

1 WO

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9 We Are America, et al.,)

10 Plaintiffs,)

No. CIV 06-2816-PHX-RCB

11 vs.)

O R D E R

12 Maricopa County Board of)
Supervisors, et al.)

13 Defendants.)

14

15

Introduction

16

17

18

19

20

21

22

23

24

25

26

27

28

In 2005, the Arizona State Legislature criminalized human smuggling. See Ariz.Rev.Stat. ("A.R.S.") § 13-2319. Thereafter, the Maricopa County Attorney's Office ("MCAO") interpreted that human smuggling statute, in combination with Arizona's conspiracy statutes, as giving it the prosecutorial discretion to charge and prosecute non-smuggling migrants for conspiring to transport themselves within Maricopa County. Accordingly, the Maricopa County Sheriff's Office ("MCSO") began arresting and detaining migrants for that crime. This lawsuit is a direct challenge to the foregoing, which the parties refer to, as will the court, as the Maricopa Migrant Conspiracy Policy (the "Policy").

Currently pending before the court are defendants' (Doc.

1 119) and plaintiffs' (Doc. 121) competing motions for summary
2 judgment pursuant to Fed.R.Civ.P. 56. The primary issue which
3 these summary judgment motions raise is whether federal law
4 preempts and renders invalid the Policy.¹ The plaintiffs'
5 second motion for class certification pursuant to Fed.R.Civ.P.
6 23 (Doc. 122)² is also currently pending before the court.

7 Background

8 An examination of the parties' statements of facts and
9 controverting statements of facts, reveals that there is little
10 complete agreement between them. Most of the parties'
11 objections are not well-taken though; and they obfuscate rather
12 than sharpen the factual record.

13 A court "may only consider admissible evidence in ruling on
14 a motion for summary judgment." Ballen v. City of Redmond, 466
15 F.3d 736, 745 (9th Cir. 2006) (citation omitted). However,
16 "'objections to evidence . . . [as] irrelevant, speculative,
17 and/or argumentative, or that it constitutes an improper legal
18 conclusion are all duplicative of the summary judgment standard
19 itself.'" Harris Technical Sales, Inc. v. Eagle Test Sys., Inc.,
20 2008 WL 343260, at *3 (D.Ariz. Feb. 5, 2008) (quoting Burch v.
21 Regents of the Univ. of Cal., 433 F.Supp.2d 1110, 1120 (E.D.Cal.

22
23 ¹ Given the court's intimate familiarity with this action and
24 because the issues have been fully briefed, in its discretion the court
25 denies the parties' request for oral argument as it would not aid the
26 decisional process. See Fed.R.Civ.P. 78(b); Partridge v. Reich, 141 F.3d
27 920, 926 (9th Cir. 1998).

28 ² This court previously denied plaintiffs' first motion for class
certification without prejudice to renew. We Are America/Somos America
Coalition of Arizona v. Maricopa Co. Bd. of Supervisors, 2007 WL 2775134,
at * 8 (D.Ariz. Sept. 21, 2007) ("WAA/SACA I").

1 2006)). Many of the parties' objections are to relevancy. Such
2 objections are "'redundant'" though because a court "'cannot
3 rely on irrelevant facts[]" in awarding summary judgment.
4 Huynh v. J.P. Morgan Chase & Co., 2008 WL 2789532, at *4
5 (D.Ariz. July 17, 2008) (quoting Burch, 433 F.Supp.2d at 1119).
6 "'A court can award summary judgment only when there is no
7 genuine dispute of *material* fact.'" Id. (quoting Burch, 433
8 F.Supp.2d at 1119) (emphasis in original)).

9 Other objections are that the proffered evidence is
10 argumentative or constitutes an improper legal conclusion.
11 These types of objections are "superfluous" in this context,
12 however, because such statements "'are not facts and likewise
13 will not be considered on a motion for summary judgment.'" Id.
14 (quoting Burch, 433 F.Supp.2d at 1119 (citation omitted)).
15 Thus, insofar as the parties' objections are duplicative of the
16 summary judgment standard, the court sees no need to expressly
17 rule on each.

18 There are two objections which merit specific
19 consideration, however. The defendants are objecting to the
20 plaintiffs' second statement of fact which, in turn, is based
21 upon a document entitled "[Criminal Justice-Sheriff-Human
22 Smuggling Enforcement] Opinion No. 2005-002[,]" dated September
23 29, 2005. Pls.' Exh. 5 (Doc. 121-2) at 213-219.³ This unsigned
24 document purports to be a letter from former Maricopa County
25 Attorney Andrew P. Thomas to defendant Sheriff Joseph M. Arpaio.

26
27 ³ For uniformity and ease of reference, all citations to page
28 numbers of docketed items are to the page assigned by the court's case
management and electronic case filing (CM/ECF) system.

1 See id. Based upon this letter, the plaintiffs offer the
2 following statement of "fact[:]" "On September 29, 2005, [the
3 then] defendant County Attorney announced that his office would
4 prosecute not only actual *coyotes*, but also non-smuggler
5 migrants – 'people who are trying to enter into this country'
6 and whom, in the legislature's view, actual smugglers 'exploit'
7 – who agree to pay for their own transport on the theory that
8 such migrants have conspired to violate § 13-2319." Plaintiffs'
9 Statement of Facts in Support of Motion for Summary Judgment
10 ("Pls.' SOF") (Doc. 121-1) at 3:16-21 (citations omitted). The
11 plaintiffs also rely upon the September 29, 2005, document as
12 the source of the Policy. See id. at 3:24-25 ("This [opinion
13 letter] initiated the . . . MMCP at issue[.]")

14 Objecting to this statement of fact, and the predicate
15 document, the defendants assert that the latter lacks foundation
16 because it is unsigned. The defendants further assert that that
17 unsigned document cannot "serve as an admission by a party
18 opponent[]" in the absence of any testimony by either its
19 supposed author, non-party Thomas, or its alleged recipient,
20 defendant Arpaio. Defendants' Response to Plaintiffs' Statement
21 of Facts in Support of Plaintiffs' Motion for Summary Judgment
22 and Controverting Statement of Facts ("Def's.' Resp. SOF") (Doc.
23 129) at 3:13-14, ¶ 2.

24 Documentary evidence submitted on a summary judgment
25 motion "must be authenticated and attached to a declaration
26 wherein the declarant is the person through whom the exhibits
27 could be admitted into evidence." Bias v. Moynihan, 508 F.3d
28 1212, 1224 (9th Cir. 2007) (citation omitted); see also Orr v.

1 Bank of America, 285 F.3d 764, 773 (9th Cir. 2002) (citations
2 and footnote omitted) ("Authentication is a condition precedent
3 to admissibility" and "unauthenticated documents cannot be
4 considered in a motion for summary judgment.") The Ninth
5 Circuit has "repeatedly held that unauthenticated documents
6 cannot be considered in a motion for summary judgment." Orr,
7 285 F.3d at 773. This authentication requirement is "satisfied
8 by evidence sufficient to support a finding that the matter in
9 question is what its proponent claims[,]" Fed.R.Evid. 901(a),
10 or if the document is self-authenticating pursuant to
11 Fed.R.Evid. 902. The plaintiffs have shown neither. Therefore,
12 the court will not consider the unsigned September 29, 2005,
13 letter due to a lack of foundation.

14 For substantially similar reasons, the court also will not
15 consider what purports to be "Minutes of the Committee on
16 Judiciary re: H.B. 2539, Arizona House of Representatives, 47th
17 Legislature, First Regular Session (February 10, 2005)." Pls.'
18 SOF (Doc. 121-1) at 3:14-17. Attempting to show legislative
19 intent, the plaintiffs recite from these Minutes several times.
20 The Minutes themselves are not part of the record, however; nor
21 have they been authenticated in any way.

22 Notwithstanding the parties' objections, at bottom, the
23 undisputed facts pertaining to the pending summary judgment
24 motions are straightforward and few. In 2005, Arizona
25 criminalized human smuggling, making it a class 4 felony for a
26 "person to intentionally engage in the smuggling of human beings
27 for profit or commercial purpose." A.R.S. § 13-2319(A)-(C)(1)-
28

1 (2) (Supp. 2010)⁴. The statutory definition of "[s]muggling of
2 human beings" is "transportation, procurement of transportation
3 or use of property or real property by a person or an entity
4 that knows or has reason to know that the person or persons
5 transported or to be transported are not United States citizens,
6 permanent resident aliens or persons otherwise lawfully in this
7 state or have attempted to enter, entered or remained in the
8 United States in violation of law." A.R.S. § 13-2319(F)(3).

9 Significantly, the defendants do not dispute either the
10 existence of the Policy or its implementation. Indeed, they
11 expressly acknowledge that "[s]ince March of 2006, the [MCAO]
12 has reserved the prosecutorial discretion under Arizona law to
13 charge and prosecute persons for the state crime of conspiracy
14 under A.R.S. § 13-1003 to violate Arizona's human smuggling
15 statute, A.R.S. § 13-2319." Defendants' Motion for Summary
16 Judgment ("Defs.' SJM") (Doc. 119) at 1:27-2:2. Along those
17 same lines, the defendants further acknowledge that the MCSO
18 "also enforces § 13-1003 as applied to § 13-2319 by arresting
19 individuals for, and detaining them under, the criminal charge
20 of conspiring to violate Arizona's human smuggling statute when
21 probable cause exists to do so." *Id.* at 2:5-7. Defendants also
22 point out that A.R.S. § 13-1006(B) recognizes that a person may

23
24 ⁴ Section 13-2319 was amended by section four of "Support Our Law
25 Enforcement and Safe Neighborhoods Act," as amended by H.B. 2162 ("S.B.
26 1070"). That amendment, which is not relevant here, "made only a minor
27 change to Arizona's preexisting human smuggling statute, i.e., section
28 13-2319[,] and did not affect its substantive scope. See We Are Am./Somos
Am., Coal. of Ariz. v. Maricopa Cnty. Bd. of Supervisors, 809 F.Supp.2d
1084, 1086 n. 1 (D.Ariz. 2011) ("WAA/SACA IV") (citation omitted).

1 commit conspiracy to commit an offense, even if that person
2 cannot be convicted of the offense itself.⁵

3 By June 2011, in accordance with the Policy, MCSO "deputies
4 had arrested at least 1,800 non-smugglers for conspiring to
5 violate § 13-2319." Pls.' SOF (Doc. 121-1) at 3, ¶ 3 (citations
6 omitted); see also Defs.' Resp. SOF (Doc. 129) at 3, ¶ 3
7 (admit). And, "[a]s of March 2010, the [MCAO] had prosecuted
8 1,357 non-smugglers for conspiracy to violate § 13-2319." Id.
9 at 4, ¶ 4 (citation omitted); see also Defs.' Resp. SOF (Doc.
10 129) at 4, ¶ 4 (admit). At his August 23, 2012, deposition,
11 Maricopa County Sheriff Arpaio confirmed that the MCSO is
12 continuing to arrest "co-conspirators" and that the MCAO
13 continues to prosecute them. Pls.' Exh. 1 (Doc. 121-2) at 36:5-
14 10.

15 The First Amended Complaint ("FAC") alleges four separate
16 causes of action. Significantly however, believing they are
17 "clearly entitled" to summary judgment "on their first claim for
18 relief (preemption)[,]" the plaintiffs are "reced[ing] from
19 their remaining [three] claims[.]" Plaintiffs' Responsive
20 Memorandum in Opposition to Defendants' Motion for Summary
21 Judgment ("Pls.' Resp.") (Doc. 126) at 16:27-28, n. 5. This
22 obviates the need to consider much of the defendants' summary
23

24 ⁵ That statute provides as follows:

25 It is not a defense to a prosecution for
26 solicitation or conspiracy that the defendant
27 is, by definition of the offense, legally
28 incapable in an individual capacity of committing
the offense that is the object of the solicitation
or conspiracy.

28 A.R.S. § 13-1006(B).

1 judgment motion, which addressed all four claims. What remains,
2 as mentioned at the outset, is the vigorously disputed issue of
3 federal preemption. The parties each argue their entitlement
4 to summary judgment on this issue. The defendants argue that
5 the Policy is not preempted by federal immigration law, whereas
6 the plaintiffs argue that it is preempted. Additionally, the
7 plaintiffs are seeking certification of two alternative classes,
8 as more fully discussed herein.

