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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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ARIZONA CONTRACTORS )  
ASSOCIATION, INC., an Arizona non- )  
profit corporation; ARIZONA )  
10 EMPLOYERS FOR IMMIGRATION )  
REFORM, INC., an Arizona non-profit )  
11 corporation; CHAMBER OF )  
12 COMMERCE OF THE UNITED )  
STATES OF AMERICA, a Washington )  
13 D.C. non-profit corporation; ARIZONA )  
CHAMBER OF COMMERCE, an )  
14 Arizona non-profit corporation; )  
ARIZONA HISPANIC CHAMBER OF )  
15 COMMERCE, INC., an Arizona non- )  
profit corporation; ARIZONA FARM )  
16 BUREAU FEDERATION, an Arizona )  
non-profit corporation; ARIZONA )  
17 RESTAURANT AND HOSPITALITY )  
ASSOCIATION, an Arizona non-profit )  
18 corporation; ASSOCIATED MINORITY )  
CONTRACTORS OF AMERICA, an )  
19 Arizona non-profit limited liability )  
company; ARIZONA ROOFING )  
20 CONTRACTORS ASSOCIATION, an )  
Arizona non-profit corporation; )  
21 NATIONAL ROOFING )  
CONTRACTORS' ASSOCIATION, an )  
22 Illinois not-for-profit corporation; )  
WAKE UP ARIZONA! INC., an )  
23 Arizona non-profit corporation; and )  
ARIZONA LANDSCAPE )  
24 CONTRACTORS ASSOCIATION, )  
INC., an Arizona non-profit corporation, )

No. CV07-02496-PHX-NVW (lead)  
No. CV07-02518-PHX-NVW (member)

ORDER

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Plaintiffs,

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vs.

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1 CRISS CANDELARIA, Apache County )  
Attorney; ED RHEINHEIMER, Cochise )  
2 County Attorney; TERENCE C. )  
HANER, Coconino County Attorney; )  
3 DAISY FLORES, Gila County Attorney; )  
KENNY ANGLE, Graham County )  
4 Attorney; DEREK D. RAPIER, Greenlee )  
County Attorney; MARTIN BRANNAN, )  
5 LaPaz County Attorney; ANDREW P. )  
THOMAS, Maricopa County Attorney; )  
6 MATTHEW J. SMITH, Mohave County )  
Attorney; JAMES CURRIER, Navajo )  
7 County Attorney; BARBARA )  
LAWALL, Pima County Attorney; )  
8 JAMES P. WALSH, Pinal County )  
Attorney; GEORGE SILVA, Santa Cruz )  
9 County Attorney; SHEILA POLK, )  
Yavapai County Attorney; JON SMITH, )  
10 Yuma County Attorney; TERRY )  
GODDARD, Attorney General of the )  
11 State of Arizona; and FIDELIS V. )  
GARCIA, Director of the Arizona )  
12 Registrar of Contractors, )

13 Defendants. )

14 VALLE DEL SOL, INC.; CHICANOS )  
15 POR LA CAUSA, INC.; and SOMOS )  
AMERICA, )

16 Plaintiffs, )

17 vs. )

18 )  
19 TERRY GODDARD, in his official )  
capacity as Attorney General of the State )  
of Arizona; GALE GARRIOTT, in his )  
20 official capacity as the Director of the )  
Arizona Department of Revenue; and )  
21 ANDREW THOMAS, in his official )  
capacity as Maricopa County Attorney, )

22 Defendants. )  
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24 The court set an accelerated hearing on December 18, 2007, on the temporary  
25 restraining order portions of Plaintiffs' Motion for Temporary Restraining Order and  
26 Preliminary Injunction (doc. # 4 in No. CV 07-2496), and on Plaintiffs' Application for  
27 Temporary Restraining Order, etc. (doc. # 3 in No. CV 07-2518, now consolidated with  
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1 No. CV 07-2496). The motions for preliminary injunction are set for hearing on January  
2 16, 2008, with a pre-hearing schedule worked out at the December 18, 2007 hearing.

