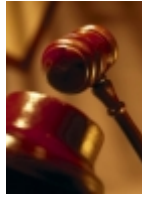




Written by [Joe Wolverton, II, J.D.](#) on December 26, 2011

## Federal Judge Blocks Parts of S.C. Immigration Law

Of the 20 sections of the South Carolina law, four of them were challenged and are now blocked from enforcement. These four include provisions which that state criminal sanctions for: “harboring and transporting of unlawfully present persons”; “failure to carry alien registration materials”; “the creation of fraudulent identification documents”; and the directive to state and local law enforcement officials to “determine the immigration status of certain persons encountered in routine traffic stops and other contacts in which there is a ‘reasonable suspicion’ that the person may be in the United States unlawfully.”



The civil rights groups challenging the law argue that enforcement of the law requires de facto racial profiling. The Justice Department argues that the Constitution places all power over the establishment of immigration policy in the hands of the federal government and that the legislature of South Carolina is thus preempted from passing legislation in that area of the law.

The argument is that once the feds have “occupied the field,” of this or that area of the law or policy, then no other government (state or local) may trespass therein.

In short, the Obama administration insists that the federal government has such a compelling interest in the establishing of laws and policies in a certain area that any legislation in that area passed by another entity (the legislature of South Carolina in this case) would interfere with the enforcement of the federal statutes.

According to the complaint filed by the Justice Department, if enforced, the South Carolina law would unlawfully conflict with federal immigration statutes and would contribute to a patchwork of state and local laws many of which would contradict currently operative federal immigration policies and principles.

Specifically, the filing claims:

In our constitutional system, the federal government has preeminent authority to regulate immigration matters and to conduct foreign relations. This authority derives from the Constitution and numerous acts of Congress.

Nowhere, however, has the government been able to point to the exact location in the Constitution where there is found congressional authority to regulate immigration.

The enumeration in the Constitution of specific powers delegated to the federal government is the cornerstone of American political theory and of the constitutional Republic established in 1787. The basic definition of enumerated powers is that the best limitation on power is to not give it in the first place. Powers, as understood by Madison, Jefferson, et al., were only legitimate if they had been granted to the government by the people and written specifically in the document through which the



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governed gave life to the government — the Constitution.

"We the People, of the United States" established this government. All powers assigned to the government in the document were originally (and ultimately) held by the people. No original, organic, or self-possessed powers exist in any government. All government is an artificial creation of the people and is powerless but for their endowment of a specific roster of limited powers to it.

In all of the complaints filed against the various states which have enacted Arizona-style immigration laws, U.S. Attorney General Eric Holder insists that the federal footprint has marked the legal limits within which a state may make laws in the field of immigration.

In light of the lack of enumeration of such a power in the Constitution, however, the question becomes whether the government of the United States enacted a slate of laws for which there is no constitutional authority.

In the absence of explicit, enumerated authority to legislate, the power remains with the states and the people. The responsibility for deciding who may or may not enter a state is upon the government of that state, and not the national government.

The judge's opinion in the South Carolina case reflects his agreement with the Obama administration's position on this question of constitutional law: "This state-mandated scrutiny is without consideration of federal enforcement priorities and unquestionably vastly expands the persons targeted for immigration enforcement action."

Furthermore, he held that the "balance of equity" tipped in favor of the position of the federal government, that it has exclusive control over immigration and that state laws interfering with this power would "create a chaotic situation in immigration enforcement."

The lone section of the four that the federal government sought to block that was left intact and enforceable was that relating to the imposition of criminal penalties for the making and selling of counterfeit identification "for the use of persons unlawfully present in the United States." The judge ruled that the United States did not prove that it would suffer irreparable harm should this section of the South Carolina law be enforced as directed by the state legislature.

The law was set to take effect January 1, 2012.

As has been reported by *The New American* and other outlets, laws similar to that passed in South Carolina have been challenged in court by the Obama administration.

In mid December, [motions were filed](#) in the 11th Circuit Court of Appeals by Attorneys General of Alabama, Georgia, and South Carolina asking the court to temporarily halt challenges currently proceeding against their immigration laws pending a ruling by the Supreme Court in the case of *Arizona v. United States*, scheduled to be heard by the highest court sometime during this term.

The Obama administration has challenged the constitutionality of all three recently enacted immigration statutes, arguing that the federal government has exclusive jurisdiction to legislate in the arena of immigration.

[A couple of weeks ago](#), the Supreme Court announced that it will hear oral arguments in the matter and ultimately issue a ruling deciding whether the legislature and Governor of the Grand Canyon State were preempted by federal law from enacting a law establishing immigration policy.

The new [Utah immigration statute is currently under review](#) and the enforcement of a recently enacted



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Indiana immigration law was blocked by a federal judge.



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