9 Discussion

10 "Bringing a class certification motion together with a Rule
11 56 motion[,]" as the plaintiffs have done, "is consistent with
12 the Federal Rules of Civil Procedure." See Evon v. Law Offices
13 of Sidney Mickell, 688 F.3d 1015, 1032 (9th Cir. 2012) (citing
14 cases). At the outset, though, the court must determine which
15 motion to resolve first. In their summary judgment motion, the
16 defendants argue, *inter alia*, that each of the remaining named
17 plaintiffs⁶ "lack standing to bring this suit for equitable
18 relief." Defs.' SJM (Doc. 119) at 15:17. Similarly, in
19 opposing class certification, the defendants also argue that the
20 two municipal taxpayer plaintiffs, Dawn Haglund and David⁷

22 ⁶ In We Are America/Somos America Coalition of Arizona v. Maricopa
23 Co. Bd. of Supervisors, 594 F.Supp.2d 1104 (D.Ariz. 2009) ("We Are America
24 II"), based upon Younger abstention, this court held that it lacked
25 jurisdiction to consider the claims of the six Mexican Nationals - a
26 holding which the Ninth Circuit affirmed. We Are America/Somos America
27 Coalition of Arizona v. Maricopa Co. Bd. of Supervisors, 386 Fed.Appx. 726,
28 727 (9th Cir. 2010).

26 ⁷ The FAC's caption accurately names David Lujan as a plaintiff,
27 but later it incorrectly refers to him as "Steve" Lujan" Compare FAC
28 (Doc. 45) at 1:23 with FAC (Doc. 45) at 8:13, ¶ 13. Despite this
misidentification, it is clear that David Lujan and "Steve" Lujan are the
same plaintiff.

1 Lujan, lack standing.

2 If the defendants are correct, and none of the plaintiffs
3 have standing, then this court would not have subject matter to
4 consider the merits, including class certification. See
5 Righthaven LLC v. Hoehn, 716 F.3d 1166, 1172 (9th Cir. 2013)
6 ("In the absence of standing, a federal court 'lacks subject
7 matter jurisdiction over the suit.'") (quoting Cetacean Cmty.
8 v. Bush, 386 F.3d 1169, 1174 (9th Cir. 2004) (citing Steel Co.
9 v. Citizens for a Better Env't, 523 U.S. 83, 101, 118 S.Ct.
10 1003, 140 L.Ed.2d 210 (1998)). Therefore, the court will first
11 address the parties' summary judgment motions. See Tech v.
12 U.S., 271 F.R.D. 451, 454 (M.D.Pa. 2010) ("[p]rior to rendering
13 a disposition on the Plaintiff's class certification motion,
14 [the court] first consider[ed] the United States'[] motion to
15 dismiss . . . for lack of subject matter jurisdiction . . . ,
16 asserting that Tech lacks standing[]"); cf. Evon, 688 F.3d at
17 1032 ("While Rule 23 does not require a district court to fully
18 consider the merits of the plaintiffs' claims, addressing the
19 merits of the claims in a related summary judgment motion can
20 have a substantial bearing on the required Rule 23
21 determinations.")

22 **I. Summary Judgment Motions**

23 The court assumes familiarity with what has sometimes been
24 referred to as the Celotex trilogy wherein the Supreme Court
25 clarified and refined the standards for deciding Rule 56 summary
26 judgment motions. See Anderson v. Liberty Lobby, Inc., 477 U.S.
27 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Celotex Corp. v.
28 Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986);

1 and Matsushita Elec. Industr. Co. v. Zenith Radio Corp., 475
2 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). There is no
3 need to repeat the entire body of summary judgment case law
4 which has developed since then. That is especially so given
5 that there are no material facts in dispute and the pending
6 motions turn on legal issues, making them proper for resolution
7 pursuant to Fed.R.Civ.P. 56. See Liberty Lobby, 477 U.S., at
8 250.

9 The summary judgment standards do not "change when the
10 parties file cross-motions for summary judgment: the court must
11 apply the same standard and rule on each motion independently
12 because the granting of one motion does not necessarily
13 translate into the denial of the other unless[,]" as here, "the
14 parties rely on the same legal theories and same set of material
15 facts." See Feezor v. Excel Stockton, LLC, 2013 WL 2485623, at
16 *2 (E.D.Cal. June 10, 2013) (citing Pintos v. Pac. Creditors
17 Ass'n., 605 F.3d 665, 674 (9th Cir. 2010), *cert. denied sub nom.*
18 Experian Info. Solutions, Inc. v. Pintos, 562 U.S. ----, 131
19 S.Ct. 900 (2011)).

20 **A. Standing**

21 Defendants assert that a party's standing "is a fundamental
22 *threshold* inquiry[,]" while simultaneously asserting that
23 plaintiffs' lack of standing is a "*final* reason" for granting
24 summary judgment. Defs.' SJM (Doc. 119) at 15:16 (citation
25 omitted) (emphasis added). If the plaintiffs lack standing
26 then, as previously explained, this court would lack subject
27 matter jurisdiction. Therefore, even though lack of standing
28 is the defendants' last asserted basis for seeking summary

1 judgment, the court must address that argument first.

2 Earlier in this litigation the defendants brought a
3 "strictly facial[]" challenge to standing, arguing for dismissal
4 pursuant to Fed. R. Civ. P. 12(b)(1). WAA/SACA IV, 809
5 F.Supp.2d at 1089 and n.4. Denying that motion, this court
6 found that the plaintiffs had sufficiently alleged
7 organizational standing as to We Are America/Somos America
8 Coalition of Arizona ("WAA/SACA") and the American Hispanic
9 Community Forum ("AHCF"),⁸ and municipal taxpayer standing as to
10 plaintiffs David Lujan and LaDawn Haglund.⁹

11 Now, however, the standing issue is before the court in a
12 different procedural posture -- on a summary judgment motion.
13 Essentially the defendants are arguing that the plaintiffs'
14 evidence is insufficient to confer standing upon any of them
15 because their grievances are too general to establish the
16 requisite Article III injury in fact. The plaintiffs retort
17 that "the uncontroverted evidence establishes both
18 organizational and taxpayer plaintiffs' standing." Pls.' Resp.
19 (Doc. 126) at 8:19-20 (emphasis omitted).

20 Mere allegations were sufficient to establish standing with
21 respect to the defendants' earlier motion to dismiss, but at

23 ⁸ This court also found that the FAC adequately alleged
24 organizational standing as to plaintiff Friendly House. Since then,
25 however, the parties have stipulated to the dismissal of Friendly House and
26 others, leaving only two organizational plaintiffs. See Ord. (Doc. 109) at
27 2.

28 ⁹ This court previously also found that the FAC adequately alleged
municipal taxpayer standing as to plaintiffs Kyrsten Sinema and Cecilia
Menjivar. Since then, however, the parties have stipulated to their
dismissal, leaving Haglund and Lujan as the municipal taxpayer plaintiffs.
See Ord. (Doc. 109) at 2.

1 this juncture more is required. "In response to a summary
2 judgment motion . . . to establish Article III standing, a
3 plaintiff can no longer rest on 'mere allegations' but must set
4 forth by affidavit or other admissible evidence 'specific facts'
5 as delineated in Federal Rule of Civil Procedure 56(e) as to the
6 existence of such standing." Gerlinger v. Amazon.com Inc., 526
7 F.3d 1253, 1255-1256 (9th Cir. 2008) (quoting Lujan v. Defenders
8 of Wildlife, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351
9 (1992)).

10 1. Municipal Taxpayers¹⁰

11 "[I]mproper expenditure of public funds' is the crux of
12 any claim that a municipal taxpayer satisfies the injury in fact
13 prong of constitutional standing[,]" as fully discussed in
14 WAA/SACA IV, 809 F.Supp.2d at 1108 (citing Cammack v. Waihee,
15 932 F.2d 765, 770 (9th Cir. 1991)). "As recently as 2008, the
16 Ninth Circuit has reaffirmed this view." Id. (citing
17 Barnes-Wallace v. City of San Diego, 530 F.3d 776, 786 (9th Cir.
18 2008) . . . ("[M]unicipal taxpayers must show an expenditure of
19 public funds to have standing.)) "In fact, the premise that an
20 'unconstitutional expenditure of government funds can itself be
21 injury enough to confer municipal-taxpayer standing' is not
22 unremarkable as a general proposition." Id. (quoting Smith
23 v. Jefferson County Bd. of School Com'rs, 641 F.3d 197, 213 (6th
24 Cir. 2011) (citation omitted) (Sixth Circuit noted that its
25 "sister circuits[,]" including the Ninth in Cammack, "all agree"

27 ¹⁰ The court incorporates by reference as if fully set forth herein
28 its discussion of the governing standing principles and ensuing analysis in
WAA/SACA IV, 809 F.Supp.2d at 1089-1112.

1 with that general proposition).

2 Succinctly put, Article III standing comprises three
3 elements: (1) injury in fact; (2) causal connection; and
4 (3) redressability. See Barnum Tiber Co. v. U.S. Environmental
5 Protection Agency, 633 F.3d 894, 897 (9th Cir. 2011). Given
6 that the defendants are once again confining their argument to
7 the injury in fact element, presumably they are conceding, as
8 this court previously found, that the municipal taxpayer¹¹
9 plaintiffs have shown the latter two standing elements. See
10 WAA/SACA IV, 809 F.Supp.2d at 1105. The court will confine its
11 analysis accordingly.

12 The defendants make the blanket assertion that municipal
13 taxpayer plaintiff LaDawn Haglund lacks standing because her
14 "injury . . . is simply a generalized grievance that she does
15 not like any tax money, . . . , being used for governmental
16 decisions she disagrees with as a matter of public policy, such
17 as the Policy." Defs.' SJM (Doc. 119) at 16:26-17:2 (citation
18 omitted). This is the sum total of the defendants' standing
19 "argument" as to plaintiff Haglund. Overlooking the lack of any
20 analysis, the court is compelled to comment upon the liberties
21 which the defendants have taken in describing the portion of
22 plaintiff Haglund's deposition to which they cite.

23 In that snippet, plaintiff Haglund was explicitly asked,
24 "[W]hat is the injury to you because of th[is] [P]olicy[?]"
25 Defs.' Exh. C (Doc. 120-1) at 18:5-6. Directly responding,

27 ¹¹ Because it is no longer necessary to distinguish between federal,
28 state and municipal taxpayers, hereinafter all references to taxpayers
shall be read as referring to the municipal taxpayer plaintiffs.

1 plaintiff Haglund stated, "[M]y "tax money is being used to
2 house and prosecute and detain non-criminals, in my view,
3 economic migrants and treating them as criminals." Id. at
4 18:13-15. Describing this use of her tax money as "a misuse in
5 many ways[,]" plaintiff Haglund further testified that given the
6 "federal rules . . . for dealing with immigrants, . . . using
7 . . . my tax dollars to prosecute economic migrants detracts
8 from prosecuting real criminals." Id. at 18:16-20.

9 This testimony cannot be reasonably interpreted to support
10 defendants' characterization thereof. Plainly, the foregoing
11 does not show a "*generalized* grievance that [plaintiff Haglund]
12 does not like *any* tax money . . . being used for *governmental*
13 *decisions she disagrees with* as a matter of public policy[.]"
14 See Defs.' SJM (Doc. 119) at 16:27-17:1 (citation omitted)
15 (emphasis added). Rather, plaintiff Haglund responded to a
16 narrowly tailored question regarding any injury to her as a
17 result of the Policy, and she responded accordingly. She was
18 not asked about any "governmental decisions" beyond the Policy.
19 Obviously then, there is no way to know from the cited
20 testimony how plaintiff Haglund views other governmental
21 decisions as to the expenditure of her tax dollars. Even
22 assuming the existence of such testimony, it would be
23 irrelevant. Consequently, the court gives no credence to the
24 defendants' depiction of plaintiff Haglund's testimony, which
25 does nothing to advance their argument that she lacks standing.

26 Not only is there no factual basis for that defense
27 argument, but there is no legal basis for it either. As this
28 court previously found, the municipal taxpayers sufficiently

1 alleged the requisite injury in fact by alleging their status
2 as municipal taxpayers and the improper expenditure of municipal
3 funds. See WAA/SACA IV, 809 F.Supp.2d at 1104-1109. The
4 plaintiffs' evidence offered in support of their summary
5 judgment motion substantiates the FAC's allegations as to
6 plaintiff Haglund's standing as a municipal taxpayer.

7 First, plaintiff Haglund's status as a Maricopa County
8 taxpayer is undisputed. Since 2005, she has been a Maricopa
9 County resident. See Pls.' Supp. Exh. 19 (Doc. 126-3) at 68:11-
10 16. From 2005 until 2011, she owned real property in Maricopa
11 County and paid property taxes thereon. Id. at 68:17-23. In
12 October 2011, plaintiff Haglund began renting a house in
13 Maricopa County. Id. at 69:6-13. She is charged for and pays
14 property taxes and rent on that residence. Id. at 69:14-70:14.
15 By statute, such taxes are paid to the treasury of Maricopa
16 County which "shall apportion and apply the[m] . . . to the
17 several special and general funds as provided by law." See
18 A.R.S. § 11-492.

