

BACKGROUND AND TALKING POINTS OF INTEREST REGARDING  
MARICOPA COUNTY IMMIGRANT CRIMINAL CONSPIRACY POLICY  
AND THE CASE OF  
WE ARE AMERICA COALITION OF ARIZONA V. MARICOPA COUNTY

Contacts: Roberto Reveles (We Are America Coalition/ Arizona) (480) 983-8611  
Marianne Gunko (Friendly House) (602) 257-1870, ext. 230  
Peter Schey, Esq. (Center for Human Rights & Constitutional Law) (323)  
251-3223  
Ray Velarde, Esq. (LULAC) (915) 373-6003.

**The plaintiffs:**

Plaintiffs in the lawsuit include We Are America/Somos America Coalition of Arizona, Arizona Hispanic Community Forum, League of United Latin American Citizens, Friendly House, Arizona State Representatives Kyrsten Sinema, Steve Gallardo, and Steve Lujan, Arizona State University Associate Professors Cecilia Menjivar and LaDawn Haglund, and six immigrants charged with felony conspiracy under the Maricopa County policy.

**Status of the six migrant plaintiffs:**

Two of the immigrants, *Rosa Flor Diaz Godines* and *Adriana Rodriguez Espiritu*, were arrested around September 18, 2006, and remain in jail awaiting felony criminal proceedings. They are very afraid of their current circumstances, feel extremely isolated, have virtually no contact with family or friends, find their jail conditions extremely harsh even though they have yet to be convicted of any crimes, had no prior knowledge of Maricopa's "conspiracy" policy, and had no intention to violate any laws of any kind in Maricopa County.

Two of the immigrants arrested in September, Plaintiffs *Raul Bomaye* and *Javier Encino*, were jailed for several weeks and then turned over to the Immigration and Customs Enforcement (ICE) after posting bail. They were promptly removed from the country to Mexico while their criminal charges were still pending. The charges remain pending and the Maricopa County Court will probably issue a warrant for their arrest. They have effectively been prevented from appearing in court and defending their criminal charges.

Two plaintiffs Cortez-Cuellar and Sanchez-Diego, father and son, were arrested in May 2006. After a few months in jail, they were released on bail and are presently living in Phoenix, Arizona and have pending conspiracy charges. They have been living in the U.S. for about 17 years. Their right to continue residing in the U.S. will eventually be determined by federal authorities. A felony conviction under the Maricopa County policy could destroy whatever rights they may possess to continue residing in the U.S.

**The legal team:**

The plaintiffs are represented by the Center for Human Rights and Constitutional Law (Los Angeles), Perkins Coie Brown & Bain P.A (Phoenix), Ray Velarde, LULAC National Legal Advisor, Dan Ballecer (Phoenix), and Antonio Bustamante (Phoenix).

**The State law:**

In 2005 the Arizona legislature passed an anti-coyote (anti-smuggling) law. 34. Ariz. Rev. Stat. § 13-2319: "It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose. . . . For the purposes of this section 'smuggling of human beings' means ... that the person or persons transported ... are not ... lawfully in this state."

**The Maricopa County "conspiracy" policy**

On September 29, 2005, the Maricopa County Attorney Andrew Thomas issued a statement declaring that, in his view, § 13-2319 makes a crime not only smugglers' transporting persons for profit, but also non-smuggler migrants' agreeing to pay for transport or on whose behalf others had agreed to pay for transport.

According to defendant Thomas: "If [law enforcement has] probable cause to believe that illegal immigrants have intentionally allowed themselves to be smuggled by a paid human smuggler . . . [law enforcement] may arrest the illegal immigrants as well as the coyote." Maricopa County Attorney Opinion 2005-002, Sept. 29, 2005.

**How State legislators reacted to defendant Thomas' policy:**

On March 6, 2006, the Associated Press reported lawmakers' astonishment at defendant Thomas' adoption of the Maricopa conspiracy policy:

[T]wo of the law's authors said Friday that it was never their intent for illegal immigrants to be prosecuted under the law.  
"This is something the county attorney came up with himself," said Rep. Jonathon Paton, R-Tucson. "I never intended that immigrants would be arrested . . . *That's not what I sold the bill as, and that's not what our attorneys at the time told us. It was pretty clear.*"  
When Sen. Timothy Bee, R-Tucson, was contacted about the arrests, he hadn't heard Thomas was seeking to charge the immigrants under the human smuggling law.  
"Wow," he said. "That's the first time I've seen that interpretation of the law. *The law was designed to go after those who are involved in drug trafficking and human trafficking for a profit.*" ....

**Who is the lawsuit brought on behalf of:**

The lawsuit is brought as a class action on behalf of "all individuals stopped, detained, arrested, incarcerated, prosecuted, or penalized for conspiring to transport themselves" in Maricopa County.

**The legal theories:**

Maricopa County Attorney Andrew Thomas and Sheriff Joseph Arpaio have publicly expressed their frustration with the failure of the federal Government to control immigration and decided to take matters into their own hands to control undocumented immigration through their “conspiracy” program.

1. However, the plaintiffs believe that *regulating international migration is a matter of exclusive federal authority*. The conspiracy policy and the arrests that it promotes violate “federal preemption.” U.S. Const. Article I, § 8, cl. 4 (the federal power to establish uniform rules regarding immigration).
2. *The arrest policy also promotes racial profiling and discriminatory detentions* because Sheriff Deputies have no training in and cannot easily tell whether someone is not “not lawfully in this state” without first detaining and interrogating them.
3. *The lawsuit also argues that the conspiracy policy is inconsistent with and violates the State’s anti-coyote law* (this is called a “pendent state claim” raised in the lawsuit).

**What the lawsuit wants to achieve:**

The plaintiffs want the federal courts to finally determine whether the Maricopa County conspiracy arrest policy is constitutional or not.

The plaintiffs seek a declaration about the constitutionality of the policy and an injunction stopping the policy if the federal courts find that the policy is illegal.

The plaintiffs are not asking the federal court to award any damages.

By asking the federal courts to block an illegal policy that is extremely costly for the tax-payers (requiring that every arrested immigrant be appointed a defense lawyer, jail costs, food costs, medical attention, etc.), the plaintiffs seek to save the tax-payers money and channel tax funds into lawful Government programs.

# # # #