

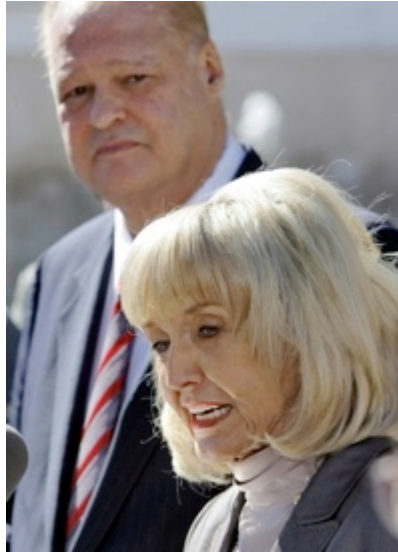


Written by [R. Cort Kirkwood](#) on February 14, 2011

## Ariz. Countersues Obama Admin. on Illegal Immigration

Arizona has launched a counteroffensive against the Obama administration's legal attack to halt the state's legislative effort to close its border with Mexico and stop the tsunami of illegal aliens breaking Arizona's budget and preying upon its residents who live on the border.

Last week, the state attorney general [filed a lawsuit](#) against the federal government for failing to end the invasion of illegal aliens. Arizona's legal move is a counterclaim to the federal government's lawsuit [that shut down](#) the enforcement of Arizona's now famous [immigration law](#), which required police to determine the immigration status of arrestees and others they stop lawfully.



Gov. [Jan Brewer](#), who stood fast against the Obama administration, [declared that](#) if the federal government will not protect the border, Arizona has to. Her attorney general, [Tom Horne](#), [explained the counterclaim](#) and the monetary damages it seeks:

Arizona is unable to bear the staggering cost of protecting itself. And, even if it could, the federal government has argued that Arizona is preempted from taking action to assist in the enforcement of federal immigration law.

### Genesis Of Arizona's Lawsuit

The Grand Canyon State's trouble began when [it passed](#) SB 1070, a law [that required](#) police to determine the immigration status of arrestees and other persons they encounter if police suspect that those arrestees or other persons jumped the border.

The law also required police to cooperate with federal immigration authorities and remand illegals to the custody of federal immigration authorities. As well, it declared that illegals in the state were, in essence, trespassing, and prohibited employers from stopping at street corners to pick up illegal-alien workers.

The bill sent the illegal-alien lobby, led by the Obama administration, [into a rage](#), with the latter [filing a lawsuit](#) to stop enforcement of the law. The Obama administration [claimed thusly](#):

[T]he power to regulate immigration is exclusively vested in the federal government. The immigration framework ... reflects a careful and considered balance of national law enforcement, foreign relations, and humanitarian concerns — concerns that belong to the nation as a whole, not a single state. The Constitution and federal law do not permit the development of a patchwork of state and local immigration policies throughout the country. [A] state may not establish its own immigration policy or enforce state laws in a manner that interferes with federal immigration law.

The State of Arizona has crossed this constitutional line.



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Federal Judge Susan Bolton of the U.S. District Court in Arizona [agreed](#), targeting the provision of SB 1070 that permits police to check the immigration status of those with whom they have a constitutionally permissible encounter. Wrote Bolton: “There is a substantial likelihood that officers will wrongfully arrest legal resident aliens. By enforcing this statute, Arizona would impose [a] ‘distinct, unusual and extraordinary’ burden on legal resident aliens that only the federal government has the authority to impose.”

### **Arizona Fights Back**

That left Arizona with no choice but [to fight](#) for its residents, who bear the cost of the illegal-alien invasion. The Federation for American Immigration Reform estimates that Arizonans pay about \$2.5 billion annually to provide welfare and education for — and to incarcerate — illegal aliens.

Arizona’s [counterclaim argues](#), firstly, that the Homeland Security Secretary is not doing her job because she has not completed the border fence as required by law:

The Secretary of DHS has not taken all necessary and appropriate actions to achieve and maintain operational control of the southwest border, as required by the [Secured Fence Act](#) and the [Appropriations Act of 2008](#). The Secretary has not built at least 700 miles of fence along the border as required. The Secretary has targeted the construction of less than 700 miles of fence. The Secretary has failed to provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to achieve and maintain “operational control.”

