

US government files suit against Arizona anti-immigrant law

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The US Department of Justice filed suit Tuesday against the new anti-immigrant law adopted by the state of Arizona. The suit brought in federal court charges that the law is unconstitutional and seeks an injunction to prevent it from taking effect as scheduled July 29.

The legal complaint declares, “[T]he federal government has preeminent authority to regulate immigration matters. This authority derives from the United States Constitution and numerous acts of Congress.”

This federal authority preempts state jurisdiction, the lawsuit charges. The complaint asserts that “a state may not establish its own immigration policy or enforce state laws in a manner that interferes with the federal immigration laws.” It adds, “The Constitution and the federal immigration laws do not permit the development of a patchwork of state and local immigration policies throughout the country.”

Immigration is an intrinsically federal issue because the Constitution reserves to the federal government the power to determine citizenship and prescribe the process by which non-citizens become naturalized. A separate state immigration policy would, moreover, call into question the freedom of movement of people from state to state.

While this constitutional argument is well established and has been frequently upheld by the US Supreme Court, the lawsuit is equally significant for what it does not say. There is no claim that the provisions of the Arizona law are discriminatory or racist, authorize de facto racial profiling, or violate federal civil rights laws, as many civil rights and civil liberties groups have charged in their own litigation.

The *New York Times* reported, “In a background call with reporters, a senior [Justice] department official said the decision to file the lawsuit—and to do so on the ground that it pre-empts federal authority, rather than on civil rights grounds like racial profiling—followed extensive

deliberations with the Civil Rights Division and others inside the department.”

Instead, the suit argues that the Arizona law will make federal enforcement of immigration laws more difficult, since Arizona is expected to detain hundreds of thousands of suspected “illegals” and turn them over to Immigration and Customs Enforcement (ICE), the federal agency responsible for deporting undocumented immigrants.

These detainees, the complaint asserts, will flood the system with non-violent offenders, when the ICE is tasked to focus on suspected “terrorists,” drug traffickers and violent felons.

Attorney General Eric Holder sought to demonstrate sympathy with the anti-immigrant campaign in Arizona while making a law-and-order argument against the state legislation. “Arizonans are understandably frustrated with illegal immigration,” he told the press. “But diverting federal resources away from dangerous aliens such as terrorism suspects and aliens with criminal records will impact the entire country’s safety.”

The federal suit also claims the mass detentions will unduly burden local law enforcement officials, many of whom are opposed to the Arizona law for that reason. Police chiefs in Tucson and two other Arizona cities provided declarations in support of the lawsuit.

Because of such local opposition, particularly in heavily Hispanic cities like Tucson, the state legislation requires local police to engage in vigorous anti-immigrant efforts, and authorizes private lawsuits against local jurisdictions that drag their feet.

The reliance on the “pre-emption” doctrine is very much a double-edged sword, since the same arguments could be used against state and local governments which sought a more humane policy towards immigrant workers, such as towns that have proclaimed themselves “sanctuary cities” against federal immigration raids.

The Bush administration used the pre-emption doctrine

against an Illinois law that barred employers from using the ICE database to identify undocumented workers, as well as to overturn more liberal policies on other issues—for example, to limit product liability lawsuits and overturn bans on military recruiters adopted in areas of intense antiwar sentiment.

The Arizona law was passed through the Republican-controlled state legislature in April and signed into law by Republican Governor Jan Brewer. It requires local and state police to check on the immigration status of anyone with whom they come into contact in the normal course of their duties, provided they have “reasonable suspicion” that the individual is an “illegal immigrant.” It also makes it a state crime for legal immigrants not to carry their federal immigration papers—making it likely that tens of thousands of workers will be arrested even though they have green cards.

While the law states that police “may not consider race, color or national origin” by itself as grounds for suspicion, this language was inserted only to conceal the racist character of the legislation—to say nothing of how it will be enforced in practice.

The bill employs surrogates for race, such as speaking poor English, traveling in an overcrowded vehicle, or being in an area where “illegal” workers typically congregate, such as a roadside or parking lot where day laborers offer themselves for work. It also makes it a crime for a US citizen to hire a day laborer in such circumstances.

The law also represents a step in the direction of requiring all residents to carry identification papers, an encroachment on civil liberties and a further expansion of the police powers of the state. It threatens the democratic rights of all people, not only immigrants.

Governor Brewer, who is basing her campaign in the November election on her witch-hunt against “illegal immigrants,” denounced the federal lawsuit, suggesting a link between the Obama administration and narco-traffickers. “As a direct result of failed and inconsistent federal enforcement, Arizona is under attack from violent Mexican drug and immigrant smuggling cartels,” she said. “Now, Arizona is under attack in federal court from President Obama and his Department of Justice.”

Arizona’s two US senators, Republicans John McCain and Jon Kyl, issued a joint statement denouncing the suit, while nearly two dozen House Republicans sent a letter to Holder describing the suit as the “height of irresponsibility and arrogance.”

While most Democrats in the state legislature voted

against the bill, Democratic office-holders in Arizona issued statements opposing the federal lawsuit. In supremely opportunistic fashion, the Democrats are seeking both to appeal to the state’s large Hispanic community, which vehemently opposes the law, and to curry favor with racist and anti-immigrant elements as well.

The state attorney general, Terry Goddard, a Democrat and the party’s candidate for governor, said, “I’ve urged the administration and the Justice Department to focus on immigration reform and not on suing.”

Congresswoman Ann Kirkpatrick, a freshman Democrat, called the lawsuit “a sideshow distracting us from the real task at hand.” She added, “A court battle between the federal government and Arizona will not move us closer to securing the border or fixing America’s broken immigration system.”

Another Democratic congressman, Harry Mitchell, said he was “extremely disappointed,” calling the federal lawsuit “misdirected.” He declared, “It will not solve anything. The only thing this lawsuit will do is demonstrate to Arizonans that Washington still doesn’t get it.”

US District Judge Susan Bolton has already set a hearing for July 22 in Phoenix to hear arguments on whether to block the law from taking effect. A temporary injunction would certainly be appealed to the 9th Circuit Court of Appeals in San Francisco, and from there to the US Supreme Court, where the legal dispute is expected to end up.

The Obama administration’s decision to oppose the Arizona law solely on the basis of its infringement of federal authority, rather than its attack on civil liberties and appeal to racism, is a clear warning sign. No section of the US ruling elite and no faction of the political establishment, Democrat or Republican, has any commitment to the defense of democratic rights.

The right of all people to live and work in the country of their choice, regardless of national borders, can be realized only through the independent political action of the working class.



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