19 In addition to property taxes, as a Maricopa County
20 resident, plaintiff Haglund pays a "special sales tax[]" - the
21 "Jail Excise Tax." See Pls.' Supp. Exh. 20 (Doc. 126-3) at 90;
22 see also Pls.' Exh. 1 (Doc. 121-2) at 39:15-17 (Defendant Arpaio
23 testified that "the operations of the [County] jails come from
24 a tax that was passed by the people of this [C]ounty several
25 years ago[]" - "a special budget[.]") This Jail Excise Tax is
26 used to "fund construction and operation of adult and juvenile
27 detention facilities[]" where defendants detain, among others,
28 those arrested pursuant to the Policy. See Pls.' Supp. Exh. 20

1 (Doc. 126-3) at 90. In fiscal year 2011, Maricopa County
2 collected \$112,451,802.00. Id. This Tax will continue until
3 approximately 2027. See id.

4 Besides establishing that plaintiff Haglund is a Maricopa
5 County taxpayer, the evidence bears out the FAC's allegations
6 that County funds are being expended to carry out the Policy.
7 County taxes, such as those paid by plaintiff Haglund, are used
8 for a variety of MCSO's activities related to the Policy, as
9 defendant Arpaio admits. As defendant Arpaio admitted, those
10 activities include: (1) "training MCSO deputies to detect and
11 arrest persons who conspire to transport themselves in violation
12 of A.R.S. § 13-2319[;]" (2) "transport[ing] persons arrested for
13 conspiring to transport themselves in violation of" that
14 statute; and (3) "jail[ing] persons arrested for conspiring to
15 transport themselves in violation of A.R.S. § 13-2319." Pls.'
16 Supp. Exh. 11 (Doc. 126-2) at 77:12-14, ¶ 63; 77:16-18, ¶ 64;
17 and 77:9-10, ¶ 62.

18 County taxes are likewise being expended by the MCAO to
19 carry out the Policy, as defendant Maricopa County Attorney
20 Montgomery admits. The defendant Maricopa County Board of
21 Supervisors "appropriates funds for the operations of the MCAO."
22 Pls.' Supp. Exh. ex. 12 (Doc. 126-2) at 93:27-94:1, ¶ 72. The
23 MCAO, in turn, "spends tax revenues to prosecute persons for
24 conspiring to transport themselves in violation of A.R.S. § 13-
25 2319[,]" as well as for training personnel to conduct such
26 prosecutions, as defendant Montgomery also admits. Id. at 93:4-
27 10, ¶¶ 68-69.

28 Furthermore, the defendants concede that "[b]y June 10,

1 2011, [MCSO] deputies had arrested at least 1,800 non-smugglers
2 for conspiring to violate § 13-2319[;]" and "[a]s of March 2010,
3 the [MCAO] had prosecuted 1,357 non-smugglers" for that same
4 crime. Pls.' SOF (Doc. 121-1) at 3:26-4:7, ¶¶ 3 and 4
5 (citations omitted); see also Defs.' Resp. SOF (Doc. 129) at
6 3:15-16. It costs \$91.73 per day to detain an individual in the
7 Maricopa County jail.¹² Pls.' Supp. Exh. 18 (Doc. 126-3)
8 (Maricopa Co. Justice System Annual Activities Report FY 2011)
9 at 44. This evidence confirms the expenditure of plaintiff
10 Haglund's County taxes to arrest, detain, and prosecute
11 individuals pursuant to the Policy.

12 In short, plaintiffs' evidence fully corroborates the FAC's
13 allegations that Ms. Haglund is a municipal taxpayer, as well
14 as the expenditure of Maricopa County taxes in connection with
15 the Policy. There is thus no dispute that she satisfies the
16 injury in fact prong of municipal taxpayer standing - the only
17 element with which the defendants take issue. Cf. Page v. Tri-
18 City Healthcare District, 806 F.Supp.2d 1154, 1165 (S.D.Cal.
19 2012) (no municipal taxpayer standing where plaintiff did not
20 "show[] an expenditure of public funds[]" and "provided no
21 evidence indicating how much money had been spent" regarding the
22 challenged conduct "or where the funds came from[]").

23 Tellingly, in the face of this undisputed evidence, the
24 defendants' reply is conspicuously silent on the issue of
25 standing. The defendants do not contest plaintiffs' evidence
26

27 ¹² This figure was derived by dividing the total number of jailed
28 adults in fiscal year 2011 by the total spent for detaining those adults.
See Pls.' Controverting SOF, exh. 18 thereto (Doc. 126-3) at 44.

1 or legal position in any way. For all of these reasons, the
2 court finds that plaintiff Haglund has standing as a municipal
3 taxpayer. Thus, the court denies this aspect of defendants'
4 summary judgment motion.

5 There are no readily discernible differences between
6 taxpayer plaintiffs Haglund and Lujan in terms of the evidence
7 pertaining to their standing. Plaintiff Lujan is a Maricopa
8 County resident of longstanding and "regularly pays taxes to
9 Maricopa County, including, but not limited to, the . . . Jail
10 Excise Tax[.]" Pls'. Controverting SOF (Doc. 126-3), exh. 17
11 thereto (Lujan Decl'n) at 191, ¶ 2. And, the plaintiffs are
12 proffering the same undisputed evidence outlined above to
13 establish his standing as a taxpayer. See Pls.' Resp. (Doc.
14 126) at 9:11-10:26. Despite that, the defendants,
15 inconsistently, are not challenging plaintiff Lujan's standing.
16 Nonetheless, the evidence which supports a finding of taxpayer
17 standing as to plaintiff Haglund supports the same finding as
18 to plaintiff Lujan. Thus, both taxpayer plaintiffs have
19 standing to pursue the preemption claim. See Haro v. Sebelius,
20 2013 WL 4734032, at *4 (9th Cir. Sept. 4, 2013) (quoting
21 DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 352, 126 S.Ct.
22 1854, 164 L.Ed.2d 589 (2006)) ("[A] plaintiff must demonstrate
23 standing for each claim[.]'")

24 "[S]tanding is not dispensed in gross[.]" however. Lewis
25 v. Casey, 518 U.S. 343, 358 n. 6, 116 S.Ct. 2174, 135 L.Ed.2d
26 606 (1996). Therefore, the court's inquiry cannot end here.
27 It also must decide whether the taxpayer plaintiffs have
28 "'standing . . . for each form of relief sought.'" See Haro,

1 2013 WL 4734032, at *4 (quoting DaimlerChrysler, 547 U.S., at
2 352). The difference between the FAC and the plaintiffs' summary
3 judgment motion, in terms of the relief sought, requires the
4 court to first ascertain exactly what types of relief the
5 plaintiffs are seeking.

6 In their prayer for relief, the plaintiffs are seeking
7 declaratory and injunctive relief, as well as attorneys' fees
8 and costs pursuant to 42 U.S.C. § 1988(b). FAC (Doc. 45) at 28-
9 29, ¶¶ 3-5. In their summary judgment motion, however, the
10 plaintiffs are expanding the scope of the relief. Now, the
11 plaintiffs are also seeking "to *make whole class members*
12 *previously injured* by defendants detaining, arresting, and
13 prosecuting non-smuggler migrants for conspiracy to transport
14 themselves in violation of Ariz. Rev. Stat. § 13-2319[.]" Pls.'
15 SJM (Doc. 121) at 3:5-9 (emphasis added). The plaintiffs'
16 proposed summary judgment order reveals the nature of such
17 relief. More specifically, the plaintiffs request that the
18 "[c]onvictions secured against persons for conspiring to
19 transport themselves, and no one else, in purported violation
20 of Ariz. Rev. Stat. § 13-2319 are inconsistent with the
21 Supremacy Clause, U.S. Const., Art. VI, cl. 2, and are
22 accordingly declared null and void." Proposed Summary Judgment
23 Order (Doc. 123) at 2:2-5, ¶ 3.

24 The court will not consider whether the taxpayer plaintiffs
25 (or, for that matter, the organizational plaintiffs) have
26 standing to pursue this belated request for retrospective
27 declaratory relief. In the first place, neither of the
28 plaintiffs' two proposed class definitions includes putative

1 class members who were "previously injured by" the Policy. See
2 id. at 3:6. As plaintiffs themselves define it, their first
3 proposed class is: "All individual who are . . . stopped,
4 detained, arrested, incarcerated, prosecuted, or penalized for
5 conspiring to transport themselves, and themselves only, in
6 violation of Ariz. Rev. Stat. § 13-2319[.]" Class Certification
7 Mot. (Doc. 122) at 5:26-28 (emphasis added). The second
8 proposed class pertains to municipal taxpayers. Thus, even
9 assuming *arguendo* that the court were to grant class
10 certification to both classes, by plaintiffs' own definition,
11 neither would include "class members previously injured" by the
12 Policy. See Pls.' SJM (Doc. 121) at 3:6.

13 The second reason for declining to consider whether any of
14 the plaintiffs have standing to pursue retrospective declaratory
15 relief is that this request is belated and has not been
16 adequately addressed by the plaintiffs. The plaintiffs did not
17 seek this form of relief in their FAC. In the final paragraph
18 of the FAC, the plaintiffs do request the court to "[g]rant such
19 further relief as [it] deems just." FAC (Doc. 45) at 29, ¶ 6.
20 That boilerplate phrase is insufficient to put the defendants
21 on notice that as part of this lawsuit the plaintiffs are asking
22 this federal court to nullify potentially thousands of prior
23 state court convictions.

24 Rule 54(c) does permit a court to "grant the relief to
25 which each party is entitled, even if the party has not demanded
26 that relief in its pleadings." Fed.R.Civ.P. 54(c). The
27 plaintiffs certainly have not shown their entitlement to this
28 particular relief, however. They only mention it once in

1 passing in their summary judgment motion, and then include it
2 in a *proposed* order submitted in connection with that motion.
3 The lack of any briefing on plaintiffs' supposed entitlement to
4 retrospective declaratory relief is problematic because it is
5 not a "predictable remedy" as to their preemption claim. Contra
6 Mueller v. Aufer, 2010 WL 2265867, at *5 (D.Idaho June 4, 2010)
7 ("A predictable remedy for constitutional violations includes
8 declaratory and injunctive relief[.]") Lastly, the court is
9 concerned about possible prejudice to the defendants given that
10 the plaintiffs' demand for this retrospective declaratory relief
11 was explicitly raised for the first time in their proposed
12 summary judgment order.

13 Having determined that the potential available relief in
14 this case is prospective declaratory and injunctive relief, the
15 court will next address whether the taxpayer plaintiffs have
16 standing to seek such relief. "'The standing formulation for
17 a plaintiff seeking prospective injunctive relief' generally
18 requires that the plaintiff's concrete injury be 'coupled with
19 'a sufficient likelihood that he will again be wronged in a
20 similar way.'" Haro, 2013 WL 4734032, at *4 (quoting Bates v.
21 United Parcel Serv., Inc., 511 F.3d 974, 985 (9th Cir. 2007) (en
22 banc) ((quoting in turn City of Los Angeles v. Lyons, 461 U.S.
23 95, 111, 103 S.Ct. 1660, 75 L.Ed.2d 675 (1983)). "In addition,
24 the claimed threat of injury must be likely to be redressed by
25 the prospective injunctive relief." Bates, 511 F.3d 985
26 (citation omitted). That does not mean "'that a favorable
27 decision *will inevitably* redress [their injuries][.]'" See
28 Ibrahim v. Dep't of Homeland Sec., 669 F.3d 983, 993 (9th Cir.

1 2012) (quoting Wilbur v. Locke, 423 F.3d 1101, 1108 (9th Cir.
2 2005) (internal quotations omitted, emphasis and alterations in
3 original) (quoting in turn Graham v. FEMA, 149 F.3d 997, 1003
4 (9th Cir. 1998), *abrogated on other grounds by Levin v. Commerce*
5 *Energy, Inc.*, 560 U.S. 413, 130 S.Ct. 2323, 176 L.Ed.2d 1131
6 (2010))." Rather, the "[p]laintiffs must show only that a
7 favorable decision is *likely* to redress [their injuries][.]"
8 Id. That standard is met here.

9 The taxpayer plaintiffs have shown a concrete, "necessary
10 injury - actual expenditure of tax dollars" *vis-a-vis* the
11 Policy. See Cammack v. Waihee, 932 F.2d 765, 772 (9th Cir.
12 1991). Furthermore, the defendants admit that they "continue
13 to . . . arrest and prosecute" persons for conspiring to
14 transport themselves in violation of Arizona's human smuggling
15 statute. See Pls.' SOF (Doc. 121-1) at 4:8-10, ¶ 5; see also
16 Defs.' Resp. SOF (Doc. 129) at 3:17-4:6, ¶ 5. Therefore, the
17 injury to the taxpayer plaintiffs continues unabated.
18 Consequently, there is "a sufficient likelihood" that the
19 taxpayer plaintiffs "will again be wronged in a similar way[,]"
20 *i.e.*, by having their County taxes expended to enforce a Policy
21 which they maintain federal law preempts. See Haro, 2013 WL
22 4734032, at *4 (internal quotation marks and citations omitted).

