

# Arizona's SB 1070: Fact and Fiction

By *THE SOCIAL CONTRACT* EDITORS

**O**n April 23, Arizona Governor Jan Brewer signed SB 1070, the Support Our Law Enforcement and Safe Neighborhoods Act, into law. While Arizona had previously passed a number of state-level immigration control measures with relatively little fanfare, SB 1070 created a national firestorm and brought immigration to the forefront of national debate. On July 6, the Justice Department filed a complaint to block the implementation of SB 1070, and on July 28, Arizona District Court Judge Susan Bolton issued a preliminary injunction against the major provisions of the law before it could go into effect.

When testifying before Congress about SB 1070 on May 13, Attorney General Eric Holder stunned the nation when he admitted that while he had “expressed concerns on the basis of what I’ve heard about the law,”<sup>1</sup> he had *not actually read* the ten-page bill. While Holder appears to have finally read the bill, most media discussion about SB 1070 still shows the same ignorance.

## What's in SB 1070

The bill is intended to create a policy of “attrition through enforcement”—in other words, to get illegal aliens to leave the state. Its basic provisions include:<sup>2</sup>

- Prohibiting “sanctuary” policies where local police refuse to share information with immigration authorities. Additionally, it prohibits state agencies from refusing to divulge immigration status.
- Requiring all legal aliens to carry their federal immigration documents at all times, which is already required by federal law.
- Empowering police to determine the immigration status of individuals whom they encounter during a lawful stop when they have reasonable suspicion to believe the individuals are illegal aliens. The law additionally requires all people who are arrested to have their immigration status checked.
- Additional provisions deal with restricting day labor centers, streamlining processes of

transferring illegal aliens to federal custody, enabling legal residents to sue the state government for failure to enforce the law, and increasing enforcement against illegal alien gang members.

## Why Arizona Had to Act

While illegal immigration is a nationwide problem, the situation in Arizona, given its location at the border, is particularly dire.

- The Department of Homeland Security estimates that there are 460,000 illegal aliens living in Arizona.<sup>3</sup>
- According to a newly released study by the non-partisan Federation for American Immigration Reform (FAIR), illegal aliens cost the state of Arizona \$2.6 billion each year.<sup>4</sup>
- According to the latest (2008) figures from the Pew Hispanic Center, 9.8 percent of Arizona’s workforce is composed of illegal aliens, the third highest rate in the country.<sup>5</sup> (That number has most likely decreased due to an earlier *state* law, the Legal Arizona Workers Act, which mandated E-Verify.)
- While no records are kept on the total number of crimes committed by illegal aliens, the drug wars have given Phoenix the highest kidnapping rate in the country.<sup>6</sup> Twelve police officers have been killed or seriously maimed by illegal aliens in Phoenix alone.<sup>7</sup>

## The Obama Administration's Intentional Failure to Enforce the Law

On multiple occasions, President Obama has purported to sympathize with the concerns of Arizonans and acknowledged that it was federal inaction that led to the current crisis; nonetheless he calls the state’s response “misguided.” Upon the passage of the law, he stated: “Our failure to act responsibly at the federal level will only open the door to irresponsibility by others.” Upon issuing his complaint against Arizona, Attorney General Holder stated, “Arizonans are understandably frustrated

with illegal immigration, and the federal government has a responsibility to comprehensively address those concerns.” As Justice Bolton declared, in her injunction against SB 1070, “The court by no means disregards Arizona’s interests in controlling illegal immigration.”<sup>8</sup> Yet this “failure to act” is explicit government policy under the Obama administration.



Because SB 1070 mirrors federal law, the fact that the Obama administration claims it conflicts with federal policy is an implicit admission that they are not fully enforcing law. The Justice Department’s complaint against Arizona states, “In exercising its significant enforcement discretion, the federal government prioritizes for arrest, detention, prosecution, and removal those aliens who pose a danger to national security or a risk to public safety.”<sup>9</sup> Department of Homeland Security (DHS) Secretary Janet Napolitano stated, “We have some deep concerns with the law, from a law enforcement perspective; because we believe it will detract from and siphon resources that we need to focus on those in the country illegally who are those who are committing the most serious crimes in addition to violating our nation’s immigration laws.”<sup>10</sup> In other words: *unless illegal aliens also commit a serious crime in addition to illegal presence, they are not a “priority” of the federal government.*

