

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

FRIENDLY HOUSE; SAMUEL U  
CHAVIRA; TAMMY GREGOIRE; JULIA  
V, by and through his guardian ad  
litem; V BETO; MARISOL C, by and  
through their guardian ad litem;  
ADAN C; FRANCISCO C; ALEJANDRA  
C; LUCY A; JOAQUIN G, by and  
through their guardian ad litem;  
MANUEL G; JOSE G; MARIA S, by  
and through their guardian ad  
litem; SERGIO S; JUANITA S;  
NATHAN S; MARCO S; CLAUDIA S;  
LYDIA HERNANDEZ,

*Plaintiffs-Appellants,*

v.

JANET NAPOLITANO, in her official  
capacity as Governor of the State  
of Arizona; JAN BREWER, in her  
official capacity as Secretary of  
State of the State of Arizona;  
DAVID A BERNS, Director of the  
Arizona Dept of Economic  
Security,

*Defendants-Appellees,*

YES ON PROPOSITION 200; RANDY  
PULLEN; FEDERATION FOR AMERICAN  
IMMIGRATION REFORM; KATHY  
McKEE; CLAUDIA BLOOM,

*Defendants-Intervenors-  
Appellees.*

No. 05-15005

D.C. No.  
CV-04-00649-DCB  
District of Arizona,  
Tucson  
ORDER

Appeal from the United States District Court  
for the District of Arizona  
David C. Bury, District Judge, Presiding

Argued and Submitted  
June 13, 2005—San Francisco, California

Filed August 9, 2005

Before: Alfred T. Goodwin, Thomas M. Reavley,\* and  
Johnnie B. Rawlinson, Circuit Judges.

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### **COUNSEL**

Hector O. Villagra, Mexican American Legal Defense and  
Educational Fund, Los Angeles, California, for the plaintiffs-  
appellants.

Mary O'Grady, Office of Attorney General, Phoenix, Ari-  
zona, for the defendants-appellees.

Edmond D. Kahn, Tucson, Arizona, for intervenors-  
defendants/appellees McKee and Bloom.

Jayne Shipp and William Perry Pendley, Mountain States  
Legal Foundation, Lakewood, Colorado, for defendants-  
intervenors/appellees Yes on Proposition 200, et al.

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### **ORDER**

The appeal is dismissed for want of jurisdiction. The dis-  
trict court record reveals that there was no case or controversy

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\*The Honorable Thomas M. Reavley, Senior United States Circuit  
Judge for the Fifth Circuit, sitting by designation.

between plaintiffs and the State of Arizona when pleadings were before the district court. *See San Diego County Gun Rights Comm'n v. Reno*, 98 F.3d 1121, 1126 (9th Cir. 1996) (“Standing is an essential, core component of the case or controversy requirement.”). The order of the district court, styled *Friendly House v. Napolitano*, and filed on December 22, 2004, must be vacated because the plaintiffs lack standing.

Plaintiffs appeal the district court’s denial of a preliminary injunction to enjoin the enforcement of Arizona Proposition 200, addressing voter registration and public benefits. The plaintiffs are certain state and local employees subject to Proposition 200’s criminal provision and certain potentially eligible benefit recipients. Plaintiffs have not met their burden of demonstrating an injury-in-fact. “[N]either the mere existence of a proscriptive statute nor a generalized threat of prosecution satisfies the ‘case or controversy’ requirement.” *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1139 (9th Cir. 2000) (en banc). Although it is not necessary for a plaintiff to subject himself to actual arrest or prosecution in order to establish standing, *see, e.g., Culinary Workers Union, Local 226 v. Del Pap*, 200 F.3d 614, 617-618 (9th Cir. 1999), a plaintiff must at least show a “genuine threat of imminent prosecution.” *See San Diego County*, 98 F.3d at 1126. Here, plaintiffs have not articulated (1) a concrete plan to violate Proposition 200, (2) evidence that prosecuting authorities have communicated a specific warning or threat to initiate proceedings, or (3) a history of past persecution, which clearly cannot be shown here. *See Thomas*, 220 F.3d at 1139. Nor is a First-Amendment injury alleged which would relax the standing requirement. *See San Diego County*, 98 F.3d at 1129.

We therefore VACATE the order below and REMAND with instructions to DISMISS WITHOUT PREJUDICE. Neither party to receive costs.

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