

**Effects of *Arizona v. U.S.* on the Validity of State Immigrant Laws<sup>1</sup>**  
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Traditionally, the power to regulate immigration and to enact immigration laws has rested exclusively in the hands of the federal government. However, in recent years a number of state laws and local ordinances have been enacted, giving state and local officials the authority to regulate immigration. State law provisions cutting access to programs, benefits, and services to non-citizens including undocumented immigrants, have been enacted.<sup>3</sup> The first laws were introduced in Arizona's racial profiling bill, the Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070). Before the bill was implemented, the United States District Court for the District of Arizona issued a preliminary injunction preventing the following four provisions from taking effect. These provisions were challenged on the grounds that the state could not enact laws that regulated an area that has traditionally been regulated by the Federal Government.

The Supreme Court reviewed the constitutionality of SB 1070 in *Arizona v. United States*. On June 25, 2012 the Supreme Court held unconstitutional three of the four provisions in controversy of Arizona's SB 1070.

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| <p><b>STRUCK DOWN</b><br/><b>I. § 5(c)</b>→ Crime for immigrants without work permits to work or even seek employment</p> | <p><b>STRUCK DOWN</b><br/><b>III. § 6</b>→ Police was authorized to arrest any immigrant they believe has committed a deportable offense.</p>  |
| <p><b>STRUCK DOWN</b><br/><b>II. § 3</b>→Crime for immigrants to fail to carry registration documents</p>                 | <p><b>UPHELD</b><br/><b>IV. § 2(b)</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.<sup>4</sup></p> |

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<sup>3</sup> For a complete analysis of federal preemption of state law ability to place immigration status limitations on access to programs deemed necessary to protect life and safety, emergency and community health care and other services see, Rocio Molina, Leslye Orloff and Benish Anver, Federal Preemption of State Laws That Attempt to Restrict Immigrant Access to Services Necessary to Protect Life and Safety (January 11, 2013) available at <http://niwaplibrary.wcl.american.edu/reference/additional-materials/immigration/enforcement-detention-and-criminal-justice/federal-preemption/State%20Services%20and%20Federal%20Preemption%201-11-13%20%20FINAL.pdf/view>

<sup>4</sup> 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

## Bills with some provisions similar to Arizona's SB 1070

- Alabama: H.B. 56
- Utah: H.B. 497
- South Carolina: SB20 or Act 69
- Indiana: SEA 590, Sections 19 & 18.
- Georgia: H.B. 87



This memorandum will outline the provisions of SB 1070 that were challenged in *Arizona v. United States*. Each description of an *Arizona* provision is followed by the current status of analogous state provisions in the aftermath of this Supreme Court ruling.

### **I. Criminalizing Unauthorized Employment Provision** **STRUCK DOWN**

*Arizona*: Section 5(c) of SB 1070 enacts a criminal provision making it a misdemeanor for an unauthorized alien to seek or engage in work in the State.

***Supreme Court's Reasoning:*** Provision upsets the balance struck by the Immigration Reform and Control Act of 1986, 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 *not* to impose criminal penalties on aliens who engage in unauthorized employment. Because provision 5(c) seeks to impose criminal penalties on aliens who seek or engage in unauthorized employment, it is a law contrary to the regulatory system that Congress chose. *Preempted.*

- Deems Unconstitutional:
  - o Alabama *overturned*
    - Beason-Hammon Alabama Taxpayer and Citizen Protection Act (H.B. 56), Section 11(a) – This provision is virtually identical to Section 5(c) of the Arizona law. In *US v. Alabama*, it was struck down by the Eleventh Circuit Court of Appeals.<sup>5</sup>

### **II. Criminalizing Failure to Carry Papers Provision** **STRUCK DOWN**

*Arizona*: Section 3 of SB 1070 makes it a misdemeanor for immigrants to willingly fail to complete or carry an alien registration document. Thus, if an immigrant willfully fails to carry his federal immigration registration documents at all times, he/she could be charged with a misdemeanor.