On the few occasions when the Obama administration enforced immigration law, they later investigated those who carried out their orders. After a workforce raid in Bellingham, Washington, found 28 illegal aliens, Secretary Napolitano ordered an investigation of Immigration and Customs Enforcement (ICE) to see why the raid took place.<sup>11</sup> When a woman wrote Obama about her illegal alien husband, and the White House reported him to ICE, the man was eventually freed and the administration launched an investigation to see just who in the White House had reported the illegal alien to ICE.<sup>12</sup>

The Justice Department explicitly defended sanctuary cities’ “right” to withhold cooperation from federal immigration officials. According to Attorney General Holder, “There is a big difference between a state or locality saying they are not going to use their resources to enforce a federal law, as so-called sanctuary cities have done, and a state passing its own immigration policy that actively interferes with federal law [which he claims Arizona did].”<sup>13</sup> The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 explicitly prohibits sanctuary cities.

While the Justice Department’s complaint states that “The federal government, moreover, welcomes cooperative efforts by states and localities to aid in the enforcement of the nation’s immigration laws,”<sup>14</sup> in 2009, they restricted and threatened to revoke Maricopa County Sheriff Joe Arpaio’s 287(g) agreement.<sup>15</sup> Section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 creates a program whereby federal immigration authorities deputize state and local law enforcement to help them enforce immigration law.

### States’ Rights and Federal Responsibilities

The Justice Department’s lawsuit is premised on the idea that “the Constitution and federal law do not permit the development of a patchwork of state and local immigration policies throughout the country” and that Arizona’s law interferes with federal immigration enforcement. In reality, SB 1070 is designed specifically to enable local police to assist federal immigration officials in enforcing federal immigration law. The only conflict is that the Obama administration does not actually want to enforce federal immigration law.

All the measures dealing with detaining and questioning illegal aliens in SB 1070 mirror federal laws, eliminating any potential conflict with them. Illegal presence is a federal crime, and no one will be detained under SB 1070 who is not guilty of that crime.

SB 1070 does not conflict with federal law; how-

ever, *it does conflict with the Obama administration's policy not to fully enforce the law*, what the complaint calls “the exercise of discretion, the administering agencies may decide not to apply a specific sanction Arizona laws are meant to aid the federal government.”<sup>16</sup> Judge Susan Bolton’s injunction stated, “Federal resources will be taxed and diverted from federal enforcement priorities as a result of the increase in requests for immigration status determination that will flow from Arizona law enforcement.”<sup>17</sup> However, the Constitution gives the plenary power of immigration policy to Congress, not to the executive branch.

Congress has passed, and the courts have approved, numerous pieces of legislation that are meant to encourage states and localities to assist federal authorities with immigration enforcement, such as the aforementioned 287(g).

Despite claims that the federal government will be overwhelmed by having to look into the immigration status of potential illegal aliens detained under SB 1070, the Department of Justice enters “civil immigration warrants” into the “National Crime Information Center Database” in order to enable state and local law enforcement agencies to look up immigration status.<sup>18</sup>

In 2002, the Department of Justice issued guidelines allowing state and local law enforcement to detain illegal aliens who had not committed any crimes other than illegal presence.<sup>19</sup>

The courts have repeatedly upheld state measures on immigration. In *Chicanos Por La Causa, Inc. et al. v. Napolitano et al.*, the 9<sup>th</sup> Circuit Court of Appeals—widely acknowledged as the most liberal in the country—upheld Arizona’s Legal Arizona Workers Act (LAWA). Unlike SB 1070, LAWA places immigration restrictions that are not part of federal law—namely requiring all employers to use E-Verify.<sup>20</sup>

There are some areas of immigration law that are reserved to the federal government, such as setting immigration quotas, border security, and deportation proceedings. SB 1070 in no way attempts to interfere with these functions.

### Reasonable Suspicion and Racial Profiling

Although the Justice Department’s complaint focuses on federal jurisdiction, Attorney General Holder said this “doesn’t mean that if the law, for whatever reason, happened to go into effect that six months from now, a year from now, we might not look at the impact the law has had and whether or not—see whether or not there has been that racial profiling impact.”<sup>21</sup> SB 1070 will not lead to racial profiling, and even if it did,

it would still be constitutional.

