



Written by [Joe Wolverton, II, J.D.](#) on July 29, 2010

## Federal Judge Blocks Enforcement of Key Provisions of S.B. 1070

The ink on S.B. 1070 hadn't dried before motions to enjoin its enforcement were filed in federal district court. One of those motions, a motion for a preliminary injunction, was filed by the Department of Justice on behalf of the government of the United States. Wednesday, the court ruled on that motion.



Judge Susan Bolton of the United States District Court for the District of Arizona granted in part and denied in part the motion of the United States to enjoin the enforcement of Arizona's new anti-illegal immigration law that was scheduled to take effect today, July 29.

The United States argued that were the court not to block enforcement of the Arizona statute, then it would suffer "irreparable harm" and the balance of constitutional power would be tipped in the wrong direction. Further, the Justice Department attorneys averred that immigration is the exclusive jurisdiction of the national government and states may not preempt federal law.

For its part, Arizona argued that relevant rulings by the [Supreme Court](#) make it clear and settled law that states are permitted to act in the arena of immigration and that S.B. 1070 merely gives legal force to existing federal immigration statutes, thus the law makes no encroachment onto exclusive federal territory.

In its 36-page decision, the court summarized both parties' contentions and laid out the legal requirements for the granting of a preliminary injunction. Basically, the party seeking the injunction "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor and that an injunction is in the public interest." Judge Bolton held that for a few key provisions of S.B. 1070, the federal government had carried this burden.

Applying the standards as set forth in her ruling, Judge Bolton temporarily halted the enforcement of the following provisions of S.B. 1070:

1. A portion of Section 2 of S.B. 1070 (known officially in the Arizona Code as A.R.S. § 11-1051(B)), which requires that an officer make a reasonable attempt to determine the immigration status of a



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- person stopped, detained or arrested if there is a reasonable suspicion that the person is unlawfully present in the United States, and requiring verification of the immigration status of any person arrested prior to releasing that person;
2. Section 3 of S.B. 1070 (A.R.S. § 13-1509) which criminalizes the failure to apply for or carry alien registration papers;
  3. A portion of Section 5 of S.B. 1070 (A.R.S. § 13-2928(C)) which makes it a state crime for an unauthorized alien to solicit, apply for, or perform work; and
  4. Section 6 of S.B. 1070 (A.R.S. § 13-3883(A)(5)) authorizing the warrantless arrest of a person where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States.

With regard to the first section enjoined by the court's ruling on Wednesday, Judge Bolton agreed with the contention of the Justice Department that such activities on the part of the police would overburden the limited resources of the federal government and that implementation of such a provision is "likely to burden legally-present aliens."

Of legal interest, however, there is Footnote 12 of the ruling that protects discretionary inquiries by local law enforcement into the immigration status of those reasonably suspected of being present in the United States in violation of applicable immigration law. This is perhaps a bit of jurisprudential sophistry, but it does poke a small loophole in the overall injunction.

The court found that in making it a state crime to violate federal registration requirements for immigrants, the Arizona legislature was creating "an obstacle to the uniform, federal registration scheme" and is therefore enjoined from enforcement of that provision.

The section of the new law that sought to penalize anyone seeking work (or working) without the proper legal authorization was also struck down by the court. The judge held that Congress had established a "comprehensive federal scheme" of punishing (or not) those unlawfully seeking employment, as well as those employing a worker who did not have the necessary visa. Therefore, since Congress had already legislated in the matter, Arizona could not pass laws conflicting with the federal law already on the books.

In this matter, Arizona contended that Congress had not passed laws regulating every aspect of illegal employment and the punishment thereof, so states have a sovereign right to control the laws pertaining to employment inside their borders. The judge disagreed.

Finally, as pertains to the legal sustainability of Arizona law enforcement to arrest a person that is reasonably suspected of having committed a crime worthy of expulsion from the United States, the court found, again, in favor of the Obama administration. Judge Bolton held that cops in Arizona aren't going to know whether a particular offense is deportation-worthy or not and that therefore they will probably "wrongfully arrest legal resident aliens" and thus impose a "distinct, unusual, and



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extraordinary burden” on those people mistakenly believed be illegal.

Predictably, cries of “*Si, se pudo*” (Yes, We Could) rang out from the steps of the federal courthouse in Phoenix. Adversaries of the law declared victory and praised the judge’s sagacious decision.

“It’s good news for everybody. For now, all residents of Arizona will remain protected under the law,” said Ali Noorani of the National Immigration Forum.

“Yesterday I went to bed really depressed,” said one illegal alien living in Mesa, Arizona. “This morning, knowing this [the court’s decision] everything came back. The hope, the faith, knowing that those prayers are really working,” she continued.

There is another side to the story, however. “Today, the federal government got relief from the courts to not do their job,” said Arizona Governor Jan Brewer. Governor Brewer continued by vowing to expeditiously file an appeal of the judge’s ruling and reminded her constituents (the majority of whom support the whole of S.B. 1070) that this was merely a preliminary injunction and that the “merits of the bill” would be heard.

The parts of the law not blocked by the decision on Wednesday are now in force in Arizona, and police have been trained in the lawful, effective, and proper enforcement of those provisions. Sheriff Joe Arpaio of Maricopa County, Arizona told ABC News that his officers are “very comfortable” enforcing the new law and are “not engaged in [racial profiling] now” and won’t be in the future.

The defendants, the state of Arizona and Governor Brewer, will now appeal the ruling and depending on the outcome there, the issue could percolate up to the Supreme Court.

Of particular note is the fact that the ruling on Wednesday was a ruling on a motion and not a decision on the merits of the case or the constitutionality of S.B. 1070. Those matters, along with six other lawsuits pending against Arizona, will have their day in court and the issue of states’ rights, federal supremacy, and the rights of Americans to expect their government to protect them from invasion will form the core of this historic conflict.

Photo of Governor Jan Brewer: AP Images



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