23 Additionally, the claimed threat of injury - the misuse of
24 the taxpayers' County taxes to fund the Policy - is likely to
25 be remedied by prospective injunctive and declaratory relief.
26 As plaintiff Lujan succinctly put it, enjoining the Policy would
27 mean that his "local tax payments would no longer be diverted
28 to th[e] unlawful purpose" of the Policy. Pls.' Supp. Exh. 17

1 (Doc. 126-3) at 42, ¶ 4. This is fully consistent with the long
2 held view, as laid out in WAA/SACA IV, 809 F.Supp.2d 1084, that
3 “[t]he interest of a taxpayer of a municipality in the
4 application of its moneys is direct and immediate and the remedy
5 by injunction to prevent their misuse is not inappropriate.”
6 Id. at 1106 (quoting Frothingham v. Mellon, 262 U.S. 447, 486-
7 487, 43 S.Ct. 597, 67 L.Ed. 1078 (1923)). For all of these
8 reasons, the court finds that plaintiffs Haglund and Lujan have
9 municipal taxpayer standing as to the preemption claim and as
10 to the prospective equitable relief sought. Thus, the court
11 denies this aspect of defendants’ summary judgment motion.

12 If the court finds, as it has, that the municipal taxpayer
13 plaintiffs have standing, then, they contend (and the defendants
14 do not disagree), that there is no need to consider whether the
15 organizational plaintiffs also have standing. Plaintiffs base
16 their contention upon the “general rule [in] federal court
17 suits with multiple plaintiffs . . . that once the court
18 determines that one of the plaintiffs has standing, it need not
19 decide the standing of the others.” See Melendres v. Arpaio, 695
20 F.3d 990, 999 (9th Cir. 2012) (quoting Leonard v. Clark, 12 F.3d
21 885, 888 (9th Cir. 1993)). In Melendres, Latino motorists and
22 passengers and the organization Somos America, brought an action
23 under § 1983 alleging that the MCSO and Sheriff Arpaio, among
24 others, engaged in a policy of racially profiling Latinos in
25 connection with traffic stops. Applying that general rule in
26 Melendres, the Ninth Circuit, after finding that Latino
27 motorists and passengers had standing, expressly declined to
28 “address whether Somos America, an organization, met the

1 requirements for associational standing." Id.

2 This court did depart from that general rule in WAA/SACA
3 IV, 809 F.Supp.2d at 1090-1094, as the parties are well aware.
4 The standing issue is before the court now in a different
5 procedural posture --- on a motion for summary judgment motion,
6 not on a motion to dismiss. Consequently, as it strongly
7 intimated in WAA/SACA IV, having found that the municipal
8 taxpayer plaintiffs have standing as to the preemption claim and
9 for the relief sought, the court will not address whether the
10 WAA/SAC and AHFC, the organizational plaintiffs, also have
11 standing. See id. at 1093 ("By contrast, if defendants were
12 moving for summary judgment on the dual grounds of lack of
13 standing and the merits, plaintiffs' argument that the court
14 need not reach the issue of organizational plaintiffs' standing,
15 if it finds that the taxpayers have standing, would carry far
16 more weight.") It is simply not necessary.

17 **B. Federal Preemption**¹³

18 The plaintiffs are pursuing only their "Federal Preemption"
19 claim, opting for voluntary dismissal of their other claims.
20 See FAC (Doc. 45) at 25:25. The plaintiffs allege that the
21 Policy "is an impermissible attempt by state actors to regulate
22 immigration, and as such unlawfully usurps the federal

23

24 ¹³ As the defendants acknowledge, although the preemption issue
25 arose earlier in this case in a different context, the court "has not
26 dispositively ruled on whether the Policy is preempted by federal
27 immigration law." Defs.' SJM (Doc. 119) at 2:19, n. 1. Therefore, nothing
28 about those prior decisions precludes revisiting the preemption anew. This
is all the more so given: (1) the completion of discovery, and hence a more
fully developed record; (2) the federal preemption issue is squarely raised
by the parties' summary judgment motions; and (3) the evolving state of the
law in this area.

1 government's exclusive power to regulate immigration in
2 violation of the United States Constitution"¹⁴ and the
3 Immigration and Nationality Act, 8 U.S.C. §§ 1101 *et seq.*
4 ("INA"). Id. at 25:28-26:2, ¶ 53. In moving for summary
5 judgment on this claim, the plaintiffs argue that federal law
6 impliedly preempts the Policy. Contrariwise, the defendants
7 argue that federal law does *not* impliedly preempt the Policy.
8 The defendants thus assert that they, and not the plaintiffs,
9 are entitled to summary judgment on the issue of field
10 preemption.

11 Before considering the parties' preemption arguments,
12 there is one prefatory issue. From the inception of this
13 lawsuit, the plaintiffs made a seemingly deliberate choice to
14 challenge only the Policy --- and not A.R.S. § 13-2319. The
15 defendants are taking the position, however, that because the
16 plaintiffs are not attacking the constitutionality of A.R.S.
17 § 13-2319, or arguing that federal law preempts that state
18 statute, they cannot argue that federal law preempts the Policy
19 itself. The defendants offer no legal support for this novel
20 proposition. The allegations of plaintiffs' FAC and the legal
21 theories which they pursue are their prerogative. The court,
22 therefore, agrees with the plaintiffs that they may challenge
23 the Policy as conflict and field preempted "regardless of § 13-
24 2319's facial constitutionality." See Pls.' Reply (Doc. 134)
25 at 9:20-21.

26
27 ¹⁴ The constitutional basis for plaintiffs' argument is Congress'
28 power "[t]o establish an uniform Rule of Naturalization[.]" and its power
"[t]o regulate Commerce with foreign Nations[.]" See U.S. Const. Art. I,
§ 8, cls. 3-4.

1 “The Supremacy Clause provides a clear rule that federal
2 law ‘shall be the supreme Law of the Land; and the Judges in
3 every State shall be bound thereby, any Thing in the
4 Constitution or Laws of any State to the Contrary
5 notwithstanding.’” Arizona v. U.S., 567 U.S. ----, 132 S.Ct.
6 2492, 2500, 183 L.Ed.2d 351 (2012) (quoting U.S. Const. Art. VI,
7 cl. 2). It is thus “[a] fundamental principle of the
8 Constitution . . . that Congress has the power to preempt state
9 law.” Crosby v. Nat’l Foreign Trade Council, 530 U.S. 363, 372,
10 120 S.Ct. 2288, 147 L.Ed.2d 352 (2000) (citations omitted).
11 Moreover, on “the subject of immigration and the status of
12 aliens[,]” “[t]he Government of the United States has broad,
13 undoubted power[.]” Arizona, 132 S.Ct., at 2498 (citations
14 omitted); see also DeCanas v. Bica, 424 U.S. 351, 354, 96 S.Ct.
15 933, 47 L.Ed.2d 43 (1976), *superseded by statute on other*
16 *grounds as stated in Chamber of Comm. v. Whiting*, 563 U.S. ----,
17 131 S.Ct. 1968, 179 L.Ed.2d 1031 (2011) (The “[p]ower to
18 regulate immigration is unquestionably exclusively a federal
19 power.”) Indeed, that power is “well settled[,]” reflective of,
20 among other things, the fact that “[i]mmigration policy can
21 affect trade, investment, tourism, and diplomatic relations for
22 the entire Nation, as well as the perceptions and expectations
23 of aliens in this country who seek the full protection of its
24 laws.” Arizona, 132 S.Ct., at 2498 (citations omitted).

25 This federal immigration power derives, in part, from the
26 federal government’s “constitutional power to ‘establish an
27 uniform Rule of Naturalization,’ . . . , and its inherent power
28 as sovereign to control and conduct relations with foreign

1 nations[.]” Id. (citations omitted). That said, the Supreme
2 Court “has never held that every state enactment which in any
3 way deals with aliens is a regulation of immigration and thus
4 per se pre-empted by this constitutional power[.]” DeCanas, 424
5 U.S., at 355 (citations omitted).

6 Federal preemption can be either express or implied. Gade
7 v. National Solid Wastes Management Assn., 505 U.S. 88, 98, 112
8 S.Ct. 2374, 120 L.Ed.2d 72 (1992). Implied preemption is the
9 only issue which these summary judgment motions raise, however.
10 Implied preemption comprises two, albeit “not rigidly
11 distinct[,]” subcategories, -- field and conflict preemption.
12 Crosby, 530 U.S., at 372 n. 6 (internal quotation marks and
13 citation omitted). Field preemption precludes States “from
14 regulating conduct in a field that Congress, acting within its
15 proper authority, has determined must be regulated by its
16 exclusive governance.” Arizona, 132 S.Ct., at 2501 (citation
17 omitted). Conflict preemption occurs where “compliance with
18 both federal and state regulations is a physical
19 impossibility[.]” Florida Lime & Avocado Growers, Inc. v. Paul,
20 373 U.S. 132, 142–143, 83 S.Ct. 1210, 10 L.Ed.2d 248 (1963).
21 It can also occur in “those instances where the challenged state
22 law ‘stands as an obstacle to the accomplishment and execution
23 of the full purposes and objectives of Congress[.]’” Arizona,
24 132 S.Ct., at 2501 (quoting Hines, 312 U.S., at 67, 61 S.Ct.
25 399). In the present case, the parties’ conflict preemption
26 arguments center on actual and obstacle preemption, as opposed
27 to impossibility. The court will similarly confine its
28 analysis.

1 "There are 'two cornerstones' of preemption jurisprudence."
2 Aguayo v. U.S. Bank, 653 F.3d 912, 917 (2011) (quoting Wyeth v.
3 Levine, 555 U.S. 555, 129 S.Ct. 1187, 1194, 173 L.Ed.2d 51
4 (2009). First, "[r]egardless of the type of preemption involved
5 . . . '[t]he purpose of Congress is the ultimate touchstone of
6 pre-emption analysis.'" Gilstrap v. United Air Lines, Inc., 709
7 F.3d 995, 1003 (9th Cir. 2013) (quoting Cipollone v. Liggett
8 Grp., Inc., 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407
9 (1992) (internal quotation marks omitted)). Second, a court
10 "should assume that 'the historic police powers of the States'
11 are not superseded 'unless that was the clear and manifest
12 purpose of Congress.'" See Arizona, 132 S.Ct., at 2501 (quoting
13 Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230, 67 S.Ct.
14 1146, 91 L.Ed. 1447 (1947)) (other citation omitted). With
15 these principles firmly in mind, the court will first consider
16 whether federal law, and more particularly the INA, preempts the
17 Policy.

18 1. Field Preemption

19 The crux of the defendants' field preemption argument
20 is the latter principle. That is, the defendants argue that
21 they should prevail on the field preemption issue because the
22 plaintiffs cannot "prove . . . that it was 'the **clear and**
23 **manifest** purpose of Congress' to oust state power from the
24 field" of alien smuggling. Defs.' SJM (Doc. 119) at 8:25-9:1
25 (citing, *inter alia*, DeCanas, 424 U.S., at 357) (emphasis added
26 by defendants). On the other hand, the plaintiffs argue that
27 because Congress "fully regulates conspiracies to transport
28 unauthorized entrants[,]" the Policy is field preempted. Pls.'

1 SJM (Doc. 121) at 10:5-6. In making this argument, the
2 plaintiffs rely upon the Supreme Court's rationale in Arizona,
3 132 S.Ct. 2492. Pls.' SJM (Doc. 121) at 10:7. There, the
4 Supreme Court held, *inter alia*, that because "the Federal
5 Government has occupied the field of alien registration[,]"
6 § 3 of S.B. 1070, which made it a state misdemeanor to fail to
7 comply with federal alien registration requirements, was field
8 preempted. Id. at 2502 (citations omitted).

