

Arizona anti-immigrant law argued before US Supreme Court

Tom Carter
26 April 2012

The oral arguments yesterday before the US Supreme Court over Arizona's anti-immigrant act are chiefly remarkable for the refusal of the Obama administration to mount any serious opposition to the unprecedented and authoritarian provisions of the law.

Arizona's Support Our Law Enforcement and Safe Neighborhoods Act (Arizona Senate Bill 1070) features prominently in the nationwide campaign to whip up racist, nationalist and law-and-order sentiments and expand the powers of the police. The bill, passed last April by the Arizona state legislature, was followed by similar bills in Alabama, South Carolina, Utah, Georgia and Indiana.

SB 1070, which has become a battle flag of sorts for extreme right-wing elements around the Republican Party, grants the Arizona police unprecedented powers to terrorize immigrants in the name of ridding the state of so-called "illegal aliens."

The bill constitutes an attack not just on immigrants, but on the fundamental democratic rights of the American people as a whole.

Among the extraordinary powers granted to police is the power to demand, without a warrant, identification papers from anyone who the police "suspect" is an undocumented immigrant. Whoever is unable to produce proof of citizenship is to be seized and turned over to federal authorities for deportation. There is more than a whiff of fascism in this provision, which has long been a demand of white supremacist groups.

This provision is clearly unconstitutional. The Fourth Amendment, part of the Bill of Rights, prohibits "unreasonable searches and seizures" and requires the police to obtain a warrant before conducting a search. The police have no authority under the Constitution to conduct a search on the mere suspicion that a person is an undocumented immigrant.

On what basis is a police officer supposed to develop a "suspicion" that a person is an undocumented immigrant?

In practice, this provision provides a blank check for police officers to single out people for harassment and intimidation on the basis of race or ethnicity. The Fourteenth Amendment, passed in the aftermath of the Civil War, prohibits discrimination of this kind.

SB 1070's provisions make it a crime for immigrants not to carry an "alien registration document," criminalize job applications by undocumented immigrants, and make it easier for the police to imprison individuals whom the police believe can be deported.

Perhaps the most ominous provision in SB 1070 makes it a crime to "conceal, harbor, or shield" an undocumented immigrant, echoing the vague "material support for terrorism" laws included in the USA PATRIOT Act.

The Ninth Circuit Court of Appeals struck down the obviously unconstitutional provisions of SB 1070 last year. Rather than wait until litigation over the bill had completed its course in the lower courts, as tradition requires, the Supreme Court took the highly unusual step of rushing to review the Ninth Circuit decision this term. This decision was no doubt motivated by the opportunity the case presented for certain justices to deliver anti-immigrant speeches from the bench in an election year.

Because the provisions of the Arizona bill are so obviously unconstitutional, the decision of the Supreme Court to take the case in the first place, after many provisions of the bill had already been struck down on what historically would have been uncontroversial grounds, is itself provocative.

Justice Elena Kagan, an Obama appointee, recused herself from the case, leaving only eight justices to vote in the ultimate decision. Her recusal strengthens the position of the right-wing four-justice bloc of Antonin Scalia, Clarence Thomas, Samuel Alito, and Chief Justice John Roberts.

With a number of justices on the Supreme Court

evidently poised to carry out a major attack on democratic rights, the position taken by the Obama administration in oral arguments yesterday is remarkable for the absence of any serious commitment to such rights.

Cowardly, obsequious, indifferent to questions of principle, the Obama administration is perpetually terrified of antagonizing the Republican right. Accordingly, the administration's solicitor general, Donald Verrilli, opposed SB 1070 solely on the grounds that the Arizona law is pre-empted by federal law.

This contention is clearly true. Federal law has always trumped state law on all questions affecting immigration. While this legal question, once thought to be settled and uncontroversial, is significant, the Obama administration plainly seized on it as a way to avoid taking a position on the more important issue: the fact that the Arizona law flagrantly violates fundamental constitutional rights.

Verrilli's conduct emboldened the right-wing bloc. Roberts bluntly interrupted Verrilli's opening statement to confirm that the Obama administration was not opposed to the bill from the standpoint of democratic rights:

ROBERTS: Before you get into what the case is about, I'd like to clear up at the outset what it's not about. No part of your argument has to do with racial or ethnic profiling, does it? I saw none of that in your brief.

VERRILLI: That's correct.

ROBERTS: Okay. So this is not a case about ethnic profiling.

VERRILLI: We're not making any allegation about racial or ethnic profiling in this case.

Verrilli went on to make clear that the position of the Obama administration is simply that "the Constitution vests exclusive authority over immigration matters with the national government" and that immigration is a "problem [that] needs to be managed on a national basis."

Justice Sonia Sotomayor, an Obama appointee, expressed exasperation with Verrilli's unwillingness to present stronger arguments. "You can see it is not selling very well," she told him. "Why don't you try to come up with something else?"

The Obama administration's refusal to conduct a principled opposition to the Arizona bill opened the door for arch-reactionary Justice Scalia to dominate the arguments. Citing "states' rights," Scalia declared that Arizona should be free to take the initiative in the persecution of immigrants.

"[I]f, in fact, somebody who does not belong in this country is in Arizona, Arizona has no power?" Scalia

demanded to know. "What does sovereignty mean if it does not include the ability to defend your borders?"

The so-called "swing" justice Anthony Kennedy chimed in, asking "hypothetically" what Arizona should do when the state is confronted with "a massive emergency with social disruption, economic disruption, residents leaving the state because of [a] flood of immigrants." Verilli responded that Arizona would "have legitimate concerns in that situation."

The boldness of the right-wing judges in attacking democratic rights is in sharp contrast to the indifference of the Obama administration. In the final analysis, the conduct of the administration in this case underscores the fact that there is no serious support for core democratic rights within the political establishment.

Obama postured as a defender of the rights of immigrants during his 2008 election campaign, but his administration proved to be even more vicious than its Republican predecessor in persecuting them. For three straight years, the current administration set a record for the number of deportations, with well over one million people having been deported since Obama took office.

The Arizona state government has a history of using race and ethnicity to divide the working class stretching over a hundred years. Well into the second half of the 20th century, segregation was openly practiced in many parts of the state, with a wide range of establishments from restaurants to swimming pools denying access to Hispanic workers.

In the recent period, the xenophobic campaign against immigrants in Arizona has reached new levels of hysteria. With the tacit support of state authorities, violent gangs of armed right-wing vigilantes in camouflage uniforms are now permitted to roam the border with Mexico looking for "illegals." These forces will no doubt be encouraged by yesterday's arguments in the Supreme Court.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact