

ARIZONA STATE IMMIGRATION LEGISLATION

Tips for Law Enforcement and Advocates Working With Immigrant Crime Victims

Support Our Law Enforcement and Safe Neighborhoods Act (Arizona SB 1070)

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Introduction:

The following chart summarizes the status of each provision. For the provisions of the legislation that remain in effect, this chart provides implementation suggestions for law enforcement and safety planning strategies for victim advocates and attorneys working with immigrant victims of domestic violence, sexual assault, human trafficking and other immigrant crime victims. The goal is to identify measures that help ensure that immigrant victims of criminal activity continue to have access to assistance from the justice, health care, and social services systems that are to be open as a matter of federal law² and state domestic violence, sexual assault and anti-human trafficking laws to all victims without regard to their immigration status.

Status:

The Supreme Court reviewed the constitutionality of SB 1070 in Arizona v. United States, 132 S. Ct. 2492, 2495 (2012). On June 25, 2012 the Supreme Court held unconstitutional three of the four provisions and upheld one of the provisions, which may be subject to future challenges.

PROVISIONS STRUCK DOWN BASED ON PREEMPTION

Arizona v. United States, 132 S. Ct. 2492, 2495 (2012)

Provision	Reasoning	Current Status
Section 5(c) → Crime for immigrants without work permits to work or seek employment in the state of Arizona. Ariz. Rev. Stat. Ann. § 13–2928(C).	Held that this provision upsets the balance struck by the Immigration Reform and Control Act of 1986 (IRCA), which makes it illegal for employers to knowingly hire, recruit, refer, or continue to employ unauthorized workers. In passing this Act, Congress made a deliberate choice <i>not</i> to impose criminal penalties on immigrants who engage in unauthorized employment. Because provision 5(c) seeks to impose criminal penalties on immigrants who seek or engage in unauthorized employment, it is a law contrary to the regulatory system that Congress chose.	STRUCK DOWN
Section 3 → Crime for immigrants to fail to carry	The Supreme Court clarified that immigration is a field occupied by Congress, and has delineated a full set of standards	STRUCK DOWN

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² Examples include: The Violence Against Women Act, the Trafficking Victims Protection Act, The Family Violence Protection and Services Act, The Victims of Crime Act, The Elder Justice Act and The Child Abuse Prevention and Treatment Act

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registration documents. Ariz. Rev. Stat. Ann. § 13–1509(A).	dictating when immigrants must register with the government. This Arizona state law provision intrudes on the field of immigrant registration which fall within the purview of federal immigration laws, a field in which Congress has left no room for States to regulate.	
Section 6 → Police were to be authorized under Arizona law to arrest any immigrant they believe has committed a deportable offense. Ariz. Rev. Stat. Ann. § 13–3883(A)(5).	Supreme Court stated that Federal law specifies limited circumstances in which state officers may perform the functions of immigration officers. This Arizona state law provision violates the principle that the removal process is entrusted to the discretion of the Federal Government. Its enforcement presents an obstacle to the full purposes and objectives of Congress.	STRUCK DOWN

PROVISIONS THAT MAY BE OVERTURNED DEPENDING ON IMPLEMENTATION

Bill Text: <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>

Provision	Advise/Tips:
Section 2(B) → State officers can determine the immigration status of any person they stop, detain or arrest on some legitimate basis unrelated to immigration status, if they have reasonable suspicion that the person is not lawfully present in the United States. ³ Ariz. Rev. Stat. Ann. § 11–1051(B).	To law Enforcement: <ul style="list-style-type: none"> • Police should be trained on what is and is not a legitimate basis for stopping an individual. Under Arizona v. U.S. means the stop, detention or arrest can only be made on some <i>legitimate basis</i> unrelated to immigration status • Implementing U Visa certification and T Visa declaration practices will help mitigate impact of this provision on immigrant crime victims • Become knowledgeable about DHS policies designed to promote safety and prevent immigration enforcement against immigrant crime victims

