

Judge blocks main provisions of Arizona anti-immigrant law

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A federal district judge issued a preliminary order Wednesday to bar enforcement of the main provisions of an anti-immigrant law passed by the Arizona state legislature in April and signed by Governor Jan Brewer. Judge Susan Bolton acted in response to a lawsuit filed by the Obama administration to prevent the law from taking effect as scheduled at midnight on the morning of July 29.

Judge Bolton found that the federal Department of Justice was likely to prevail in its arguments that the key provisions of the state law infringe on federal authority to regulate immigration and enforce immigration law. And she found that legal resident aliens and legal immigrants were likely to suffer harm because they could be detained in custody of state and local police while their immigration status was checked.

She did not block enforcement of the law, SB 1070, in its entirety, because the law contains a “severability” clause that allows any provision not found unconstitutional to take effect even if the rest of the bill is struck down. Most of the intact portions of the law, nine out of thirteen, involve technical changes in state statutes and will have little practical effect.

The main provisions whose enforcement was enjoined include:

- Portions of section 2, requiring that police make a “reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is a reasonable suspicion that person is unlawfully present in the United States, and requiring verification of the immigration status of any person arrested prior to releasing that person.”
- All of section 3, creating a state crime for the “failure to apply for or carry alien registration papers.”
- A portion of section 5, making it a state crime “for an unauthorized alien to solicit, apply for, or perform work.”
- All of section 6, which authorizes the warrantless arrest of a person where “there is probable cause to

believe” the person has committed a public offense (in another state) that would make them deportable from the United States.

Only one substantive prohibition remains intact and enforceable, a ban on day laborers congregating along public streets to offer themselves for work, and a ban on employers contracting with these laborers under those conditions.

Bolton accepted the Justice Department argument that the Arizona law “necessarily places lawfully present aliens (and even US citizens) in continual jeopardy of having to demonstrate their lawful status to non-federal officials,” and that there were numerous individuals, legally present in the United States, “who will not have readily available documentation to demonstrate that fact.”

In her 36-page opinion, Bolton agreed with the federal contention that “United States citizens are not required to carry identification, and some citizens might not have easy access to a form of identification that would satisfy the requirement” of the Arizona law.

She also agreed that federal law reflects “Congress’s deliberate choice *not* to criminally penalize unlawfully present aliens for performing work, much less for attempting to perform it.” In other words, since Congress has not criminalized the work performed by undocumented workers, the state government may not do so either.

The judge rejected the argument made by the state of Arizona that it was merely using its own police resources to enforce a federal law—i.e., helping rather than hindering the federal government. “Even though Arizona’s interests may be consistent with those of the federal government,” she wrote, “it is not in the public interest for Arizona to enforce pre-empted laws.”

From a legal standpoint, Bolton’s ruling represents a return to the status quo before the passage of the Arizona law, which will now be further litigated in the federal

district and appeals courts, with all sides expecting an ultimate appeal to the US Supreme Court, a process that could take several years, and whose outcome is by no means certain.

Governor Brewer, a Republican who is using the immigration issue in her bid for reelection in November, vowed to file an immediate appeal to the Ninth Circuit Court of Appeals in San Francisco. She reiterated the militaristic language habitually employed by those seeking to whip up anti-immigrant prejudice, declaring, “We are being invaded by illegal immigration in the state of Arizona.”

The Obama administration chose to focus its arguments entirely on the question of federal preemption of the area of immigration, not on the obviously anti-democratic and discriminatory character of the bill, particularly its open invitation to racial profiling of anyone who “looks foreign” to an Arizona state or local cop.

The upholding of federal authority is something of a two-edged sword. Today, it blocks the efforts of the Arizona authorities to establish a police-state regime against Hispanic, Asian and other non-white residents. Tomorrow, the same argument will be used against local governments that have sought a more humane approach toward undocumented immigrants, like those declaring themselves “sanctuary cities.”

This double-edge character of the ruling is suggested in the text of Bolton’s ruling where she declared, “There is a substantial likelihood that officers will wrongfully arrest legal resident aliens under the new” law. “By enforcing this statute, Arizona would impose a ‘distinct, unusual and extraordinary’ burden on legal resident aliens that only the federal government has the authority to impose.” In other words, the judge is arguing that the federal government *does* have the power to inflict such an “extraordinary burden” on immigrants, but the state government does not.

Meanwhile, the day-to-day reality is that much of Arizona is already a police state for undocumented workers. In Maricopa County, the state’s largest, including the city of Phoenix, Sheriff Joe Arpaio has mobilized thousands of deputies to check the immigration status of anyone stopped for routine traffic offenses or otherwise becoming the subject of police attention.

According to a report published Wednesday by the Associated Press, the Maricopa County sheriff’s department accounted for 26,146 deportations and forced departures of immigrants since 2007, twice the number of the next most active local police force, the Los Angeles

County sheriff’s department. Maricopa County accounted for nearly one quarter of the total US deportations instigated by local authorities rather than the federal Immigration and Customs Enforcement (ICE).

Appearing on ABC’s “Good Morning America” program on Wednesday morning, Arpaio boasted, “I don’t know what the big hype is going on with this law. We’ve been doing it for three years.” He said that regardless of the judge’s ruling, the sheriff’s department will continue seek verification of immigration status for anyone placed in Maricopa County jail for any reason.

Thousands of protesters were arriving in Phoenix Wednesday for planned protests outside the county jail and at other government locations. Arpaio threatened to fill the jails with all those who engage in civil disobedience and attempt to block access.

On August 1, some 1,200 National Guard troops will report for duty on the southwestern US-Mexico border, reinforcing the Border Patrol and state and local police agencies. The Obama administration has embraced the anti-immigrant frenzy being promoted by the ultra-right, with the backing of the Republican Party and large sections of the Democratic Party.

A Justice Department spokeswoman issued a statement welcoming Judge Bolton’s ruling, and declaring, “While we understand the frustration of Arizonans with the broken immigration system, a patchwork of state and local policies would seriously disrupt federal immigration enforcement and would ultimately be counterproductive.” She added that the administration “takes its responsibility to secure our borders seriously and has dedicated unprecedented resources to that effort.”



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