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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>

<sup>5</sup> United States v. Alabama, 691 F.3d 1269, 1283 (11th Cir. 2012).

**Supreme Court's Reasoning:** The Supreme Court clarified that Immigration is a field occupied by Congress, and has delineated a full set of standards dictating when immigrants must register with the government. This provision of SB 1070 is a state law penalty for conduct proscribed by federal law, which intrudes on the field of alien registration, a field in which Congress has left no room for States to regulate. *Preempted.*

- Deems Unconstitutional:
  - o *Alabama overturned*
    - Beason-Hammon Alabama Taxpayer and Citizen Protection Act (H.B. 56), Section 10 – This section of H.B. 56 is virtually identical to Section 3 of the Arizona law in criminalizing failing to carry registration documents. In *US v. Alabama*, it was struck down by the Eleventh Circuit Court of Appeals.<sup>6</sup>
  - o *South Carolina enjoined*
    - Illegal Immigration Reform Act (SB20 or Act 69) – In *US v. South Carolina*, Judge Gergel of the District Court held that Section 5 of SB20, which requires aliens to carry their registration documents pursuant to federal law, is impliedly preempted.<sup>7</sup> This section is enjoined.
    - *US v. South Carolina* is pending before the Court of Appeals for the Fourth Circuit on the State of South Carolina's interlocutory appeal.
  - o *Utah enjoined*
    - Illegal Immigration Enforcement Act (HB497), Section 4 – In *Utah Coalition of La Raza v. Herbert*, Judge Clark Waddoups of the US District Court for the District of Utah issued a temporary injunction against this section.<sup>8</sup>

### **III. Empowering Law Enforcement to Arrest Immigrants Provision** **STRUCK DOWN**

*Arizona:* Section 6 of SB 1070 authorizes officers to arrest without a warrant a person the officer has probable cause to believe has committed any public offense that makes the person removable from the U.S.

**Supreme Court's Reasoning:** Supreme Court stated that Federal law specifies limited circumstance in which state officers may perform the function of an immigration officer. This 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.

- Deems Unconstitutional
  - o *Indiana overturned*

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<sup>6</sup> Id at 1282

<sup>7</sup> United States v. South Carolina, 840 F. Supp. 2d 898, 926 (D.S.C. 2011).

<sup>8</sup> Unreported decision in *Utah Coalition of La Raza v. Herbert*, No. 2:11-CV-401 CW, 2011 WL 7143098, at \*1 (D. Utah May 11, 2011). The decision may be found at <https://ecf.utd.uscourts.gov/doc1/18312333206>.

- Immigration Law (SEA 590), Section 1(a) – In *Buquer v. City of Indianapolis*, the US District Court for the Southern District of Indiana ruled that this law’s provision that allows police to arrest non-citizens without a warrant is unconstitutional.<sup>9</sup>
- Utah *enjoined*
  - Illegal Immigration Enforcement Act (HB497), Section 11 – This section gives police officers authority to conduct warrantless arrests of persons for whom the officer has reasonable cause to believe 1) are subject to a civil removal order of an immigration judge, 2) have a civil detainer warrant issued against them by DHS, or 3) have been charged or convicted in another state of a any public offense that makes those persons deportable. In *Utah Coalition of La Raza v. Herbert*, Judge Clark Waddoups of the US District Court for the District of Utah issued a temporary injunction on this law and reserved its ruling until the Supreme Court issued a decision.<sup>10</sup>

#### IV. “Show Me Your Papers” Provision UPHELD, BUT SUBJECT TO FUTURE CHALLENGES

*Arizona*: Section 2(B) of SB 1070 provides that officers who conduct a stop, detention, or arrest *must* in some circumstances where there is reasonable suspicion, make efforts to verify the person’s immigration status with the Federal Government.