9 The plaintiffs also heavily rely upon two Eleventh Circuit
10 decisions - Georgia Latino Alliance for Human Rights v. Deal,
11 691 F.3d 1250, 1256 (11th Cir. 2012) ("GLAHR"); and United
12 States v. Alabama, 691 F.3d 1269, 1285 (11th Cir. 2012), *cert.*
13 *denied*, 569 U.S. ----, 133 S.Ct. 2022, 185 L.Ed.2d 905 (Apr. 29,
14 2013). As part of sweeping immigration reform legislation in
15 2011, Georgia and Alabama criminalized a variety of activities
16 pertaining to unauthorized or illegal aliens, including
17 transporting, concealing or harboring such aliens. In GLAHR,
18 the Eleventh Circuit affirmed a district court's finding that
19 those Georgia statutes were field preempted by the INA's
20 criminal provisions, particularly 8 U.S.C. § 1324. GLAHR, 691
21 F.3d at 1285-1287; see also Alabama, 691 F.3d at 1285-1287
22 (applying GLAHR's reasoning to finding similar Alabama statutes
23 field preempted); Valle del Sol v. Whiting, 2012 WL 8021265, at
24 *5 (D.Ariz. Sept. 5, 2012)¹⁵ (adopting the Eleventh Circuit's
25 rationale, and holding that § 5 of S.B. 1070, Arizona's

26
27 ¹⁵ This appeal was argued and submitted in the Ninth Circuit on
28 April 2, 2013. Valle del Sol v. Whiting, No. 12-17152. A decision has yet
to be issued.

1 counterpart to the statutes at issue in GLAHR and Alabama, was
2 field preempted).

3 Maintaining that "[t]here is no principled way to
4 distinguish" the Policy from the state statutes at issue in
5 Arizona, GLAHR, Alabama, and Valle del Sol, the plaintiffs argue
6 that those cases are determinative of the field preemption issue
7 herein. See Pls.' SJM (Doc. 121) at 11:7. The defendants'
8 rejoinder is that the Policy is "materially and substantively
9 different" from the challenged statutes in the cases just
10 listed. Defs.' Reply (Doc. 132) at 4:4-5. Based upon those
11 claimed differences, the defendants argue that none of the cases
12 upon which the plaintiffs are relying apply to the field
13 preemption issue now before this court. The parties' strong
14 dispute as to the applicability of Arizona and the Eleventh
15 Circuit's decisions in GLAHR and Alabama require closer
16 examination of each.

17 In Arizona, to determine whether § 3 of S.B. 1070 intruded
18 on the field of alien registration, the Supreme Court began by
19 reiterating that "the States are precluded from regulating
20 conduct in a field that Congress, acting within its proper
21 authority, has determined must be regulated by its exclusive
22 governance." Arizona, 132 S.Ct., at 2501 (citation omitted).
23 The Supreme Court also recited the well settled rule that "[t]he
24 intent to displace state law altogether can be inferred from a
25 framework of regulation 'so pervasive . . . that Congress left
26 no room for the States to supplement it' or where there is a
27 'federal interest . . . so dominant that the federal system will
28 be assumed to preclude enforcement of state laws on the same

1 subject.'" Id. (quoting Rice, 331 U.S., at 230) (other citation
2 omitted) (emphasis added).

3 Examining the history of federal alien registration
4 requirements against that legal backdrop, the Arizona Court held
5 that the federal government has occupied that field because
6 "[t]he federal statutory directives provide a full set of
7 standards governing alien registration, including punishment for
8 noncompliance[,] . . . designed as a harmonious whole." Id.
9 (internal quotation marks and citation omitted). In such a
10 case, "[w]here Congress occupies an entire field," the Supreme
11 Court found that "even complementary state regulation is
12 impermissible." Arizona, 132 S.Ct., at 2502. Such state
13 regulation is "impermissible" because "[f]ield preemption
14 reflects a congressional decision to foreclose any state
15 regulation in the area, even if it is parallel to federal
16 standards." Id. (citation omitted) (emphasis added).

17 The defendants assert that the plaintiffs' "heavy reliance"
18 upon Arizona is "mistaken[,]" as the Supreme Court's "analysis[]
19 is not controlling." Defs.' Resp. (Doc. 128) at 2:12 (emphasis
20 omitted); Defs.' Reply (Doc. 132) at 3:6. The main basis for
21 this defense argument is the difference in subject matter.
22 Unlike the present case involving alien smuggling, the portion
23 of Arizona which the plaintiffs invoke dealt with alien
24 registration, and it has long been held "that the Federal
25 Government . . . occupie[s]" that field. See Arizona, 132
26 S.Ct., at 2502 (citations omitted). This distinction does not
27 render Arizona any less applicable here. That is because, as
28 discussed next, in GLAHR the Eleventh Circuit soundly reasoned,

1 and this court agrees, that Arizona "provides an instructive
2 analogy" even outside the realm of alien registration. See
3 GLAHR, 691 F.3d at 1264. In other words, Arizona's significance
4 lies not in its subject matter but because it provides a useful
5 framework for examining preemption in the context of federal
6 immigration.

7 Broadly stated, Georgia enacted statutes criminalizing the
8 transport, concealment and harboring of illegal aliens, as
9 earlier mentioned. When confronted with the issue of whether
10 those statutes were preempted by the INA, the Eleventh Circuit
11 looked first to the text of 8 U.S.C. § 1324 to ascertain
12 Congressional intent. Section 1324 creates several discrete
13 crimes with respect to unlawfully present aliens. That statute
14 makes it a federal crime for any person to bring an alien into
15 the United States; to "transport or move an unlawfully present
16 alien within the United States; to conceal, harbor, or shield
17 an unlawfully present alien from detection; or to encourage or
18 induce an alien to come to, enter, or reside in the United
19 States." Id. at 1263 (citation, internal quotation marks and
20 footnote omitted). It is also unlawful pursuant to § 1324 for
21 any person to conspire or aid in the commission of any of those
22 enumerated offenses. Id. (citation omitted).

23 "[P]ermit[ting] local law enforcement officers to arrest
24 for these violations of federal law," while simultaneously
25 "maintaining exclusive jurisdiction" for "*federal* prosecution
26 in *federal* court[,]" provided further indicia of the
27 comprehensive framework of the INA, the GLAHR Court reasoned.
28 Id. at 1264 (citations omitted). The sweep of § 1324 includes

1 dictating evidentiary rules for one of the enumerated offenses,
2 as well as mandating a community outreach program regarding the
3 penalties associated with bringing in and harboring aliens in
4 violation of that statute. Citing to De Canas, 424 U.S. 351, the
5 Court in GLAHR, concluded that “[i]n the absence of a savings
6 clause permitting the regulation in the field, the inference
7 from these enactments is that the role of the states is limited
8 to arrest for violations of federal law.” Id. The foregoing
9 persuaded the Eleventh Circuit in GLAHR that “[t]he INA provides
10 a comprehensive framework to penalize the transportation,
11 concealment, and inducement of unlawfully present aliens.” Id.
12 at 1263.

13 To bolster this conclusion, the GLAHR Court examined
14 section 1324's place in the “larger context of federal statutes
15 criminalizing the acts undertaken by aliens[.]” Id. at 1264.
16 After so doing, the Court found that “the federal government has
17 clearly expressed more than a ‘peripheral concern’ with the
18 entry, movement, and residence of aliens within the United
19 States,” and that “the breadth of th[o]se laws illustrates an
20 overwhelmingly dominant federal interest in the field.” Id.;
21 accord Lozano v. City of Hazleton, 2013 WL 3855549, at *14 (3rd
22 Cir. July 26, 2013) (internal quotation marks and citation
23 omitted) (“We agree with the Eleventh Circuit and other courts
24 that have held that the federal government has clearly expressed
25 more than a peripheral concern with the entry, movement, and
26 residence of aliens within the United States and the breadth of
27 these laws illustrates an overwhelmingly dominant federal
28 interest in the field.”)

1 Furthermore, like the "federal registration scheme" in
2 Arizona, the Eleventh Circuit held that "Congress has provided
3 a 'full set of standards' to govern the unlawful transport and
4 movement of aliens." Id. (quoting Arizona, 132 S.Ct., at 2502).
5 Continuing, and again relying upon Arizona, the GLAHR Court
6 found that "[t]he INA comprehensively addresses criminal
7 penalties for these actions undertaken within the borders of the
8 United States, and a state's attempt to intrude into this area
9 is prohibited because Congress has adopted a calibrated
10 framework within the INA to address this issue." Id. (citing
11 Arizona, 132 S.Ct., at 2502-03). The GLAHR Court's final
12 justification for finding that the Georgia statute was field
13 preempted was that Congress did "not sanction[] concurrent state
14 legislation 'on the subject covered by the challenged state
15 law.'" Id. at 1265 (quoting De Canas, 424 U.S., at 363).

16 Adopting wholesale GLAHR's reasoning, the Eleventh Circuit
17 in Alabama, likewise held that "Alabama is prohibited from
18 enacting concurrent state legislation in this field of federal
19 concern[,] " Alabama, 691 F.3d at 1287, *i.e.*, "the
20 transportation, concealment, and inducement of unlawfully
21 present aliens[.]" Id. at 1285 (internal quotation marks
22 omitted); see also U.S. v. South Carolina, 720 F.3d 518, 531
23 (4th Cir. 2013) (quoting Arizona, 132 S.Ct. 2501) ("find[ing]
24 the Eleventh Circuit's reasoning persuasive[,] " and holding
25 that state statutes making it a felony to transport, move,
26 conceal, harbor, etc. unlawful aliens were "field preempted
27 because the vast array of federal laws and regulations on this
28 subject . . . , is 'so pervasive . . . that Congress left no

1 room for the States to supplement it[.]"). Particularly
2 significant here is that much like the Policy, Alabama also
3 specifically criminalized "conspiring to transport an unlawfully
4 present alien, *including an alien's conspiracy to be*
5 *transported[.]*" Alabama, 691 F.3d at 1285 (emphasis added).
6 South Carolina likewise made "it a state felony for[.]" among
7 other things, "an unlawfully present person to allow himself or
8 herself to be 'transported or moved' within the state[.]" South
9 Carolina, 720 F.3d at 529. The striking similarity between the
10 Policy and the Alabama and South Carolina statutes, which the
11 Eleventh and Fourth Circuits respectively found were field
12 preempted, further erodes the defendants' contention that
13 Arizona and its progeny are not germane to the field preemption
14 herein.

15 The defendants also attempt to distinguish the GLAHR line
16 of cases because, in their view, unlike the Policy, those
17 various state statutes "did not involve . . . criminal human
18 smuggling . . . per se[;]" nor did they prohibit human smuggling
19 "for profit or commercial purposes[]" as does A.R.S. § 13-
20 2319(A). Defs.' Reply (Doc. 132) at 3:17-19, ¶ C. These claimed
21 distinctions are, once again, unavailing. To be sure, none of
22 those state statutes explicitly mention "human smuggling," or
23 even "smuggling[.]" but each criminalizes transporting
24 unauthorized or illegal aliens. The court is thus hard pressed
25 to see how those statutes could be read to exclude smuggling,
26 which necessarily has a transport or movement component.
27 Furthermore, pursuant to the Policy, an unlawfully present alien
28 who is being transported is subject to arrest and prosecution.

1 That proscribed conduct fits within the INA's "comprehensive
2 framework to penalize the *transportation*, concealment, and
3 inducement of *unlawfully present aliens*[]" as defined in GLAHR,
4 691 F.3d at 1263 (emphasis added).

5 The defendants fare no better with their argument that it
6 was the breadth of the state statutes in GLAHR and its progeny
7 which led to the conclusion that the federal government had
8 fully occupied the field of alien transportation and movement
9 within the United States. The defendants' have it backwards.
10 When the issue is field preemption, the focus is on the breadth
11 of the federal statutes purporting to occupy a given field, not
12 upon the breadth of the challenged state statute. See GLAHR,
13 691 at 1264 ("Based on the *breadth of federal regulation*," the
14 Arizona Court held that the federal government occupied the
15 field of alien registration.) Consistent with that view,
16 neither the Eleventh Circuit in GLAHR and Alabama, nor the
17 Arizona District Court in Valle del Sol, considered the breadth
18 of the challenged statutes as a basis for finding field
19 preemption.

20 Equally unavailing is the defendants' contention that the
21 Policy is not field preempted because it is "*completely*
22 *harmonious* with the federal law[.]" Defs.' Resp. (Doc. 128) at
23 7:18 (emphasis added). Unlawful presence, alone, is not a
24 federal crime, as more fully discussed next in connection with
25 conflict preemption. By making it a state felony for
26 unlawfully present aliens or non-smuggling migrants to transport
27 themselves and no one else, however, the Policy is criminalizing
28 mere unlawful presence. It thus strains credulity to insist,

1 as do the defendants, that the Policy is "completely harmonious
2 with federal law." See id. Even assuming *arguendo* that the
3 Policy could somehow be deemed "parallel to federal
4 standards[,] " as in Arizona, 132 S.Ct., at 2502, such an
5 argument "ignore[s] the basic premise of field preemption ---
6 that States may not enter, *in any respect*, an area that the
7 Federal Government has reserved for itself[,] " such as the
8 transportation and movement within the United States of
9 unlawfully present aliens. See id. (emphasis added).

