

ARIZONA LAW FURTHER POLARIZES THE U.S. PUBLIC ON THE ISSUE OF UNDOCUMENTED IMMIGRANTS

By Christopher A. Kerosky, Esq.

In April, the governor of Arizona signed one of the most punitive anti-immigration laws in the country. The law was immediately condemned by President Obama, Congressional leaders, representatives of both political parties and even foreign leaders. Other politicians including several Republican candidates for California Governor and Senator defended the bill, rallying their base on the issue of illegal immigration.

Within days, a coalition of community groups and several police organizations filed lawsuits challenging the constitutionality of the law and seeking to block its implementation. One month later, there is great uncertainty when the law will take effect and how it will be applied by Arizona state and local officials.

Terms of SB 1070.

The Arizona law, known as SB 1070, gives state and local police the authority to demand to see proof of a person's immigration status based solely on "reasonable suspicion" that they are undocumented. Many believe there is no way to apply this law except by racially profiling immigrants and in particular, Latinos.

No guidance is included in the bill as to how law enforcement personnel are to determine when a "reasonable suspicion" exists that a person is not lawfully here.

This provision of the law also applies to non-police civil servants enforcing state, county and municipal civil laws. Even county officials visiting residents' homes for such things as housing inspections, child welfare visits, complaints about barking dogs would have an obligation to demand a person's proof of legal status if they had a "reasonable suspicion" that persons were undocumented. This apparently means that persons with no training in law enforcement would also have a role in enforcing immigration laws and turning over undocumented immigrants to Immigration and Customs Enforcement (ICE).

The law could create the opportunity for selective enforcement and abuse of power by state and local officials, who would be not only authorized but required to root out "illegal immigrants". It could also dramatically change the relationship between local governments and the Hispanic population in Arizona and discourage undocumented persons from any contact whatsoever with government at any level.

The law also makes it a crime to be an undocumented immigrant and requires immigrants to carry proof of their legal status or be subject to six months

imprisonment and fines. While supporters point to the fact that federal immigration law already requires immigrants to carry ID, a violation of this federal law is not a felony subjecting a violator to a jail sentence.

Most controversial is a provision which allows anyone in the state to sue a local, county or state agency official in Arizona if they believe the official is not enforcing immigration laws. This means that if police do not apply the law aggressively enough, they can be sued by any citizen. This subjects law enforcement personnel to lawsuits from anti-immigrant groups and individuals who believe they are not detaining sufficient immigrants. It puts law enforcement and other local officials in an untenable position between enforcing this new state law and observing the equal protection clause of the constitution barring racial and ethnic discrimination.

Reaction to the Bill.

The national and international reaction to the law has been vocal. President Obama called the law “misguided”, “wrong” and likely to invite discrimination against immigrants. Many leaders in Congress have attacked the bill as unconstitutional and unenforceable. Mexican President Felipe Calderon told a joint session of Congress that the law encourages racial profiling. Even the United Nations has condemned the law.

The cities of Los Angeles and San Francisco have voted to boycott the state of Arizona as long as the law is not repealed; many organizations across the country have joined the boycott, cancelling conventions and commercial contracts with the state. The Arizona Diamondbacks baseball team has been greeted by protests throughout the country during its away games.

The boycott has not been without economic effect. Mayor of Phoenix Phil Gordon has said the bill has already cost his city millions of dollars in tourism revenues. His staff has calculated the loss of at least 10,000-20,000 hotel room nights to date. The City estimates it will cost the Phoenix \$90 million in tourism dollars over the next five years.

Law Challenged in Court.

At least five suits have been filed challenging the legality of the Arizona law.

Most recently, the ACLU filed a court challenge on behalf of a coalition of community service organizations, labor unions, a religious organization, chambers of commerce, as well as individuals U.S. citizens and noncitizens. The lawsuit claims that SB 1070 is preempted by federal immigration laws. The suit also alleges that SB 1070 violates the equal protection and due process clauses of the Constitution, the First Amendment right to freedom of speech and the Fourth Amendment prohibition on unreasonable searches and seizures.

Arizona police officers have also brought two lawsuits challenging SB 1070 on the grounds that if the officers were to enforce the law, they could be subject to civil rights actions.

Creating momentum for immigration reform.

The law has unquestionably brought the issue of immigration reform to the front burner. Pro reform organizations have used the bill to mobilize their supporters in favor of reform, drawing large crowds in rallies on May 1st in many American cities including Los Angeles and Santa Rosa.

Democratic leaders have renewed calls for immigration reform in response to the Arizona bill. However, with the November elections within sight and the country in an anti-incumbent mood, it is unlikely that immigration reform will be voted on this year. The Arizona law and similar legislation being considered in other states will likely give supporters of immigration reform more ammunition for fighting the battle for reform in 2011.

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