

**Fact Sheet:**  
**Impact of the Supreme Court Decision on  
Georgia's Illegal Immigrant Reform and Enforcement Act of 2011<sup>1</sup>**

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## **Background**

In March 2011, the Georgia state legislature passed the Illegal Immigrant Reform and Enforcement Act of 2011, which was introduced as House Bill 87 (“HB 87”). Three months later on June 2, 2011, the American Civil Liberties Union and other civil rights groups filed a class action suit challenging the constitutionality of HB 87. As result, a federal judge issued a temporary injunction against the following sections requiring law enforcement officers to:

- Georgia's Section 7
  - If a law enforcement officer has probable cause to believe the suspect has committed a crime, including any traffic offense, the officer is authorized to verify the suspect's immigration status if the suspect cannot provide identification;
  - Imposed criminal penalties on anyone who knowingly harbors or transports undocumented immigrants while committing another crime or using fake identification to gain employment in Georgia;
  - Imposed criminal penalties for “inducing an illegal alien to enter into [Georgia],” which applied to “[a] person who is acting in violation of another criminal offense and who knowingly induces, entices, or assists an illegal alien to enter into [Georgia], when such person knows that the person being induced, enticed, or assisted to enter into [Georgia] is an illegal alien.
  
- Georgia's Section 8
  - Check the immigration status of those stopped by police if there is probable cause that the suspect has committed a crime, and
  - Criminalizing the transportation or harboring of undocumented immigrants

The State of Georgia appealed this decision, and the US Court of Appeals for the Eleventh Circuit deferred to the Supreme Court's reasoning in *Arizona v. United States*, which analyzed the constitutionality of Arizona's Senate Bill 1070 (“SB 1070”), a state legislation bill which also adopted similar strict immigration law statutes passed by Arizona legislature in July 2010. The Supreme Court gutted a significant portion of the law and the Eleventh Circuit did the same to HB 87.

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## **Supreme Court Decision - *Arizona v. United States* – June 25, 2012**

The Supreme Court ruled that the following provisions of the law were unconstitutional and unenforceable:

- Immigrant Registration Laws: State laws making the “willful failure to complete or carry an alien registration document . . .” a state misdemeanor crime;
- Laws Prohibiting Undocumented Immigrants from Applying for, Soliciting, or Performing Work;
- Laws Promoting Warrantless Arrests of Immigrants, because such laws “attempt to provide state officers with even greater authority to arrest aliens on the basis of possible removability that Congress has given to trained federal immigration officers.”

The basis of the Court’s finding of unconstitutionality of these three provisions was the concept of preemption. Preemption refers to the idea that there are certain areas the federal government, and the federal government alone, has the authority to regulate. If a state tries to legislate on a subject matter within the area of the federal government, the U.S. Supreme Court has said that the law can be “preempted” or blocked from being enforced. One such area is immigration.

The Supreme Court upheld one section of SB 1070: Section 2(B), which requires state officers to make a “reasonable attempt... to determine the immigration status’ of any person they stop, detain, or arrest on some other legitimate basis if ‘reasonable suspicion exists that the person is an alien and is unlawfully present in the United States.’” One of the reasons the Court upheld Section 2(B) is because the provision had not yet gone into effect at the time the case was before the Court and that it would be prudent to wait and see how the state courts would interpret the provision.

### **Georgia’s Illegal Immigrant Reform and Enforcement Act of 2011 and the Eleventh Circuit**

Following the Supreme Court ruling in *Arizona vs. United States*, the Eleventh Circuit Federal Court of Appeals in *Georgia Latino Alliance for Human Rights v. Governor of Georgia* upheld an injunction stopping implementation of the following state law provisions of Georgia’s Section 7 as likely to be unconstitutional based on federal preemption grounds:

- State law making transporting or moving undocumented immigrants a crime.
- Creating a criminal offense for inducing an undocumented immigrant to enter the state.
- State law criminalizing harboring or concealing undocumented immigrants.

The Eleventh Circuit Federal Court of Appeals did not rule on the constitutionality of Georgia’s Section 8 because it was not enforced in Georgia at the time of the ruling (see above explanation of why the Supreme Court upheld Arizona Section 2(B)). Therefore, Georgia Section 8 is still enforceable.

### **Which Provisions are Still in Place?**

Through both of these decisions the Supreme Court and the Eleventh Circuit have provided a framework for analyzing state laws regulating immigration. The Courts have not made a determination on the constitutionality of the provisions that have not yet taken effect (Arizona Section 2(B) and Georgia Section 8). Since the courts have not made a determination on the constitutionality of these provisions, they are to be enforced according to how they are written in the state law. However, it remains to be seen what the federal courts will do with the rest of provisions that court did not review once they are enforced and, undoubtedly, challenged.