As well, [Arizona claims](#) the federal government has abdicated its duty to protect the state against invasion — a term, it argues, that “does not necessarily mean [military] invasion of one country by another, but can mean large numbers of illegal immigrants from various countries,” adding,

The constitutional obligation to protect Arizona from this type of invasion is further clarified in the congressional requirement that the federal government acquire operational control over the border, and the statutory requirement that the Secretary “shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens.” ... Arizona is unable to bear the staggering cost of protecting itself, and even if it could, the federal government has argued that Arizona is preempted from taking action to assist in the enforcement of federal immigration law.

Although the Ninth Circuit Court of Appeals [rejected a similar claim in 1997](#), Arizona believes the illegal-alien problem has worsened enough that either the Ninth Circuit or U.S. Supreme Court must take another look at the issue.

Arizona further argues that the federal government has essentially abandoned the enforcement of federal immigration law:

The executive branch has declared, including declarations made in this lawsuit, that it is determined to ignore the terms and conditions of its obligations under 8 U.S.C. §1373. In its efforts to prevent Arizona from making inquiries regarding an individual’s immigration status, the federal government has treated Arizona differently than it has treated other states. The refusal to enforce provisions of the federal immigration law has threatened national security and imposed a tremendous burden on the states, in particular on Arizona. Counter-defendants are not authorized to enforce only the immigration laws of which they approve, and their declarations amount to an abdication of their statutory responsibilities. Therefore, they are committing an abuse of discretion.



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Indeed, that is the case. In its argument to Judge Bolton, the [Obama administration claimed](#) that the federal government has sole authority to determine federal immigration policy.

Yet that authority, as [James Taranto observed](#) in the *Wall Street Journal*, would require the federal government to file lawsuits against [those cities](#) that [have declared](#) themselves [sanctuaries for illegal aliens](#). The Obama administration has not done so.

Arizona [also claims](#) the federal government is violating the Tenth Amendment to the U.S. Constitution because it will not allow the state to protect itself from the illegal aliens within its borders.

The state also seeks reimbursement for the cost of incarcerating illegal alien criminals.

## **Yes, It's An Invasion**

The proof that Arizona is indeed suffering [an invasion](#) is seen not only in the half-million illegals in the state and the [crushing financial burden](#) they have imposed upon Arizonans, but also in the rampant criminal activity on the Arizona border.

As [The New American reported](#) last week, the depredations suffered by [Roger Barnett](#), owner of the Cross Rail Ranch near Douglas, provide an example. Since 1998, Barnett [has detained](#) 12,000 illegals for the Border Patrol. Illegals have repeatedly vandalized and otherwise trashed his property and broken into his home.

Barnett [is fighting](#) a court judgment requiring him to pay \$87,000 to a pack of illegal aliens he detained at gunpoint on his property in 2004. He pulled his weapon because he thought his life was in danger, but holstered it when he realized the illegals meant no harm.

Yet the Ninth U.S. Circuit Court of Appeals, in rejecting his appeal to vacate the judgment, said Barnett could not claim self defense when he drew his gun, despite the long history of illegal-alien destruction of his property and home invasion. Instead, the court bought the claim that the illegals suffered post traumatic stress disorder because Barnett pulled his piece.

Unsurprisingly, the illegals who attacked Barnett hired the [Mexican-American Legal Defense Fund](#) to press their case. Barnett will seek a rehearing, and may well take his case to the U.S. Supreme Court.

Barnett is not alone. Casey Nethercott, another rancher, [lost his ranch](#) to a pair of illegals, thanks to the leftist [Southern Poverty Law Center](#) and the judge who ruled in their favor.

As well, the National Park Service [has closed parts of](#) five national parks to travelers and tourists because [they are routes](#) for drug smugglers and "coyotes," the criminals who smuggle illegal aliens across the border.

*Photo: Arizona Gov. Jan Brewer (R), announces plans, Feb. 10, 2011 outside the Sandra Day O'Connor Federal Courthouse in Phoenix to counter sue the federal government for failing to enforce immigration laws. Listening at rear is Arizona Attorney General Tom Horne.: AP Images*



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