***Supreme Court’s Reasoning***: Two challenges were presented: (1) the mandatory nature of the status check, and (2) the possibility of prolonged detention. With regards to the first challenge, the Supreme Court held that Congress has done nothing to suggest it is inappropriate to communicate with ICE during detentions or arrest, and has actually encouraged the sharing of information about possible immigration violations. With regards to the second challenge, the Supreme Court stated that “detaining individuals solely to verify their immigration status would raise constitutional concerns, and it would disrupt the federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without federal direction and supervision.” (2510) Although through the implementation of Section 2(B) individuals may be stopped just to verify their immigration status, it does *not* state that on its face. Because it has not yet been implemented, the Court does not have proof that this provision presents constitutional challenges. However, it was noted that the constitutionality of the provision could again be raised after the implementation of the law.

- Copycats:

- South Carolina *enjoined*
  - Illegal Immigration Reform Act (SB20 or Act 69), Section 6 – In *US v. South Carolina*, Judge Gergel of the US District Court for the District of South Carolina held that Section 6, which authorizes state and local law enforcement to undertake immigration status checks, is preempted by

<sup>9</sup> *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 921-922 (2011).

<sup>10</sup> Unreported decision in *Utah Coalition of La Raza v. Herbert*, No. 2:11-CV-401 CW, 2011 WL 7143098, at \*1 (D. Utah May 11, 2011). The decision may be found at <https://ecf.utd.uscourts.gov/doc1/18312333206>.

federal law.<sup>11</sup> Judge Gergel wrote Section 6 is impliedly preempted for three main reasons. First, he concluded “the federal government’s regulation of immigration enforcement is so pervasive and comprehensive that it has not left any room for the state to supplant it.” Second, Gergel held the provision would impose a large burden on the federal government’s finite resources dedicated to immigration enforcement. Gergel also concluded that Section 6 “improperly infringes on the federal government’s exclusive control of foreign affairs.”

- The case is pending before the Court of Appeals for the Fourth Circuit on the State of South Carolina’s interlocutory appeal.
- Utah *enjoined*
  - Illegal Immigration Enforcement Act (HB497), Section 3(1) & 3(2) – This section of the bill allows police officers to verify a person’s immigration status when a person is stopped for certain minor offenses, such as littering, jaywalking, and any traffic law violation, if the person cannot present government identification. An officer is mandated to verify the status of a person if they are arrested for any crime. In *Utah Coalition of La Raza v. Herbert*, Judge Clark Waddoups of the US District Court for the District of Utah issued a temporary injunction on this law and reserved its ruling until the Supreme Court issued a decision.<sup>12</sup>

#### Other State Law Provisions Not Ripe for Ruling as of August 2013

- Alabama
  - Beason-Hammon Alabama Taxpayer and Citizen Protection Act (H.B. 56), Section 12(a) – In *US v. Alabama*, the Eleventh Circuit declined to strike down the 12(a), a “papers please” provision, requiring law enforcement to verify immigrant status when stopping individuals under criminal suspicion. The judge implied that future lawsuits against Section 12(a) are not foreclosed, should the provision be enforced in a discriminatory manner.<sup>13</sup>
- Georgia
  - Illegal Immigration Reform and Enforcement Act of 2011 (H.B. 87), Section 8 – In *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, the Eleventh Circuit Court of Appeals declined to strike down Section 8.<sup>14</sup> Section 8 is a “papers please” provision, requiring law enforcement to verify immigrant status when stopping individuals under criminal suspicion. The judge implied that future lawsuits against Section 8 are not foreclosed, should the provision be enforced in a discriminatory manner.<sup>15</sup>

<sup>11</sup> 840 F. Supp. 2d 898, 926 (D.S.C. 2011).

<sup>12</sup> Unreported decision in *Utah Coalition of La Raza v. Herbert*, No. 2:11-CV-401 CW, 2011 WL 7143098, at \*1 (D. Utah May 11, 2011). The decision may be found at <https://ecf.utd.uscourts.gov/doc1/18312333206>.

<sup>13</sup> 691 F.3d 1269, 1285 (11th Cir. 2012).

<sup>14</sup> *Id.* at 1250, 1268

<sup>15</sup> *Id.*