10 Moving beyond this primarily textual analysis of § 1324 to
11 its history reveals that Congress' purpose was one of
12 "continuing efforts to strengthen [that] federal anti-smuggling
13 law by broadening the scope of proscribed conduct." See U.S.
14 v. Sanchez-Vargas, 878 F.2d 1163, 1169 (9th Cir. 1989). Tracing
15 the evolution of that statute and its predecessors, the Ninth
16 Circuit found that "[f]rom its genesis as a statute prohibiting
17 only the bringing in of aliens, § 1324(a)(1) now presents a
18 single comprehensive 'definition' of the federal crime of alien
19 smuggling -- one which tracks smuggling and related activities
20 from their earliest manifestations (inducing illegal entry and
21 bringing in aliens) to continued operation and presence within
22 the United States (transporting and harboring or concealing
23 aliens)." Id. This history reinforces the view that, through
24 the INA, Congress has fully occupied the field of transporting,
25 moving, concealing, harboring, etc. of unlawfully present
26 aliens. Moreover, because this field necessarily encompasses
27 the conduct which the Policy proscribes, *i.e.*, making it a state
28 felony for unlawfully present aliens or non-smuggling migrants

1 to conspire to transport themselves, it, too, is field preempted
2 by the INA. In sum, none of the defendants' arguments persuade
3 this court to depart from the Eleventh Circuit's reasoning and
4 conclusion in GLAHR, 691 F.3d 1250, particularly in light of
5 section 1324's history.

6 Having found that the Policy is field preempted by the
7 INA's comprehensive framework to penalize the transportation,
8 concealment, and inducement of unlawfully present aliens, there
9 is no need to consider the second prong of the plaintiffs' field
10 preemption argument, that is, that the Policy impermissibly
11 "circumvents Congress' [] framework for federal-local cooperation
12 in regulating immigration." Pls.' SJM (Doc. 121) at 11:16-17
13 (emphasis omitted). Accordingly, the court grants summary
14 judgment as to plaintiffs on the issue of field preemption, and
15 denies the defendants' summary judgment motion in that regard.

16 Resolution of the field preemption issue in plaintiffs'
17 favor is dispositive of their preemption claim. Nevertheless,
18 the court will also address, as did the parties, the issue of
19 conflict preemption. The court will do so for three reasons.
20 First, the plaintiffs' conflict preemption argument is equally
21 if not more compelling than its field preemption argument.
22 Second, proceeding in this way recognizes that field and
23 conflict preemption are not "rigidly distinct." See Crosby, 530
24 U.S., at 372 n. 2 (internal quotation marks and citation
25 omitted). Finally, even if Congress had not occupied the field
26 in this case, because "state law is naturally preempted to the
27 extent of any conflict with a federal statute[,]" the prudent
28 course is to consider the possibility of conflict preemption

1 here as well. See id. at 372 (footnote and citations omitted).

2 **2. Conflict Preemption**

3 Keeping in mind that an “[i]mplied preemption analysis does
4 not justify a freewheeling judicial inquiry into whether a state
5 statute is in tension with federal objectives[,]” the court will
6 next consider whether the Policy conflicts with federal law.
7 See Chamber of Commerce of U.S. v. Whiting, 563 U.S. ----, 131
8 S.Ct. 1968, 1985, 179 L.Ed.2d 1031 (2011) (internal quotation
9 marks and citation omitted). Distilling the parties’ conflict
10 preemption arguments to their essence, there are two core
11 issues: (1) whether the Policy actually conflicts with federal
12 law; and (2) whether the Policy “stands as an obstacle to the
13 accomplishment and execution of the full purposes and objectives
14 of Congress[.]’” See Arizona, 132 S.Ct., at 2501 (quoting
15 Hines, 312 U.S., at 67, 61 S.Ct. 399). The Policy does both.

16 **a. Actual Conflict**

17 Contending that the Policy is not conflict preempted, the
18 defendants again claim that it is “harmonious” with federal law.
19 See Defs.’ SJM (Doc. 119) at 11:5. The defendants are
20 overlooking a critical aspect of the Policy, however. The Policy
21 effectively criminalizes conduct which federal law does not.
22 More specifically, by deeming it a felony for unlawfully present
23 aliens to conspire to transport themselves, the Policy is
24 “criminalizing unlawful presence, a stance plainly at odds with
25 federal law.”¹⁶ See South Carolina, 720 F.3d at 530. Indeed,

26
27 ¹⁶ The court agrees with the general proposition that, standing
28 alone, A.R.S. § 13-2319 does not “criminalize[] unlawful presence.” See
Melendres v. Arpaio, 2013 WL 2997173, at *76 (D.Ariz. May 24, 2013).
However, the Policy, which is based upon Arizona’s human smuggling statute

1 the Ninth Circuit has "long made clear that, unlike illegal
2 entry, mere unauthorized presence in the United States is not a
3 crime." Melendres v. Arpaio, 695 F.3d 990, 1000 (9th Cir. 2012)
4 (citing, *inter alia*, Martinez-Medina v. Holder, 673 F.3d 1029,
5 1036 (9th Cir. 2011) ("Nor is there any other federal criminal
6 statute making unlawful presence in the United States, alone, a
7 federal crime, although an alien's willful failure to register
8 his presence in the United States when required to do so is a
9 crime, and other criminal statutes may be applicable in a
10 particular circumstance." (citation omitted)). Moreover, in
11 Arizona, "[t]he Supreme Court recently affirmed that, '[a]s a
12 general rule, it is not a crime for a removable alien to remain
13 present in the United States.'" Id. (quoting Arizona, 132 S.Ct.,
14 at 2505). Thus, it defies logic to suggest, as the defendants
15 do, that the Policy, which contravenes federal law by
16 criminalizing conduct which Congress has chosen not to, is
17 harmonious with federal law.

18 There is another way in which the Policy conflicts with
19 federal law. Among other activities, Alabama criminalized "an
20 alien's conspiracy to be transported[.]" Alabama, 691 F.3d at
21 1288 (internal quotation marks and citation omitted). That
22 statute "appear[ed]" to the Fourth Circuit "to prohibit an
23 unlawfully present alien from even agreeing to be a passenger in
24 a vehicle." Id. The Court held that that statute could not
25 "co-exist" with the federal smuggling statute, "as unlawfully
26 present aliens who are transported 'are not criminally

27
28 and its conspiracy statute, does criminalize unlawful presence, as fully
discussed above.

1 responsible for smuggling under 8 U.S.C. § 1324[.]’” Id.
2 (quoting United States v. Hernandez-Rodriguez, 975 F.2d 622, 626
3 (9th Cir. 1992)). Because the Policy at issue herein likewise
4 “appears to prohibit an unlawfully present alien even from
5 agreeing to be a passenger in a vehicle[,]” the court finds that
6 it, too, cannot “co-exist with § 1324(a).” See id.

7 The Policy and federal law conflict in another way, as the
8 plaintiffs point out. The federal crime of alien smuggling
9 includes transporting or moving an illegal alien within the
10 United States. 8 U.S.C. § 1324(a)(1)(A)(ii). That offense
11 requires that “the smuggling be ‘in furtherance of such
12 violation of law,’ meaning that the defendants moved the alien
13 ‘in order to help him or her to remain in the United States
14 illegally.’” United States v. Aguilar-Reyes, 2013 WL 3829489, at
15 *2 (9th Cir. July 28, 2013) (quoting Ninth Circuit Model Criminal
16 Jury Instructions § 9.2 (2010)). In contrast, Arizona’s
17 smuggling statute requires that the person transporting or
18 moving “knows or has reason to know” that the transported
19 person is an alien, and that the smuggling be for “profit or
20 commercial purpose.” A.R.S. §§ 13-2319(F)(3) and (A). Thus,
21 neither the § 13-2319 nor the Policy include the “in
22 furtherance” element of the federal statute. As a result, the
23 Policy “penalize[s] persons whom the narrower federal statute
24 does not.” Pls.’ SJM (Doc. 121) at 17:7-10.

25 Not only does the Policy substantively conflict with federal
26 law, but it also conflicts from an operational standpoint.
27 Indeed, despite the defendants’ insistence to the contrary,
28 there is record proof of an actual conflict. The defendants

1 admit that the MCSO has "arrested at least 1,800 non-smugglers
2 for conspiring to violate § 13-2319[.] Pls.' SOF (Doc. 121-1) at
3 3:27-28, ¶ 3 (citation omitted); Defs.' Resp. SOF (Doc. 129) at
4 3:15, ¶ 3. The defendants further admit that the MCAO has
5 "prosecuted 1,357 non-smugglers for conspiracy to violate § 13-
6 2319." Id. at 4:5-6, ¶ 4 (citation omitted); Defs.' Resp. SOF
7 (Doc. 129) at 3:16, ¶ 4. The foregoing belies the defendants'
8 blanket assertion that plaintiffs have not offered any evidence
9 of an actual conflict between the Policy and federal immigration
10 law. See Defs.' SJM (Doc. 119) at 10:23-25 ("[T]here is no
11 evidence from the Policy's nearly seven years of history that
12 there has been any conflict between federal immigration law,
13 . . . , and the Policy.") What is more, because the Policy
14 "criminalizes actions that Congress has, as a policy choice,
15 decided are a civil matter[,]" it is hard to imagine a more
16 blatant conflict than that. See South Carolina, 720 F.3d at
17 530. Given these various conflicts, the court gives no
18 credence to the defendants' argument that there is no "clear
19 proof of conflicts between federal law" and the Policy. See
20 Defs.' SJM (Doc. 119) at 10:26-27.

21 **b. Obstacle Preemption**

22 Turning to obstacle preemption, the Supreme Court has
23 instructed that "[w]hat is a sufficient obstacle is a matter of
24 judgment, to be informed by examining the federal statute as a
25 whole and identifying its purpose and intended effects[.]"
26 Crosby, 530 U.S., at 373. It matters not "whether that obstacle
27 goes by the name of conflicting; contrary to; . . . repugnance;
28 difference; irreconcilability; inconsistency; violation;

1 curtailment; . . . interference, or the like." Geier v.
2 American Honda Motor Co., Inc., 529 U.S. 861, 873, 120 S.Ct.
3 1918, 146 L.Ed.2d 914 (2000) (internal quotation marks and
4 citations omitted).

5 Viewed from this perspective, the court likewise is
6 persuaded that the Policy "presents an obstacle to the
7 execution of the federal statutory scheme and challenges federal
8 supremacy in the realm of immigration." See GLAHR, 691 F.3d at
9 1265 (footnote omitted). "[M]ere unauthorized presence is not
10 a criminal matter." Melendres, 695 F.3d at 1002. By the same
11 token though, unauthorized presence is a civil violation that
12 can lead to deportation under federal law. See South Carolina,
13 720 F.3d at 530 (citing 8 U.S.C. § 1227) ("Under federal law,
14 unlawfully present aliens are subject to civil removal
15 proceedings."); see also Gonzales v. City of Peoria, 722 F.2d
16 468, 476-477 (9th Cir. 1983) (explaining that illegal presence is
17 "only a civil violation"), *overruled on other grounds by*
18 Hodgers-Durqin, 199 F.3d 1037).

19 Recognizing that important distinction, the Fourth Circuit
20 held that the district court correctly enjoined a South Carolina
21 statute making it "a state felony for an unlawfully present
22 person to allow himself or herself to be 'transported or moved'
23 within the state or to be harbored or sheltered to avoid
24 detection." Id. at 522 (footnote omitted). Borrowing heavily
25 from Arizona, the Court explained:

26 'A principal feature of the removal system
27 is the broad discretion exercised by
28 immigration officials.' Arizona, 132 S.Ct.
at 2499. This discretion is necessary
because it 'involves policy choices that bear

1 on this Nation's international relations.'
2 Id. The State, by criminalizing what Congress
3 has deemed a civil offense and entrusted to
4 the discretion of the executive branch, is
'pursu[ing] policies that undermine federal law.'
Id. at 2510.

5 Id. at 530. Based upon that rationale, the Fourth Circuit held
6 that certain sections of South Carolina's immigration law were
7 "conflict preempted because they stand as an obstacle to the
8 execution of the federal removal system and interfere with the
9 discretion entrusted to federal immigration officials." Id.
10 Simply put, the Fourth Circuit held that federal immigration
11 law preempted certain state statutes "because they criminalize
12 actions that Congress has, as a policy choice, decided are a
13 civil matter." Id. The South Carolina Court's reasoning
14 applies with equal force here, where the Policy also
15 criminalizes conduct, an alien's unlawful presence, that
16 Congress has determined is a civil violation.

17 Put differently, the Policy "creates a new crime
18 unparalleled in the federal scheme." See GLAHR, 691 F.3d at
19 1266. And, by making it a felony for unlawfully present
20 aliens, or non-smuggling migrants, to conspire to transport
21 themselves, much like the statutes at issue in GLAHR and
22 Alabama, the Policy is "an impermissible 'complement' to the INA
23 that is inconsistent with Congress'[] objective of creating a
24 comprehensive scheme governing the movement of aliens within the
25 United States." See GLAHR, 691 F.3d at 1266 (quoting Hines, 312
26 U.S., at 66-67, 61 S.Ct., at 404).