SB 1070 mirrors federal immigration law, so if it constitutes racial profiling or any due process violation, then federal immigration policy is also unconstitutional.

SB 1070 specifically states that the police “may not consider race, color or national origin” in checking immigration status.

The Supreme Court ruled unanimously in the 1975 case *United States v. Brignoni-Ponce* that ethnicity may be used as a consideration in checking for immigration status. Writing for the majority, Justice Lewis Powell wrote, “The likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor.”<sup>22</sup> In the 2005 case *Muehler v. Mena*, the Supreme Court unanimously ruled that “Because Mena’s initial detention was lawful ... no additional Fourth Amendment justification for inquiring about Mena’s immigration status was required.”<sup>23</sup> By barring racial profiling and requiring reasonable suspicion before checking status, *SB 1070 is actually far less aggressive in its enforcement of potential immigration violations than the Supreme Court has allowed.*

That being said, according to the Pew Hispanic Center, over 90 percent of the illegal alien population in Arizona is from Mexico alone, and most of the rest are from other Latin American countries.<sup>24</sup> Approximately 23 percent of the Hispanic population in Arizona is illegal.<sup>25</sup> And according to another Pew Hispanic Center report, 55 percent of all Mexican immigrants are here illegally.<sup>26</sup>

### Arizonans Support SB 1070, Americans Support Arizona

Opinion polls consistently show that Americans strongly support Arizona’s law and oppose the Obama administration’s attempts to block it.

According to a June 29 Rasmussen Poll, Arizonans support SB 1070: 66–24 percent and oppose the Justice Department’s lawsuit: 62–23 percent.<sup>27</sup>

Polling consistently shows overwhelming support for the Arizona law: 55–27 percent (FOX News, June 29–30), 55–30 percent (Quinnipiac University Poll, July 13–19),<sup>28</sup> and 55–40 percent (CNN, July 16–20).<sup>29</sup>

When asked, most people say they want an Arizona-style law in their states: 51–35 percent (Quinnipiac University Poll, July 13–19), 55–34 percent (Fox News, July 13–14),<sup>30</sup> and 55–33 percent (Rasmussen, May 14–15).

When told specifically about the major provisions of the law and asked “Suppose a police officer stops someone for a traffic violation or a violation of some

other law. If the police officer suspects that the person they stopped might be an illegal immigrant, should the officer be required to check their immigration status?" Most say yes: 69–23 percent (Rasmussen, May 14–15).<sup>31</sup>

Americans overwhelmingly oppose the Justice Department's lawsuit against Arizona: 60–28 percent (Quinnipiac University Poll, July 13–19), 59–29 percent (Fox News, July 13–14), and 56–26 percent (Rasmussen, May 26–27).<sup>32</sup>

Americans overwhelmingly oppose the Obama administration's immigration policy: 59–38 percent (CNN, July 16–19) and 58–30 percent (Quinnipiac University Poll, July 13–19).

### Obama Ignores Americans... Pandors to Foreign Governments

The Justice Department's lawsuit states that one reason for its opposition to SB 1070 is that "it will interfere with vital foreign policy and national security interests by disrupting the United States' relationship with Mexico and other countries."<sup>33</sup>

Obama's Deputy Secretary of State James Steinberg released an affidavit against SB 1070, which, he claimed, "is insensitive to U.S. foreign affairs priorities, and has the potential to harm a wide range of delicate U.S. foreign relations interests." Not surprisingly, he cited concerns by the United Nations and Mexico, but he even stated that the socialist dictatorship of Venezuela's claims that "it could lead to the legitimization of racist attitudes and the latent risk of violence" are a reason to oppose the law.<sup>34</sup>

At the White House, Mexican President Felipe Calderon decried "such laws as the Arizona law that is forcing our people to face discrimination." Obama did not defend America from this attack by a foreign leader, and later appeared at a joint press conference with Calderon echoing his concern, though he tempered his remarks, stating the law merely had the "potential to be discriminatory."<sup>35</sup> ■

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