³ The Supreme Court in Arizona v. U.S. left open the possibility of future challenge to these provisions if states implement them in a manner that involves racial profiling, that is inconsistent with federal immigration laws, or is otherwise unconstitutional. For a more complete discussion of this issue see Benish Anver and Rocio Molina, Impact of Arizona v. United States and Georgia Latino Alliance for Human Rights v. Governor of Georgia on Georgia’s Immigration Law, available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/federal-preemption/Preemption-Georgia-Immigration-Law.pdf/view>

	<p>and witnesses.⁴</p> <ul style="list-style-type: none"> • Cooperate with DHS in notifying them when an immigrant detained by local law enforcement is a crime victim or witness⁵ • Train state and local law enforcement on victim protections under immigration law using DHS roll call videos and other DHS and DOJ funded training materials⁶ <p>For Advocates:</p> <ul style="list-style-type: none"> • Screen crime victims early to determine eligibility for immigration relief.⁷ • Assist immigrant crime victims in applying for VAWA, T or U visa immigration relief • File victim’s immigration case as early, preferably prior, to seeking assistance from family courts⁸ • If your client has filed for VAWA, T or U visa relief tell the victim to memorize her case number “A: number and if safe to do so carry a copy of a form she received from DHS in connection with her case. The victim should call you if she is stopped so that you can provide law enforcement with a evidence of her immigration case along with a copy of the DHS broadcast⁹
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STATE LAW PROVISIONS IMPLEMENTED

Bill Text: <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>

Provisions	Tips/Advice:
<p>Section 4 → Makes it a crime in Arizona for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose. Ariz. Rev. Stat. Ann. § 13-2319.</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> • Screen immigrant crime victim clients early for eligibility for VAWA, T or U visa relief. • Applying early for relief will bring earlier access to these important documents. Immigrant crime victims gain access to legal work authorization and legal identification documents through VAWA, T

⁴ For an overview of DHS enforcement priorities and victim protection memos go to: <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/tools/DHS%20Enforcement%20Priorities%20Memos.pdf/view> and <http://niwaplibrary.wcl.american.edu/reference/additional-materials/materials-for-adjudicators-and-judges/tools-for-courts-on-immigration-relief-for-immigrant-crime-victims-and-other-immigrants/DHS%20Enforcement%20Priorities%20Information%20for%20State%20Court%20Judges%207.29.13%20FINAL.pdf/view>

⁵ For information on cooperation with DHS in identifying immigrant crime victims see <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/immigration-detainer-form%20Dec%202012.pdf/view>

⁶ DHS roll call videos are available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/building-capacity/copy_of_dhs-roll-call-videos; DHS and DOJ produced and funded U and T visa training materials are available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/building-capacity>

⁷ Screening tool for law enforcement and victims services <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/february-15-2013-collaborating-with-le/Blue-Card-Screening-for-Eligibility.pdf/view>; Protection from deportation for immigrant survivors who have filed immigration cases <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message-to-DHS-384-COA-Final-12.21.10.pdf/view>

⁸ Safety planning flow chart <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/tools/dhs-policies-safety-planning-flow-chart.pdf/view>

⁹ <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/message-to-DHS-384-COA-Final-12.21.10.pdf/view>