27 Moreover, as in Alabama, the Policy "undermines the intent
28 of Congress to confer discretion on the Executive Branch in

1 matters concerning immigration." See Alabama, 691 F.3d at 1287.
2 Congress granted local law enforcement officials limited
3 authority under the federal smuggling statute. They may arrest
4 for such crimes, but not prosecute because section 1324 crimes
5 are subject to prosecution in federal court. See 8 U.S.C.
6 § 1329. Thus "[b]y confining the prosecution of federal
7 immigration crimes to federal court, Congress limited the power
8 to pursue those cases to the appropriate United States
9 Attorney." See GLAHR, 691 F.3d at 1265 (citations omitted).
10 The Policy, which makes criminal, what Congress has deemed to be
11 a civil violation, is "not conditioned on respect for the
12 federal concerns or the priorities that Congress has explicitly
13 granted executive agencies the authority to establish." See id.
14 (citation omitted).¹⁷

15 In a similar vein, local arrest, detainment and prosecution
16 of unlawfully present aliens, or non-smuggling migrants, for
17 conspiring to transport themselves under the Policy
18 "unconstrained by federal law threaten[s] the uniform
19 application of the INA." See GLAHR, 691 F.3d at 1266. That is
20 because, as the Eleventh Circuit soundly reasoned:

21 Each time a state enacts its own parallel

22
23 ¹⁷ Maintaining that the Policy does not create an obstacle to
24 compliance with federal law, the defendants assert that "states may
25 prosecute an act which constitutes both a federal and state offense under
26 the state's police power without impinging on federal jurisdiction." Defs.' SJM (Doc. 119) at 11:10-11 (citation omitted) (emphasis added). Of
27 course, in making this assertion, defendants wholly disregard that the
28 "state offense" which the Policy proscribes is not a federal offense.
Thus, the defendants cannot avoid a finding of conflict preemption by
invoking the state's police power. See Charleston & W. Carolina Ry. Co. v. Varnville Furniture Co., 237 U.S. 597, 604, 35 S.Ct. 715, 717, 59 L.Ed. 1137 (1915) ("The legislation is not saved by calling it an exercise of the police power[.]")

1 to the INA, the federal government loses
2 'control over enforcement' of the INA, thereby
3 'further detract[ing] from the integrated
4 scheme of regulation created by Congress.'

5 Id. (quoting Wis. Dep't of Indus., Labor & Human Relations v.
6 Gould, Inc., 475 U.S. 282, 288-89, 106 S.Ct. 1057, 1062, 89
7 L.Ed.2d 223 (1986) (quotation marks omitted)) (other citations
8 omitted). "Given the federal primacy in the field of enforcing
9 prohibitions on the transportation" and movement, among other
10 activities, of "unlawfully present aliens," the court concurs
11 with the Eleventh Circuit that "the prospect of fifty individual
12 attempts to regulate immigration-related matters cautions
13 against permitting states to intrude into this area of dominant
14 federal concern." Id. These various conflicts between the
15 Policy and federal law strengthen the court's earlier finding of
16 field preemption. See Arizona, 132 S.Ct., at 2503 (finding that
17 "specific conflicts . . . underscore[d] the reason for field
18 preemption[]").

19 Given that the Policy actually conflicts with federal
20 immigration law, and that it "stands as an obstacle to the
21 accomplishment and execution of the full purposes and objectives
22 of Congress[.]" Arizona, 132 S.Ct., at 2501 (internal quotation
23 marks and citation omitted), the plaintiffs have met the "high
24 threshold" necessary to support a finding of conflict
25 preemption. See Whiting, 131 S.Ct., at 1985 (internal quotation
26 marks and citation omitted). To conclude on the issue of
27 conflict preemption, the court grants summary judgment in favor
28 of the plaintiffs, and denies the defendants' summary judgment
in this regard.

1 **C. Dismissal of Remaining Claims**

2 The plaintiffs are "reced[ing]" or backing away from "their
3 remaining claims[,]" that is, their claims for unlawful search
4 and seizure, denial of due process and a pendent state claim for
5 violations of A.R.S. §§ 13-2319 and 13-1003. Pls.' Resp. (Doc.
6 126) at 16:27-28, n. 5. The plaintiffs expressly seek voluntary
7 dismissal of these claims pursuant to Fed.R.Civ.P. 41(a)(2).
8 However, they do not specify whether they are seeking dismissal
9 with or without prejudice, "implicitly accepting either
10 determination by th[is] district court." See Hargis v. Foster,
11 312 F.3d 404, 412 (9th Cir. 2002).

12 If an order granting voluntary dismissal in accordance with
13 Rule 41(2) is silent, that Rule presumes dismissal without
14 prejudice. Fed.R.Civ.P. 41(2) ("Unless the order states
15 otherwise, a dismissal under this paragraph (2) is without
16 prejudice.") That said, "[t]he 'broad grant of discretion' that
17 Federal Rule of Civil Procedure 41(a)(2) vests in the district
18 court to dismiss 'on terms that the court considers proper'
19 'does not contain a preference for one kind of dismissal or
20 another.'" Real Estate Disposition Corp. v. National Home
21 Auction Corp., 2009 WL 764529, at *1 (C.D.Cal. 2009) (quoting
22 Hargis, 312 F.3d at 412; and Fed.R.Civ.P. 41(a)(2)). "As such,
23 th[is] district court has discretion as to whether to grant a
24 voluntary dismissal pursuant to Federal Rule of Civil Procedure
25 41(a)(2) with or without prejudice." See id. (citing Hargis,
26 312 F.3d at 412).

27 The defendants do not object to the dismissal of the three
28 claims just identified, but from their standpoint that dismissal

1 should be "*with prejudice.*" Defs.' Reply (Doc. 132) at 1:27
2 (emphasis in original). As justification, the defendants point
3 out that the "[p]laintiffs have had sufficient time to develop
4 an evidentiary record to present genuine issues of material fact
5 precluding summary judgment and to substantively respond to"
6 defendants' summary judgment motion on the three non-preemption
7 claims. Id. at 1:27-2:1.

8 The defendants' position is well-taken. In addition, the
9 defendants should not have the cloud of future litigation over
10 the other claims when, apparently, the plaintiffs made a
11 deliberate choice to pursue only the preemption claim.
12 Moreover, the plaintiffs have not provided any reason for
13 granting their request without prejudice. Under these
14 circumstances, the court, in the exercise of its discretion,
15 dismisses with prejudice the FAC's second, third and fourth
16 claims.

17 **II. Class Certification**

18 The plaintiffs are seeking to certify two classes. The
19 first they define as "[a]ll individuals who are - . . . stopped,
20 detained, arrested, incarcerated, prosecuted, or penalized for
21 conspiring to transport themselves, and themselves only, in
22 violation of Ariz. Rev. Stat. § 13-2319[] ["the individual
23 class"][]]" Class Certification Motion (Doc. 122) at 5:26-28
24 (emphasis added). Alternatively, the plaintiffs are seeking to
25 certify a class of "[a]ll individuals who . . . pay taxes to
26 Maricopa County and object to the use of county tax revenues to
27 stop, detain, arrest, incarcerate, prosecute, or penalize
28 individuals for conspiring to transport themselves, and

1 themselves only, in violation of Ariz. Rev. Stat. § 13-2319
2 ["the taxpayer class"]." Id. at 5:26 and 6:2-3. The defendants
3 oppose certification of both.

4 Rule 23 "give[s] the district court broad discretion over
5 certification of class actions[.]" Stearns v. Ticketmaster
6 Corp., 655 F.3d 1013, 1019 (9th Cir. 2011). However, class
7 certification remains "'an exception to the usual rule that
8 litigation is conducted by and on behalf of the individual named
9 parties only.'" Comcast Corp. v. Behrend, 569 U.S. ----, 133
10 S.Ct. 1426, 1432, 185 L.Ed.2d 515 (2013) (quoting Califano v.
11 Yamasaki, 442 U.S. 682, 700-701, 99 S.Ct. 2545, 61 L.Ed.2d 176
12 (1979)). "[T]o justify a departure from that rule, a class
13 representative *must be part of the class* and possess the same
14 interest and suffer the same injury as the class members."
15 Wal-Mart Stores, Inc. v. Dukes, 564 U.S. ----, 131 S.Ct. 2541,
16 2550, 180 L.Ed.2d 374 (2011)(internal quotation marks and
17 citations omitted) (emphasis added).

18 Before delving into the parties' contentions as to each of
19 the Rule 23 factors, there is a preliminary, dispositive issue
20 with respect to the first proposed class. Essentially, the
21 defendants contend that because none of the named plaintiffs
22 have been stopped, detained, arrested, prosecuted, etc. in
23 accordance with the Policy, they are not members of the proposed
24 first class, and so cannot serve as class representatives
25 thereof. The court agrees. See Juvera v. Salcido, 2013 WL
26 1367354, at *3 (D.Ariz. April 4, 2013) (citing Bailey v.
27 Patterson, 369 U.S. 31, 32-33, 82 S.Ct. 549, 7 L.Ed.2d 512
28 (1962)) ("[T]he named representative must be a member of the

1 class.")

2 Although the defendants did not mention it, there is another
3 compelling reason for not certifying the first proposed class.
4 That is because, regardless of the class definition, the
5 requested relief here is identical. Basically, both classes are
6 seeking: (1) a declaration that federal law preempts the Policy;
7 and (2) an injunction permanently enjoining the defendants from
8 taking any further action under the Policy. In light of the
9 foregoing, if the court finds that class certification is proper
10 as to the proposed alternative class - the taxpayers - the
11 plaintiffs will recover complete relief, obviating the need for
12 certification of the first proposed class. The court will,
13 thus, proceed to the issue of whether the plaintiffs have met
14 their burden of "'affirmatively demonstrat[ing] . . .
15 compliance' with Rule 23." See Comcast, 133 S.Ct., at 1432
16 (quoting Wal-Mart, 131 S.Ct., at 2551-2552).

17 "A party seeking class certification must satisfy the
18 requirements of Federal Rule of Civil Procedure 23(a) and the
19 requirements of at least one of the categories under Rule
20 23(b)." Wang v. Chinese Daily News, Inc., 2013 WL 4712728, at
21 *2 (Sept. 3, 2013). In the present case, the plaintiffs are
22 seeking class certification pursuant to Rule 23(b)(2) premised
23 on the defendants having "acted or refused to act on grounds
24 that apply generally to the class, so that final injunctive
25 relief or corresponding declaratory relief is appropriate
26 requesting the class as a whole[.]" Fed.R.Civ.P. 23(b)(2).

27 **A. Rule 23(a)**

28 "'Rule 23(a) ensures that the named plaintiffs are

1 appropriate representatives of the class whose claims they wish
2 to litigate.'" Wang, 2013 WL 4712728, at *2 (quoting Wal-Mart
3 Stores, Inc. v. Dukes, 564 U.S. ----, 131 S.Ct. 2541, 2550, 180
4 L.Ed.2d 374 (2011)). Rule 23(a) provides:

5 One or more members of a class may sue or
6 be sued as representative parties on behalf
of all members only if:

7 (1) the class is so numerous that joinder
8 of all members is impracticable;

9 (2) there are questions of law or fact
common to the class;

10 (3) the claims or defenses of the
11 representative parties are typical of
the claims or defenses of the class; and

12 (4) the representative parties will
13 fairly and adequately protect the interests
of the class.

14 Fed.R.Civ.P. 23(a). Succinctly put, that Rule "requires a party
15 seeking class certification to satisfy four requirements:
16 numerosity, commonality, typicality, and adequacy of
17 representation." Wang, 2013 WL 4712728, at *2 (citation
18 omitted).

19 The defendants readily agree, and the court so finds, that
20 the first two Rule 23(a) elements -- numerosity and commonality
21 -- are satisfied in this case. See Defs.' Resp. (Doc. 127)
22 2:24-25 ("Based on research and review of Plaintiffs' Motion,
23 Defendants agree that this case satisfied the numerosity and
24 impracticability element required for a class action."); and at
25 3:8-10 ("Based on the foregoing authority and review of
26 Plaintiffs' Motion, Defendants agree that this case raises
27 issues of both law and fact that are common to the members of
28 the proposed class.") The parties are at odds, however, as to

1 whether the plaintiffs can satisfy Rule 23(a)'s typicality and
2 adequacy requirements.

