



Written by [Joe Wolverton, II, J.D.](#) on July 7, 2010

## U.S. v. Arizona: The Feds Sue Arizona over S.B. 1070

On July 6, the federal government filed suit against the state of Arizona in the United States District Court for the District of Arizona. The lawsuit seeks to "declare invalid and preliminarily and permanently enjoin the enforcement of S.B. 1070...."

The suit, which names Governor Jan Brewer as a co-defendant, focuses chiefly on the right of the federal government to nullify state legislation in areas it deems to be within the exclusive jurisdiction of the national government.



Surprisingly, given the tenor and topic of the majority of declamations against the law since the day it was passed by the Arizona state legislature, the lawsuit makes only indirect mention of the racial profiling or civil rights issues. These concerns don't pack the legally persuasive punch of the larger balance-of-power argument.

In [an interview](#), Kris Kobach, the University of Missouri-Kansas City law professor that helped draft S.B. 1070, called the government's lawsuit "unprecedented and unnecessary." He added that in light of the other lawsuits that have already been filed challenging the constitutionality of the statute, "there's no reason for the Justice Department to get involved. The Justice Department doesn't add anything by bringing their own lawsuit."

Yet still they persist in pursuing this persecution of Arizona and her citizens, financed, it must be remembered, by each and every taxpayer in America.

The Justice Department's core issue is whether a state has the right to pass laws with regard to immigration or whether that right is within the sole discretionary power of Congress. The Feds aver that states have no right to legislate in an area so clearly and, they assert, historically, within the bailiwick of the national government.

"Although states may exercise their police power in a manner that has an incidental or indirect effect on aliens, a state may not establish its own immigration policy or enforce state laws in a manner that interferes with the federal immigration laws," according to paragraph 2 of the federal government's complaint.

As of the time of the writing of this article, Arizona has not filed its answer to the federal government's complaint. Governor Jan Brewer did, however, release the following [official response](#) to the suit upon receiving word of its filing:

Today I was notified that the federal government has filed a lawsuit against the State of Arizona. It is wrong that our own federal government is suing the people of Arizona for helping to enforce



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federal immigration law. As a direct result of failed and inconsistent federal enforcement, Arizona is under attack from violent Mexican drug and immigrant smuggling cartels. Now, Arizona is under attack in federal court from President Obama and his Department of Justice. Today's filing is nothing more than a massive waste of taxpayer funds. These funds could be better used against the violent Mexican cartels than the people of Arizona.

The truth is the Arizona law is both reasonable and constitutional. It mirrors substantially what has been federal law in the United States for many decades. Arizona's law is designed to complement, not supplant, enforcement of federal immigration laws. Despite the Department of Justice's claims in paragraph 62 of today's lawsuit, Arizona is not trying "to establish its own immigration policy" or "directly regulate the immigration status of aliens." Arizona Revised Statutes § 11-1051(E) states that the federal government, along with local law enforcement officers authorized by the federal government, can only determine an alien's immigration status. Subsection (L) of that same section goes on to state that the law "shall be implemented in a manner consistent with federal laws regulating immigration."

The irony is that President Obama's Administration has chosen to sue Arizona for helping to enforce federal immigration law and not sue local governments that have adopted a patchwork of "sanctuary" policies that directly violate federal law. These patchwork local "sanctuary" policies instruct the police not to cooperate with federal immigration officials.

The best thing government can do is to create a stable, predictable environment, governed by an easily understood set of rules or laws. We do not need to make this more complicated than it already is. We must first and foremost create a secure border. Enhanced trade, economic opportunity and freedom will surely follow.

I am pleased that President Obama and the Department of Justice did not pursue the baseless claims of illegal racial profiling in the lawsuit. When signing S.B. 1070, I said, "My signature today represents my steadfast support for enforcing the law — both against illegal immigration AND against racial profiling." Arizona's law expressly prohibits unconstitutional racial profiling. However, words are not enough. For this reason, I ordered the Arizona Peace Officer Standards and Training Board (AZPOST) to develop training on the new law for Arizona's police officers. AZPOST has completed the training course and has published it for the all world to see at <http://www.azpost.state.az.us/SB1070infocenter.htm>. AZPOST has done its job professionally and served Arizona well.