	<p>or U visa immigration relief</p> <ul style="list-style-type: none"> • Inform immigrant crime victims not to buy or use false identification documents which can preclude or complicate access to immigration protections.
<p>Section 5 (a) → Makes it an Arizona state crime for an occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic. Ariz. Rev. Stat. Ann. § 13-2928(A).</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> • Inform immigrant crime victim clients of the dangers associated with seeking work as an undocumented immigrant under Arizona law • Screen immigrant crime victims for VAWA, T or U visa eligibility and assist them in applying as early as possible for victim related immigration relief. • The earlier their case is filed the sooner they will gain access to legal work authorization which can take up to a year or 18 months.
<p>Section 7 → An employer shall not intentionally employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an immigrant in Arizona, the employer intentionally contracts with an unauthorized immigrant or with a person who employs or contracts with an unauthorized immigrant to perform the labor, the employer violates this subsection Ariz. Rev. Stat. Ann. § 23-212.01.</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> • This provision of Arizona law will make it more difficult for immigrant victims to survive economically apart from their abusive partners or employers. • Screen victims for eligibility for VAWA, T or U visa relief and help them file applications as early as possible. Once the victim's VAWA, T or U visa case has been approved they will receive legal work authorization. • Immigrant crime victims gain access to legal work authorization and legal identification documents through VAWA, T or U visa immigration relief. Applying early will bring earlier access to lawful work authorization which can take up to a year or 18 months following application. • Some younger victims who arrived in the U.S. as children should also be screened for eligibility for Deferred Action for Childhood Arrivals (DACA) which can provide access to legal work authorization while the victims VAWA, T or U case is pending.¹⁰
<p>Section 8 → After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer. Ariz. Rev. Stat. Ann. § 23-214.</p>	<p>For Advocates:</p> <ul style="list-style-type: none"> • Immigrant crime victims gain access to legal work authorization and legal identification documents through VAWA, T or U visa immigration relief. Applying early will bring earlier access to lawful work authorization which can take up to a year or 18 months following application. • Some younger victims who arrived in the U.S. as children should also be screened for eligibility for Deferred Action for Childhood Arrivals (DACA) which can provide access to legal work authorization while the victims VAWA, T or U case is pending.¹¹
<p>Section 9 (a)(4) → A peace officer shall cause the removal and either immobilization or impoundment of a</p>	<p>To Law Enforcement:</p> <ul style="list-style-type: none"> • Law enforcement officials charged with implementing this provision should be trained on VAWA, T and U visa immigration

¹⁰ Deferred Action for Childhood Arrivals (DREAMERS),

<http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/deferred-action-for-childhood-arrivals-dreamers-can-also-help-immigrant-survivors>

¹¹ Id.

<p>vehicle if the peace officer determines that a person is in violation of a criminal offense and is transporting, moving, concealing, harboring or shielding or attempting to transport, move, conceal, harbor or shield an immigrant in Arizona in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law. Ariz. Rev. Stat. Ann. § 28-3511.</p>	<p>protections and the priorities DHS has set out for identifying immigrant crime victims and referring them to services who can assist them in filing for VAWA, T or U visa relief.</p> <ul style="list-style-type: none"> • Train state and local law enforcement on victim protections under immigration law using DHS roll call videos and other DHS and DOJ funded training materials¹² • By becoming familiar with DHS policies and procedures regarding crime victims.¹³ • Implementing U visa certification and T visa declarations¹⁴ policies can help ensure that this provision of Arizona law is implemented in a manner that does not impede law enforcement agencies' ability to prosecute crime perpetrators and the ability of immigrant crime victims to access justice system help, health care and victim assistance. • To recognize immigrant victims of domestic violence, sexual assault, human trafficking. Make sure that they are not immigrant victims of a crime who either qualify or have submitted a petition for a U, T, or VAWA. This would save resources and protect victims of crimes according to John Morton's prosecutorial discretion memo.¹⁵
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¹² DHS roll call videos are available at http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/building-capacity/copy_of_dhs-roll-call-videos ; DHS and DOJ produced and funded U and T visa training materials are available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/iwp-training-powerpoints/building-capacity>

¹³ John Morton, *Prosecutorial Discretion in Immigration Enforcement* (June 17, 2011), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-CertainVictimsWitnessesandPlaintiffs-Memo-06-17-2011.pdf/view>

¹⁴ DEP'T OF HOMELAND SEC. U Visa Law Enforcement Certification Enforcement Guide (2012), available at, http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/dhs_u_vis_a_certification_guide.pdf/view and http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/u-visa/government-memoranda-and-factsheets/TU_QAforLawEnforcement.pdf/view

¹⁵ John Morton, *Prosecutorial Discretion in Immigration Enforcement* (June 17, 2011), <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/government-documents/Morton-CertainVictimsWitnessesandPlaintiffs-Memo-06-17-2011.pdf/view>