 2 (U.S. Department of Commerce, Economics and Statistics Administration, U.S. Census Bureau), <http://2010.census.gov/partners/pdf/ConstituentFAQ.pdf> (hereinafter “2010 Census FAQs”).

⁴⁹ <http://www.fvap.gov/resources/media/nvralaw.pdf>.

⁵⁰ See, e.g., D. Frosch, A New Fight on Licenses for Illegal Immigrants, *New York Times* (Jan. 18, 2012), <http://www.nytimes.com/2012/01/19/us/in-new-mexico-a-fight-anew-over-drive-rs-licenses-for-illegal-immigrants.html>.

⁵¹ A. Hudson, Ineligible Voters May Have Cast a Number of Florida Ballots (Election 2000), *The Washington Times* (Nov. 29, 2000).

this country further toward their interests.

C. The Federal Government Has Armed Mexicans at the Border.

In recent months, Americans have learned that their own government has supplied firearms directly to Mexican drug dealers operating across the country's borders. "Operation Fast and Furious" ("Project Gunrunner") was purportedly designed to curb the **alleged** flow of firearms from the U.S. to Mexico. This was to be accomplished, inexplicably, by providing the Mexican cartels with guns. The Bureau of Alcohol, Tobacco, Firearms, and Explosives ("ATF") ordered — and apparently even bribed — U.S. gun dealers to make illegal sales that they otherwise never would have made. ATF even provided the funds for the illegal firearm purchases.⁵² ATF then assisted in smuggling those weapons into Mexico, and ensured that the weapons would be placed directly into the hands of the Mexican drug cartels.⁵³ It is no surprise

⁵² "ATF 'Gunrunner' program may be years old," CBS News, (Mar. 8, 2011), <http://www.cbsnews.com/video/watch/?id=7358927n&tag=contentMain;contentBody>. Letter from Senator Charles E. Grassley to Eric H. Holder, (Apr. 13, 2011), <http://grassley.senate.gov/about/upload/Judiciary-ATF-04-13-11-letter-to-Holder-Docs-FFLs-2.pdf>. W. Lajeunesse, "U.S. Government Used Taxpayer Funds to Buy, Sell Weapons During 'Fast and Furious,' Documents Show," Fox News (Sep. 26, 2011), <http://www.foxnews.com/politics/2011/09/26/us-government-bought-and-sold-weapons-during-fast-and-furious-documents-show/>.

⁵³ "Whistleblower ATF Agent John Dodson Exposes Deadly 'Operation Gunrunner,'" CBS News (Mar. 4, 2011),

that the criminals who received the guns have used them to commit crimes. As of last year, Mexico estimated that at least 200 of its citizens have died so far as a result of the ATF's actions.⁵⁴ The weapons were even linked to the death of a U.S. Border Patrol agent in 2010.⁵⁵

D. The Federal Courts Have Declined to Hold the Federal Government Responsible for Failing to Defend Arizona from Foreign Invasion.

In 1997, the states of California and Arizona sued the federal government for failing in its duty to protect them from the illegal alien invasion, and seeking to recover monies the federal government had required them to pay to care for illegal aliens. *See California v. United States*, 104 F.3d 1086 (9th Cir. 1997), *cert. denied*, 522 U.S. 806 (1997). The Court of Appeals for the Ninth Circuit held the issue to be a “nonjusticiable

http://www.youtube.com/watch?v=SvRzrSXota8&feature=player_embedded#!.

⁵⁴ K. Pavlich, “Attorney General in Mexico: 200 Murders Result of Operation Fast and Furious,” Townhall.com (Sep. 21, 2011), http://townhall.com/tipsheet/katiepavlich/2011/09/20/attorney_general_in_mexico_200_murders_result_of_operation_fast_and_furious.

⁵⁵ S. Attkisson, “Terry family marks one year anniversary of death of their son, Brian Terry, murdered border patrol agent,” CBS News (Dec. 14, 2011), http://www.cbsnews.com/8301-31727_162-57343240-10391695/terry-family-marks-one-year-anniversary-of-death-of-their-son-brian-terry-murdered-border-patrol-agent/.

political question.” *Id.*, 104 F.3d 1086, 1090-91. *See also* Pavdan v. United States, 82 F.3d 23, 28 (2nd Cir. 1996); Chiles v. United States, 69 F.3d 1094 (11th Cir. 1995).

If the issue whether Arizona has been invaded under Article IV, Section 4 is a “political question,” then so too must the issue of invasion under Article I, Section 10 be a political question and the decision of Arizona’s legislature and Governor should not be second guessed by a court. If there are no “manageable standards” by which to determine whether Arizona has been invaded, then, likewise, it should be impossible to determine that S.B. 1070 is an inappropriate response.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals should be vacated and the case remanded.

Respectfully submitted,

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