



Written by [R. Cort Kirkwood](#) on April 13, 2011

## Ninth Circuit Joins Obama's War on Arizona

The law, SB 1070, [required police](#) to check the immigration status of anyone with whom they had an otherwise lawful contact. Passed in response to the growing [fiscal](#), [educational](#), and [criminal menace from illegal aliens](#), the law contained other provisions, but none so highly enraged Obama and the reconquista lobby as the one permitting police to do the obvious.



Upholding the decision of federal Judge Susan Bolton, of the U.S. District Court in Arizona, the court's opinion largely relied on the damage the immigration law had done to American foreign relations, noting that foreign leaders and the United Nations had complained about it. [Bolton's key concern](#) was that SB 1070 imposed burdens upon legal resident aliens "that only the federal government has the authority to impose"; however, the San Francisco judges went further, fretting about the criticism of the bill from Mexico and other governments.

Arizona Gov. Jan Brewer, a stalwart in defending the law, will continue fighting because the federal government, as she and Attorney General Tom Horne argued in their appeal, has abdicated its duty to control immigration.

The decision "to uphold Judge Bolton's suspension of key provisions of SB 1070," [Brewer said](#), "does harm to the safety and well-being of Arizonans who suffer the negative effects of illegal immigration."

### **The Decision**

The meat of the decision came from Judges Richard Paez and John Noonan. A hard-bitten Latino leftist, VDare.com notes, Paez was worried about what the rest of the Latino world thought of the law.

#### [Wrote Paez:](#)

Thus far, the following foreign leaders and bodies have publicly criticized Arizona's law: The Presidents of Mexico, Bolivia, Ecuador, El Salvador, and Guatemala; the governments of Brazil, Colombia, Honduras, and Nicaragua; the national assemblies in Ecuador and Nicaragua and the Central American Parliament; six human rights experts at the United Nations; the Secretary General and many permanent representatives of the Organization of American States; the Inter-American Commission on Human Rights; and the Union of South American Nations.

In addition to criticizing S.B. 1070, Mexico has taken affirmative steps to protest it. As a direct result of the Arizona law, at least five of the six Mexican Governors invited to travel to Phoenix to participate in the September 8-10, 2010 U.S.-Mexico Border Governors' Conference declined the



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invitation. The Mexican Senate has postponed review of a U.S.-Mexico agreement on emergency management cooperation to deal with natural disasters.

As well, he wrote, Arizona is trying to “hijack” a federal prerogative, meaning managing the nation’s immigration enforcement.

The law subverts Congress’ intent that systematic state immigration enforcement will occur under the direction and close supervision of the Attorney General. Furthermore, the mandatory nature [of the law’s] immigration status checks is inconsistent with the discretion Congress vested in the Attorney General to supervise and direct State officers in their immigration work according to federally-determined priorities.

Judge Noonan, a Reagan appointee, [agreed with Paez](#):

The Arizona statute before us has become a symbol. For those sympathetic to immigrants to the United States, it is a challenge and a chilling foretaste of what other states might attempt. For those burdened by unlawful immigration, it suggests how a state could tackle that problem. It is not our function, however, to evaluate the statute as a symbol. [T]he statute is a singular entry into the foreign policy of the United States by a single state. The district court properly enjoined implementation of the four sections of the statute.

### **Minor Dissent**

Judge [Carlos Bea concurred](#) with some of Paez’s and Noonan’s opinions, but said Arizona had not trespassed into foreign policy by helping enforce immigration law. Wrote Bea:

It is the enforcement of immigration laws that this case is about, not whether a state can decree who can come into the country, what an alien may do while here, or how long an alien can stay in this country.

Congress has provided important roles for state and local officials to play in the enforcement of federal immigration law. First, the states are free, even without an explicit agreement with the federal government, “to communicate with the Attorney General regarding the immigration status of any individual.” Second, to emphasize the importance of a state’s involvement in determining the immigration status of an individual, Congress has commanded that federal authorities “shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual.” Third ... no agreement with the federal government is necessary for states “otherwise [than through communications regarding an individual’s immigration status] to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” Finally, Congress has even provided that state officers are authorized to arrest and detain certain illegal aliens. ...

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.

But the implication that complaining foreign heads of state have standing to be heard in U.S. courts over state laws also disturbed Bea. “A foreign nation,” he wrote, “may not cause a state law to be



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preempted simply by complaining about the law's effects on foreign relations generally. We do not grant other nations' foreign ministries a 'heckler's veto.'"

### **Arizona Will Appeal**

Unsurprisingly, the reconquista left was happy with the decision, as the [Washington Post reported](#). A legal torpedo for the American Civil Liberties Union flatly stated that Arizona went beyond the limits of its constitutional prerogatives. "It sends a very clear message," the ACLU's [Omar Jadwat told](#) the *Post*, "what Arizona tried to do just can't be done in a constitutional way. It would be folly not to pay attention to that."

Gov. Brewer and Arizona Attorney General Tom Horne aren't so sure about that. "It is outrageous that the Ninth Circuit Court would grant foreign nations the de facto right to veto the duly-enacted laws of a sovereign state of the United States," [Brewer said](#). Noting Judge Bea's concern about a "heckler's veto," she said the "decision is internationalism run amok that ranks right up there with the U.S. State Department's decision to refer S.B. 1070 to the United Nations Human Rights Council."

#### [Said Horne:](#)

I note that the 9th Circuit relied heavily on the opposition of foreign governments in upholding the injunction on two of the four elements. As the dissent by Judge Carlos T. Bea eloquently stated, foreign governments should not be given a "heckler's veto" to establish preemption by the federal government over the state.

Brewer [also returned](#) to what inspired Arizona to act; i.e., the federal government's refusal to stop illegal immigration:

It's worth remembering how we got here. For decades, the federal government [has neglected](#) its constitutional duty to American citizens by failing to secure the border. States like Arizona have borne the brunt of that failure. We see the impacts in our border areas, where Arizona ranchers live day and night with human-traffickers crossing their lands. We see it in our neighborhoods and communities, where drop houses and drug-runners have become a staple of the evening news.

Brewer and Horne will appeal either to the full Ninth Circuit or directly to the U.S. Supreme Court.



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