



Written by [Joe Wolverton, II, J.D.](#) on April 28, 2010

Arizona's Immigration Law: Police State or State of Emergency?

Tony Estrada is a cop's cop. For 43 years he has protected and served the citizens of Santa Cruz County and Nogales, Arizona. For 25 years he was a Nogales City police officer, and for the past 18 years, he has served as sheriff of Santa Cruz County. Sheriff Estrada proudly claims to be the state's only Hispanic sheriff, but he quickly asserts that his ethnicity is not the reason he opposes Arizona's new anti-illegal immigration law, SB 1070.



"They [the federal government] are making us [local law enforcement] do their job and they are making us pay for doing their job out of our own pocket," Sheriff Estrada told *The New American*. The weariness and decades of exasperation come through clearly in his tone of voice. It is obvious that the national government's unapologetic apathy is the real key to Sheriff Estrada's frustration with the new law.

Throughout his over 40-year career, the Sheriff has witnessed firsthand the federal government's lassitude when it comes to enforcing the laws prohibiting undocumented immigration into the United States. "The feds motto has always been 'you got 'em, you keep 'em,' " Estrada says. This attitude, he adds, has cost his county millions of dollars and he fears that under the new law the feds' tab will get bigger and bigger and will go unpaid, robbing his county of valuable resources that currently must be allocated to make up for federal ineptitude.

Governor Jan Brewer signed Senate Bill 1070 into law on April 23. The act, officially styled the Support Our Law Enforcement and Safe Neighborhoods Act, passed both houses of the Arizona legislature after weeks of vigorous debate. [In her remarks](#) on the occasion of the bill signing, Governor Brewer echoed Sheriff Estrada's indictment of the federal immigration and border patrol bureaucracy: "The bill I'm about to sign into law — Senate Bill 1070 — represents another tool for our state to use as we work to solve a crisis we did not create and the federal government has refused to fix," she said. Governor Brewer continued, "We in Arizona have been more than patient waiting for Washington to act. But decades of federal inaction and misguided policy have created a dangerous and unacceptable situation."

In the rest of her statement, Governor Brewer recognized the controversy surrounding the bill and her decision to endorse it. Rarely is a new law so vociferously and viciously assailed as is SB 1070. Various provisions of the new law, which will go into effect in July or August, have come under intense scrutiny by activists on the Right and Left of the political spectrum. Recriminations abound with opponents



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signaling toward the specter of “racial profiling” and “police state” tactics that they predict will accompany the law. While such careful examination of the new law is laudable and recommendable, there is a vacuum of disinterested dissection that this article will attempt to fill.

In light of the [recent battle](#) between the states and the federal government with regard to the noxious ObamaCare mandates, this law and the observations of Sheriff Estrada and Governor Brewer demonstrate a curious nuance of the state/federal relationship that contrasts sharply with that of the ObamaCare law.

In the ObamaCare statutes, several states have accused the federal government of legislating in an area outside of its clearly established constitutional boundaries, and as a result, they [the states] have begun the process of officially rejecting the federal overreach by enacting their own statutes nullifying the federal law.

If nullification is defined as the refusal of a state to enforce federal law it deems unconstitutional, then the Arizona law may be seen as reverse nullification — that is to say, it is the positive action by a state to legislate in an area where the federal government is constitutionally required to act, but has steadfastly refused to do so. The federal government’s lackadaisical behavior is contrary to the typical federal propensity to grab for power and assume the right to act where none exists. A spokesman for the Americans for Legal Immigration PAC praised the bill: “It is incumbent upon our states to protect the jobs, wages, health, taxes, and lives of American citizens, when Presidents fail to honor their oaths of office and Constitutional requirements to enforce the laws of Congress and protect all states from invasion,” said William Gheen. “Bush and now Obama refuse to secure our borders and adequately enforce our existing immigration laws, despite the mass casualties of innocent Americans each year,” Gheen added.

Anticipating the resistance to the law on the part of civil rights organizations, the Governor and the Arizona legislature (in the preamble to the bill) reminded citizens that this act neither creates new nor abridges established civil rights of anyone legally present in their state. In fact, the law merely “enforces federal immigration laws” already enacted by Congress. It would seem, then, that enforcement of existing law is per se lawful and not something liable to certain of the accusations being made by its foes. If there is any “profiling” in the law, it is the underlying federal law that is suspect, not Arizona’s specific intent to carry them out within its own sovereign borders.

