



Written by [R. Cort Kirkwood](#) on October 3, 2011

## Federal Judge Upholds Most of Ala. Immigration Law

A federal judge upheld the most important parts of Alabama's law that seeks to control the state's growing problem with illegal aliens.

In her 115-page decision last week, Judge Sharon Blackburn (left) of the Northern District of Alabama upheld six sections of HB 56 and enjoined four. The law is problematic in those four areas, she ruled, but in the main, HB 56 does not interfere with congressional prerogatives vis-à-vis immigration policy. Nor does it interfere, she ruled, with the foreign policy objectives of the United States.



Importantly, the judge upheld a key provision that had gone down in flames in Arizona, where the Obama administration [first went to war](#) against states seeking to stem tide of illegals that are draining state budgets. Blackburn ruled that the state of Alabama may require police to inquire about the immigration status of persons they lawfully stop or arrest if reasonable suspicion exists that those persons are in the country illegally.

That provision of HB 56 and Arizona's law, [SB 1070](#), enraged the radical left and its adherents in the reconquista lobby. As with Arizona, the Obama administration sued Alabama to overturn its law, and it had the [National Immigration Law Center](#), the [American Civil Liberties Union](#), and the discredited [Southern Poverty Law Center](#) on its side. As well, leftist clerics fought against the state.

On Aug. 29, [Blackburn blocked](#) the law from taking effect until she decided the merits of the case.

### The Ruling

Blackburn ruled on 10 sections of HB 56 and summarized what they attempted to accomplish. Under Section 10, an illegal who does not carry an alien registration document commits a misdemeanor, while Section 11(a) makes applying for, soliciting, or performing work in the state a misdemeanor.

Section 12, perhaps the most threatening to border jumpers, requires police to determine the immigration status of a person they lawfully stop, detain, or arrest if they reasonably suspect the person is an illegal alien. Section 13 made harboring and transporting illegals a crime. Section 16 eliminated employers' state tax deductions for wages paid to illegals.

Section 17 punishes employers who employ illegal aliens if the employer fails to hire or discharges an American citizen or legal alien permitted to work. Section 18 fortifies Section 12 by requiring police to determine the immigration status of those caught driving without a license, and then, if the person is found to be an illegal alien, turning them over to the immigration authorities.

Section 27 prohibits the state's courts from enforcing some but not all contracts with illegal aliens, Section 28 orders schools to determine the immigration status of pupils born in foreign countries, and Section 30 creates a felony for illegals who enter into contracts with the state or any of its counties or



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municipalities.

[Blackburn explained](#) that a plaintiff seeking a preliminary injunction “must clearly establish ... a substantial likelihood of success,” show that “irreparable injury will be suffered unless the injunction is issued,” show “the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party,” and prove that “the injunction would not be adverse to the public interest.”

She treated the individual sections of the law after a lengthy exposition of past and current immigration laws.

[The judge upheld](#) Sections 10, 12, 18, 27, 28, and 30. The upshot of her decision is that these sections of HB 56 neither trespass federal prerogatives in making and enforcing immigration law nor interfere with American foreign policy. As well, she wrote that the United States did not establish “a likelihood of success” on the merits of its case.

[With respect to](#) Section 10, for instance, she declared,

There is no evidence before the court that Section 10, or any other provision of H.B. 56, conflicts with Congressional intent regarding national foreign policy goals or with an international agreement “identify[ing] a federal foreign relation policy.”

The statement submitted in this case by the Deputy Secretary of State, alleging that foreign policy is hindered, is insufficient. Without evidence of Congressional intent, the United States must show specifically a national foreign policy “addressed in Executive Branch diplomacy and formalized in treaties and executive agreements.” There is no such evidence before the court.

[She ruled](#) similarly on Section 12 and the other sections of the law she did not enjoin. For instance, the Obama administration had argued that Section 12 would put an “undue burden” on all immigrants, a notion Blackburn found unpersuasive.

As well, [she wrote](#), “the United States argues that Section 12 is preempted by foreign policy goals.”

[T]he court finds the United States has not submitted sufficient evidence that Section 12 conflicts with federally-established foreign policy goals. For the foregoing reasons, the court concludes that the United States is not likely to succeed on its claim that [Section 12] conflicts with Congressional intent.

Importantly, in upholding Section 12, Blackburn cited and agreed with a dissenting judge in the Obama administration’s successful effort against Arizona’s SB 1070. [Judge Carlos Bea wrote that Congress](#) “provided important roles for state and local officials to play in the enforcement of federal immigration law” and that the controlling issue in Arizona should be what Congress intended with federal immigration law, not what the executive branch or its bureaucracy wants to do.

As well, [Bea wrote](#):

Congress has clearly expressed its intention that state officials should assist federal officials in checking the immigration status of aliens and in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States. ... Congress has clearly stated its intention to have state and local agents assist in the enforcement of federal immigration law, at least as to the identification of illegal aliens, in two federal code sections.

[Blackburn agreed](#) that Congress intended for the states to help enforce immigration law, and that



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Section 12 does exactly that, requiring police to determine the immigration status of those they lawfully encounter.

Indeed, Blackburn's decision is nearly the mirror opposite of that from the three-judge federal panel which struck down Arizona's law.

On those sections she enjoined, she ruled that the United States met its burden of proving it established a "likelihood of success" on the merits of its case and that not enjoining those section would cause "irreparable harm" to plaintiff.

She also ruled against the clerics who fought the law because it would prohibit them from ministering to the illegals. She said they did not have standing to sue.

## **Leftists Unhappy**

The illegal-alien lobby is unhappy with Blackburn's ruling, the [Montgomery Advertiser reported](#), and will appeal the decision. "Overall, we're very disappointed," the lawyer for the National Immigration Law Center [told the newspaper](#). "We think this is a flawed ruling." As well, the [Advertiser reported](#):

The Department of Justice said in a statement that it was considering its next steps.

"We will continue to evaluate state immigration-related laws and will not hesitate to bring suit if, in fact, a state creates its own immigration policy or enforces state laws in a manner that interferes with federal immigration law," DOJ spokeswoman Xochitl Hinojosa said in a statement.

Although the Obama administration and its leftist legal cohort concocted complex legal arguments against HB 56, observers have noted that their real reason for opposing it was their fictive allegations that it is racist. The SPLC and its allies [repeatedly claimed](#) that Alabama was "on the wrong side of history" and the [bill is](#) "racist" and "mean-spirited."

Blackburn, apparently, disagrees.

Such was the concern about the law that 16 nations, led by Mexico, joined the Obama administration and its allies on the left, [filing briefs](#) with the court. Heretofore given carte blanche to allow its citizens to stream across the border, Mexico claimed it "has an interest in protecting its citizens and ensuring that their ethnicity is not used as a basis for state-sanctioned acts of bias and discrimination."

The obvious solution to that terrible problem — encouraging its citizens to return home — is not in Mexico's plan to "protect" them; but in any event, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, and Uruguay joined in filing one brief.

Complaints from these nations about Arizona's SB 1070 [was a key reason](#) a three-judge federal panel upheld the lower federal court's decision to overturn the law.

[Illegal aliens cost](#) Alabama nearly \$300 million annually.



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