I will not stop fighting to protect the citizens of Arizona, and to defend Arizonans in federal court. I have set up a legal defense fund to pay the substantial legal fees that Arizona has been, and will be, forced to incur as a result of all of these lawsuits. Contributions to the Border Security and Immigration Defense Fund can be made at <http://www.keepazsafe.com>. My legal team will not hesitate to assert the rights of the State of Arizona in this matter. Arizona will ultimately prevail against the lawsuits — including this latest assault by the Obama Administration. Our laws will be found to be constitutional — because that is exactly what they are.

The lawsuit was denounced by Arizona state senator Russell Pearce, the principal sponsor of the original measure, as an "absolute insult to the rule of law" and to the sovereign state of Arizona and its citizens. The bill was co-sponsored by dozens of Pearce's fellow legislators.

The complaint explicitly asserts federal supremacy over the states in all matters relating to immigration



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and insists that a "patchwork of state and local immigration policies throughout the country" would interfere with the federal government's authority "to set and enforce immigration policy."

Therein lies the rub. If the federal government had effectively exercised this authority it assumes for itself, then there would be no S.B. 1070 and there would be no corresponding federal challenge.

Additionally, however, there would not be an [80-mile wide swath of southern Arizona](#) that has been all but surrendered to the criminal cartels that have made living along the border akin to living in a combat zone. Notably, our federal government's response to this hostile and adverse possession by drug and human traffickers was not to repel the invasion, rather it was to erect signs warning citizens not to venture into the area.

Furthermore, as has been well documented in [The New American](#) and elsewhere, and as specifically asserted by Governor Brewer in the statement she released upon signing the act into law, the purpose of S.B. 1070 is not to usurp federal authority or override federal immigration legislation, rather it was to compliment and carry out those restrictions already in place, but inexplicably and habitually not enforced by the various agencies of the federal government charged with patrolling the border and investigation immigration violations.

Adding insult to injury, a federal judge, that is to say, a judge nominated by the president and confirmed by the Senate, has [granted the government of Mexico](#) the right to submit a legal brief in support of one of the several lawsuits currently pending against Arizona's enforcement of S.B. 1070 scheduled for July 29.

In addition to the complex and crucial question of states' rights and the 10th Amendment, this decision on the part of a federal judge gives rise to another constitutional question, this in regard to the 11th Amendment to the Constitution which ostensibly protects states from legal action filed against one or more of them by citizens or subjects of foreign nations. Is it not the role of the Justice Department to enforce such constitutional provisions and protect the states from any violations thereof? Perhaps there are insufficient funds to pursue such a course given the expense of protecting the "civil rights" of terrorist organizations such as the [New Black Panthers](#).

In a [statement released](#) on the Justice Department's website, Attorney General Eric Holder expressed his sympathy with Arizonans that are "understandably frustrated with illegal immigration...." But, he counters, "diverting federal resources away from dangerous aliens such as terrorism suspects and aliens with criminal records will impact the entire country's safety."

If resources, one assumes that money would be included under that head, are the issue, then why has neither the Attorney General nor his boss, President Barack Obama, made an issue of the [reported \\$113 billion a year](#) that it costs the American people to harbor illegal immigrants? And why is there no mention of the [\\$2 trillion dollars it will cost American taxpayers](#) (that's nearly \$20,000 per household per year for life) to provide social benefits to the millions of newly minted citizens if the President's amnesty plan is made law? If resources are the real issue, then the consistent enforcement of existing federal immigration policy and the disavowal of amnesty proposals will instantly free up enough money to continue the "war on terror" and avoid plunging the country into the jaws of danger.

Finally, the complaint filed by the Departments of State, Justice, and Homeland Security argues that "S.B. 1070's mandatory enforcement scheme will conflict with and undermine the federal government's careful balance of immigration enforcement priorities and objectives." When reviewed even casually, the priorities and objectives of the federal government vis-à-vis illegal immigration has been to obviate



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such a concept by granting amnesty to those already illegally present in the United State in unrepentant violation of the current law and altering the present legal immigration process so radically as to facilitate (and invite?) the continued invasion of the United States by an army of foreign conquerors carrying visas stamped by our own national government.

*Photo: Maricopa County Sheriff Joe Arpaio, right, and former Maricopa County Attorney Andrew Thomas, give a news conference in Phoenix on July 6, 2010 regarding the U.S. Justice Department suing the state of Arizona over immigration law SB 1070: AP Images*



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