3 To obtain a temporary restraining order, the moving party must show “(1) a strong  
4 likelihood of success on the merits, (2) the possibility of irreparable injury to plaintiff if  
5 the preliminary relief is not granted, (3) a balance of hardships favoring the plaintiff, and  
6 (4) advancement of the public interest (in certain cases).” *See Los Angeles Memorial*  
7 *Coliseum Comm’n v. National Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980);  
8 *Slater & Assocs. Ins., Inc. v. Rork*, No. CV 07-1965, 2007 U.S. Dist. LEXIS 81373 at \*2  
9 (D. Ariz. Oct. 16, 2007). To meet this burden, the moving party may show either: “(1) a  
10 likelihood of success on the merits and the possibility of irreparable injury; or (2) that  
11 serious questions going to the merits were raised and the balance of hardships tips sharply  
12 in its favor.” *Clear Channel Outdoor Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th  
13 Cir. 2003) (quoting *Walczak v. EPL Prolong, Inc.*, 198 F.3d 725, 731 (9th Cir. 1999)).

14 These consolidated actions are refilings, with some changes in parties, of  
15 consolidated actions dismissed December 7, 2007, for failure to name sufficient  
16 defendants. *Arizona Contractors Ass’n, Inc. v. Napolitano*, No. 07-1355 PHX-NVW  
17 (*Arizona Contractors I*). Plaintiffs also appealed that judgment of dismissal and sought  
18 an injunction pending appeal. By order entered this day in *Arizona Contractors I*, those  
19 motions for injunction pending appeal are denied. That order is attached hereto and is  
20 incorporated for its discussion of the reasons for denying both an injunction pending  
21 appeal and the motions for temporary restraining order in this case.

22 Plaintiffs’ motions sought an order that “Defendants are enjoined from enforcing”  
23 A.R.S. §§ 23-211 through 214, the Legal Arizona Workers Act (the Act). That relief was  
24 rendered unnecessary at the December 18, 2007 hearing when the county attorneys  
25 agreed they could not and would not bring any enforcement proceeding before February.

26 Plaintiffs then orally amended their motions to request a different temporary  
27 restraining order, in effect a declaratory judgment, that they would not be liable for failure  
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1 to use E-Verify between January 1, 2008, and the time the injunction may be lifted. That  
2 is now the requested relief before the court.

3 Plaintiffs have established that one or more of their members will have to purchase  
4 a computer and internet access to use E-Verify. However, their presentations are not  
5 persuasive to the extent they contend that any great expense would be incurred. The  
6 declaration of Mr. LeVecke, an owner of 57 franchise restaurants who has a full time  
7 immigration compliance officer, that he would need 57 new computers for E-Verify  
8 compliance is unpersuasive in light of his failure to address alternative business solutions.

9 Plaintiffs have not supplied any authority for their oral motion that the court can  
10 enter a permanently binding declaratory judgment at the commencement of a case, styled  
11 as a temporary restraining order, where no officer needs to be restrained. Absent any  
12 authority, the court is uncertain that such relief would be a proper exercise of the  
13 extraordinary power of temporary restraint.

14 Several of the county attorney Defendants properly object to the motions for  
15 temporary restraining order as coming late and without enough time for them to respond  
16 adequately. The reason the motions for preliminary injunction cannot be heard and  
17 decided earlier than January, and therefore the reason Plaintiffs seek a temporary  
18 restraining order, is that Plaintiffs chose not to sue one or more appropriate county  
19 attorneys in *Arizona Contractors I*.

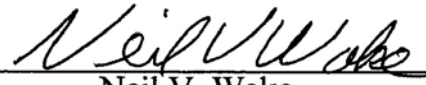
20 Nevertheless, counsel for the Maricopa County Attorney acknowledged that she  
21 has presented what she wants to concerning the motions for temporary restraining order.  
22 Therefore, the court decides the motions after considering all the factors.

23 Even applying the general standards for issuance of a temporary restraining order,  
24 Plaintiffs' motions are wanting. As discussed in more detail in today's order in *Arizona*  
25 *Contractors I*, the balance of hardships tips sharply against Plaintiffs, not in their favor.  
26 Plaintiffs' injury from complying with the law is far less than the harm that a pre-trial  
27 declaratory judgment, styled as a temporary restraining order, would impose on others

1 and on the public interest. Plaintiffs have not shown a likelihood of success on the  
2 merits, much less a strong likelihood.

3 IT IS THEREFORE ORDERED that Plaintiffs' Motion for Temporary Restraining  
4 Order (doc. # 4 in No. CV 07-2496) and Plaintiffs' Application for Temporary  
5 Restraining Order (doc. # 3 in No. CV 07-2518, now consolidated with No. CV 07-2496)  
6 are DENIED. This order does not dispose of the motions for preliminary injunction,  
7 which are set for hearing on January 16, 2007.

8 DATED this 21<sup>st</sup> day of December 2007.

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13 Neil V. Wake  
14 United States District Judge  
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