3 **a. Typicality**

4 The plaintiffs assert that because they have satisfied the
5 commonality requirement, they have also satisfied the typicality
6 requirement. The defendants counter by repeating their argument
7 that the named taxpayer plaintiffs lack standing. The
8 defendants thus imply that that purported lack of standing means
9 that the claims of these plaintiffs are not typical of the
10 taxpayer class. This is the only reason the defendants offer as
11 to why the plaintiffs have not shown typicality as to the
12 proposed taxpayer class. Of course, the court has already found
13 that the taxpayer plaintiffs Haglund and Lujan do have standing
14 - a finding which undermines this defense argument. What is
15 more, "[i]n a class action, standing is satisfied if at least
16 one named plaintiff meets the requirements." Haro, 2013 WL
17 4734032, at *4 (internal quotation marks and citation omitted).
18 Here, as this court has found, two of the named plaintiffs have
19 standing. Thus, the defendants' lack of standing argument
20 simply has no place in deciding whether to grant class
21 certification.

22 Typicality, like commonality, "serve[s] as [a] guidepost[]
23 for determining whether under the particular circumstances
24 maintenance of a class action is economical and whether the
25 named plaintiff's claim and the class claims are so interrelated
26 that the interests of the class members will be fairly and
27 adequately protected in their absence." Wal-Mart, 131 S.Ct., at
28 2551, n. 5 (quoting General Telephone Co. of Southwest v.

1 Falcon, 457 U.S. 147, 157, n. 13, 102 S.Ct. 2364, 72 L.Ed.2d 740
2 (1982)). "The test of typicality is whether other members have
3 the same or similar injury, whether the action is based on
4 conduct which is not unique to the named plaintiffs, and whether
5 other class members have been injured by the same course of
6 conduct." Ellis v. Costco Wholesale Corp., 657 F.3d 970, 984
7 (2011) (internal citation and quotation marks omitted).

8 That test is easily met in the present case. Plaintiffs
9 Haglund and Lujan and the putative taxpayer class members claim
10 the same injury and object to the same conduct. The taxpayer
11 plaintiffs, and the class which they are seeking to represent,
12 allege misuse of their Maricopa County taxes to fund all aspects
13 of the Policy. Further, this action is based on conduct which
14 is not unique to the named taxpayer plaintiffs, *i.e.*,
15 enforcement of the Policy, which federal law preempts. And,
16 obviously other taxpayer class members have been injured by the
17 use of their Maricopa County taxes to fund the Policy. The
18 court thus finds that plaintiffs have met the "permissive
19 standards" of typicality. See Hanlon v. Chrysler Corp., 150
20 F.3d 1011, 1026 (9th Cir. 1998).

21 **b. Adequacy**

22 Rule 23(a)(4) "satisf[ies] due process concerns []" in
23 that "absent class members must be afforded adequate
24 representation before entry of a judgment which binds them."
25 Hanlon, 150 F.3d at 1020 (citing Hansberry v. Lee, 311 U.S. 32,
26 42-43, 61 S.Ct. 115, 85 L.Ed. 22 (1940)). This requirement thus
27 "raises concerns about the competency of class counsel and
28 conflicts of interest." Wal-Mart, 131 S.Ct., at 2551 n. 5

1 (citation and internal quotation marks omitted). Therefore,
2 “[a]dequate representation depends on, among other factors, an
3 absence of antagonism between representatives and absentees, and
4 a sharing of interest between representatives and absentees.”
5 Ellis, 657 F.3d at 985 (citation omitted). Consequently, “[t]o
6 determine whether named plaintiffs will adequately represent a
7 class, courts must resolve two questions: ‘(1) do the named
8 plaintiffs and their counsel have any conflicts of interest with
9 other class members and (2) will the named plaintiffs and their
10 counsel prosecute the action vigorously on behalf of the
11 class?’” Id. (quoting Hanlon, 150 F.3d at 1020).

12 In addition to the foregoing, Rule 23(g) articulates four
13 criteria that a court must consider in evaluating the adequacy
14 of proposed class counsel. Those mandatory criteria are:

- 15 (i) the work counsel has done in identifying
16 or investigating potential claims in the action;
17 (ii) counsel’s experience in handling class actions,
18 other complex litigation, and the types of claims
19 asserted in the action;
20 (iii) counsel’s knowledge of the applicable law; and
21 (iv) the resources that counsel will commit to
22 representing the class[.]

23 Fed.R.Civ.P. 23(g)(1)(A)(i)-(iv) (emphasis added). In addition,
24 the court “may consider any other matter pertinent to counsel’s
25 ability to fairly and adequately represent the interests of the
26 class[.]” Fed.R.Civ.P.23(g)(1)(B). “No single factor should
27 necessarily be determinative in a given case.” Fed.R.Civ.P.
28 23(g) Advisory Committee note.

Here, the parties’ adequacy of representation arguments are
lacking, but for different reasons. The defendants did not

1 address the critical issue of potential conflicts and vigorous
2 prosecution. Instead, in reliance upon their typicality
3 argument, the defendants simply declare that "the named
4 Plaintiffs cannot fairly and adequately protect the interests of
5 either one of the two alternative proposed classes." Defs.'
6 Resp. (Doc. 127) at 5:4-5.

7 To be sure, the typicality requirement does "tend to merge
8 with the adequacy-of-representation requirement[.]" Wal-Mart,
9 131 S.Ct., at 2551 n. 5 (citation and internal quotation marks
10 omitted). In the present case, however, because the defendants'
11 typicality argument attacked only the taxpayer plaintiffs'
12 standing, it has no bearing on the adequacy of representation.
13 Given this context, the defendants' reliance upon their
14 typicality argument is misplaced. Furthermore, the plaintiffs'
15 discussion of the conflict of interest and vigorous prosecution
16 issues is perfunctory, to say the least, as is their discussion
17 of the Rule 23(g).

18 Despite these shortcomings, the court concludes that the
19 plaintiffs have satisfied the adequacy of representation
20 requirement. Not only have the defendants failed to point to
21 any claimed conflicts of interest, but the court can perceive of
22 none. As should be abundantly clear by now, the interests of
23 the named plaintiffs and their counsel are nearly identical in
24 every way to those of the putative taxpayer class members.
25 Furthermore, during the nearly seven year course of this
26 litigation, the vigorous prosecution of this lawsuit by
27 plaintiffs' counsel is evident from, among other things, the
28 extensive discovery, motion practice, and an appeal to the Ninth

1 Circuit. The decision by plaintiffs' counsel to pursue only one
2 of the four claims in the FAC demonstrates that they have
3 seriously engaged in identifying and investigating potential
4 claims as well. See Fed.R.Civ.P. 23(g)(1)(A)(i).

5 The other three Rule 23(g) factors weigh heavily in favor
6 of appointing Peter A. Schey and Carlos Holguín of the Center
7 for Human Rights and Constitutional Law Foundation ("the
8 Foundation") as lead counsel for the plaintiffs. This non-
9 profit, public interest foundation routinely litigates on behalf
10 of immigrants and refugees raising constitutional and civil
11 rights issues. Attorney Schey is the President and Executive of
12 the Foundation, and has been from 1980 to the present.
13 [Http://centerforhumanrights.org/staff](http://centerforhumanrights.org/staff) (last visited Sept. 15,
14 2013); see also Schey Decl'n (Doc. 21-1) at 8, ¶ 1. Attorney
15 Holguín has served as General Counsel with the Foundation since
16 1984. Id. The depth of their collective experience in handling
17 class actions and immigration issues can be discerned from a
18 representative sampling of lawsuits where they have successfully
19 litigated in this area. See, e.g., Immigration Assistance
20 Project of the Los Angeles Fed'n of Labor v. I.N.S., 306 F.3d
21 842 (9th Cir. 2002) (summary judgment granted in favor of an
22 immigrant class challenging provisions of the Immigration Reform
23 and Control Act of 1986, where attorney Schey served as co-lead
24 counsel); Catholic Social Services, Inc. v. I.N.S., 232 F.3d
25 1139 (9th Cir. 2000) (affirming grant of preliminary injunction
26 to alien class qualified to challenge advance parole policy);
27 and Perez-Olano v. Gonzalez, 248 F.R.D. 248 (C.D.Cal. 2008)
28 (certifying a nation-wide class and granting permanent

1 injunctive and declaratory relief where defendants' application
2 of a specific consent requirement deprived immigrant migrants in
3 federal custody of the special immigration juvenile provisions
4 of the INA).

5 Through their extensive experience litigating immigration
6 issues, attorneys Schey and Holguín certainly are knowledgeable
7 in the applicable law. Finally, there is no reason to doubt
8 that they, and the Foundation in particular, have the necessary
9 resources to devote to representing the plaintiff class.
10 Therefore, the court finds that Peter Schey and Carlos Holguín
11 satisfy the Rule 23(g) criteria and can adequately represent the
12 plaintiff class certified herein.

13 **B. Rule 23(b)(2)**

14 Here, where the plaintiffs are seeking an injunction and
15 declaratory relief which would "provide relief to each member of
16 the class[,]" and no compensatory damages, they are properly
17 invoking Rule 23(b)(2).¹⁸ See Wal-Mart, 131 S.Ct., at 2557.
18 As the Wal-Mart Court instructed, "[t]he key to the (b)(2) class
19 is the indivisible nature of the injunctive or declaratory
20 remedy warranted – the notion that the conduct is such that it
21 can be enjoined or declared unlawful only as to all of the class
22 members or as to none of them." Id. (internal quotation marks
23 and citation omitted). The equitable relief which the
24 plaintiffs herein are seeking fits that description. Thus,
25 because the plaintiffs have met their burden of satisfying each

26
27 ¹⁸ Because their response does not even mention this aspect of
28 plaintiffs' class certification motion, the court assumes that the
defendants concede that the plaintiffs are properly relying upon Rule
23(b)(2).

1 of the Rule 23(a) requirements, and that of Rule 23(b)(2), the
2 court grants their motion for class certification as to the
3 taxpayer plaintiffs.

4 **Conclusion**

5 In light of the foregoing, the court hereby **ORDERS** that:

6 (1) Defendants' Motion for Summary Judgment (Doc. 119) is
7 **DENIED**;

8 (2) Plaintiffs' Motion for Summary Judgment (Doc. 121) is
9 **GRANTED** as to their first claim ("Federal Preemption");

10 (3) Plaintiffs' second claim for relief ("Unlawful Search
11 and Seizure; violation of 42 U.S.C. § 1983"), third claim for
12 relief ("Denial of Due Process; violation of 42 U.S.C. § 1983");
13 and fourth claim for relief ("Pendent State Claim: Violation of
14 Ariz. Rev. Stat. §§ 13-2319 and 13-1003") are **DISMISSED WITH**
15 **PREJUDICE** pursuant to Fed.R.Civ.P. 41(a)(2);

16 (4) Plaintiffs' Motion for Class Certification pursuant to
17 Fed.R.Civ. 23(b)(2) (Doc. 122) is **GRANTED** in part and **DENIED** in
18 part. The court certifies a class defined as: "All individuals
19 who pay taxes to Maricopa County and object to the use of county
20 tax revenues to stop, detain, arrest, incarcerate, prosecute, or
21 penalize individuals for conspiring to transport themselves, and
22 themselves only, in violation of Ariz. Rev. Stat. § 13-2319."

23 **IT IS FURTHER ORDERED** that:

24 (5) Carlos Holguín and Peter A. Schey of the Center for
25 Human Rights and Constitutional Law, 256 S. Occidental Blvd.,
26 Los Angeles, CA 90057; telephone: (213) 388-8693; facsimile:
27 (213) 386-9484; e-mail: crholguin@centerforhumanrights.org, and
28 pschey@centerforhumanrights.org, are appointed as lead class

1 counsel for the class certified herein;

2 (6) Plaintiffs are entitled to a declaration that federal
3 law preempts and renders invalid the Maricopa County Migrant
4 Policy;

5 (7) Defendants Maricopa County Sheriff Joseph M. Arpaio and
6 Maricopa County Attorney William G. Montgomery, and their
7 agents, employees, successors in office, and all other persons
8 who are in active concert or participation with the Maricopa
9 County Sheriff's Office and the Maricopa County Attorney's
10 Office, are permanently enjoined from further implementing the
11 Maricopa Migrant Conspiracy Policy including detaining,
12 arresting, and prosecuting persons for conspiring to transport
13 themselves, and no one else, in violation of Ariz. Rev. Stat.
14 § 13-2319;

15 (8) Defendants shall promptly serve Class Counsel with
16 copies of any instructions or guidelines they issue to implement
17 this Order;

18 (9) Prior to bringing any motion or application to clarify,
19 modify or enforce this injunction, the parties, through counsel,
20 shall meet and confer in good faith to resolve their differences;
21 and

22 (10) The court shall retain continuing jurisdiction to
23 enforce the terms of this Order and Permanent Injunction.

24 Dated this 27th day of September, 2013.

25
26
27
28



Robert C. Broomfield
Senior United States District Judge

1 Copies to all counsel of record

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