Of course, for decades the national government has assailed the ramparts of state sovereignty, repeatedly thrusting the sharp but hollow battering ram of supremacy against them. To wit, current Secretary of Homeland Security, Janet Napolitano, issued the [following statement](#) regarding S.B. 1070:

The Arizona immigration law will likely hinder federal law enforcement from carrying out its priorities of detaining and removing dangerous criminal aliens. With the strong support of state and local law enforcement, I vetoed several similar pieces of legislation as Governor of Arizona because they would have diverted critical law enforcement resources from the most serious threats to public safety and undermined the vital trust between local jurisdictions and the communities they serve. I support and am actively working with bipartisan members of Congress to pass comprehensive immigration reform at the federal level because this issue cannot be solved by a patchwork of inconsistent state laws.

Actually, Madam Secretary, a “patchwork of inconsistent state laws” is exactly the way issues will be solved and be solved most effectively. States are more capable than the national government of



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identifying and rectifying problems that affect them directly, particularly the continued physical and fiscal well-being of its citizens. This is the arrangement anticipated by our Founding Fathers in establishing our federal system of government, that is to say, a government comprised of a national government endowed with an enumerated slate of limited powers, and state governments empowered by the people themselves to carry out other governmental functions not delegated to the national government.

Much of the most sustained criticism of the Arizona legislation points to the supposed vagaries of the law's terms. Detractors fear that the lack of clear and coherent definitions of various crucial strictures in the law's text will lead to overly broad interpretation by local police officers and will result in a concomitant denial of basic civil rights.

Of paramount concern to those who attack the law for being too vague is the phrase "lawful contact." The section of the law in question reads:

For any lawful contact made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation.

Obviously, a clear understanding of the requirements for a "lawful contact" is fundamental to the faithful execution of this law. As stated in this section (Title 11, Chapter 7, Article 8, Paragraph B), law enforcement officials will be the ones interpreting this restriction on the police's power to stop and question a suspected illegal alien.

Larry Dever is the sheriff of Cochise County, Arizona, and in an interview with *The New American* he confirmed that his officers (and officers throughout Arizona) will interpret the "lawful contact" element of the law in the same manner that that identical phrase is interpreted in other parts of the Arizona Code. "We will only ask for proof of legal status if we have some other reason to stop that person, such as if he is believed to be a witness, victim, or violator [of another law]," Sheriff Dever said.

Sheriff Dever clarified the point by stressing that the requirements for detaining an individual established by the U.S. Supreme Court in [Terry v. Ohio](#) (392 US 1) will be observed and that only in the case of a valid "Terry Stop" with the existence of additional "reasonable suspicion" of illegal status would a person be required to produce some official document verifying his right to be in Arizona. "Reasonable suspicion of being an illegal alien is not reason enough to question a person," said Dever.

Per the provisions of the statute, the documents that qualify as prima facie proof of legal residency include a valid Arizona driver's license; a valid Arizona non-operating identification license; and a valid tribal enrollment card or other form of tribal identification.

Understandably, though, the power of law enforcement to require presentation of documents sends chills down the spine of enemies of totalitarianism and that fearsome phrase: "Show me your papers, please." This bugaboo is the most pernicious of all the attacks on the new law because it is made by opponents who otherwise are in favor of deporting illegal aliens and the securing of our Southern border.

Such concern is appropriate, and zealous opposition to any law that would give the police power to demand demonstration of documents is well founded. However, such a sinister scenario is not the



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situation anticipated by the legislature of Arizona and not the modus operandi of the majority of the hardworking men and women serving diligently in the police and sheriff's departments in Arizona and the United States.

Perhaps an analogy would serve to buttress the point and allay fears. Consider, every time you are pulled over by a policeman and asked to see your driver's license, registration, and proof of insurance; are you not in effect being asked to "see your papers"? And for the same purpose — to produce evidence of your legal right to enjoy a privilege that could be revoked for your failure to comply with the laws governing that privilege? In one instance it is driving a car on a public road, in another it is living and working in Arizona.

Finally, as with any law, good intentions and narrow tailoring notwithstanding, SB 1070 has loopholes. There will be thousands of illegal immigrants who will still escape detection and thus deportation. Likewise, however, many guilty murderers go free everyday, yet no one cries for the repeal of laws against murder. These loopholes, no matter how spacious, will be smaller than the porous border through which thousands of aliens are invading Arizona.

Regardless of the foregoing explanations, there are a few critical points of analysis that must be observed. First, is the language of the law overly vague? Second, is the law narrowly tailored to achieve the ends for which it was enacted? Third, has the statute been enacted in furtherance of lawful power? Fourth, can the provisions of the law be executed without violating personal liberty? Fifth, does the law create or eliminate any rights, obligations, or duties not consistent with well-established constitutional principles of individual freedom, limited government, and federalism? These questions represent the starting point for an appropriate examination of SB 1070 or any law, especially one with such far-reaching implications.

Photo of Gov. Brewer signing SB 1070: AP Images



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