

Arizona v. United States

Supreme Court unanimously upholds antidemocratic attack on immigrant workers

Kevin Kearney
26 June 2012

Issuing its decision Monday on *Arizona v. United States*, the US Supreme Court unanimously upheld the core provision of Arizona's anti-immigrant law—SB 1070—that requires police officers to check the immigration status of anyone they stop for questioning or detention if there is a “reasonable suspicion” the individual is an illegal alien.

The law effectively grants police wide discretion to stop and seek the deportation of anyone who “appears to be” an illegal immigrant and is not carrying state-issued identification. It is an open invitation to racial profiling and the systematic harassment of Hispanic, Asian and other immigrant groups.

The Obama administration played a major role in ensuring this reactionary outcome by limiting its challenge to SB 1070 solely to the issue of federalism, in other words, whether federal statutes preempt state initiatives in the area of immigration law and enforcement.

In its half-hearted arguments, the administration deliberately ignored the most pressing issues of basic democratic rights presented by the bill. These include violation of the Fourth Amendment, part of the Bill of Rights, which prohibits “unreasonable searches and seizures” and requires the police to obtain a warrant before conducting a search, although already riddled with a number of exceptions.

Moreover, the Fourteenth Amendment right to “equal protection” of the law—adopted after the American Civil War to establish the legal equality of freed slaves—is clearly violated, because millions can now be subjected to an immigration check based on a policeman's assessment of supposed racial characteristics.

By dismissing questions of the right to privacy, freedom

from police harassment and racial profiling in the reactionary climate being whipped up in Arizona, the administration has provided political cover for the court's supposed liberal justices, Ruth Bader Ginsburg, Stephen Breyer and Obama's own appointee, the first Hispanic justice, Sonia Sotomayor, to make a dirty deal with the court's semi-fascist wing to uphold the key provision of SB 1070. (Justice Elena Kagan recused herself because she played a role in the Obama Justice Department's suit against the Arizona law).

The 75-page decision authored by Justice Anthony Kennedy is a confusing and self-contradictory one that lends itself to misinterpretation, seemingly by design. It strikes down three major provisions of SB 1070, those that would have made it a crime for immigrants not to carry an “alien registration document,” criminalize job applications by undocumented immigrants, and make it easier for the local and state police to imprison individuals solely on the basis of immigration law violations.

These were struck down on a 5-3 vote by the high court, based on the Supremacy Clause of the US Constitution, the basis argued by the Obama administration, which mandates that judges must follow federal law when a conflict arises between federal law and state law.

In other words, the federal government already has the same or similar anti-immigrant measures in place, which it enforces on a regular basis. As Justice Kennedy points out, “hundreds of thousands of aliens are removed by the Federal Government every year.” This is no empty boast; for three straight years, the current administration has set a record for the number of deportations, with well over one million people having been deported since Obama took office.

This is simply not enough for the three most right-wing justices, who paint, through Justice Scalia's dissent, a

fantastical picture of an attack on the “sovereign” state of Arizona, which unaided by an executive more eager to please foreign powers than enforce immigration, is forced to fight alone for its very existence. Scalia, Thomas, and Alito would have upheld SB1070 in its entirety.

Scalia’s treatment of the “evil effects of illegal immigration” in his dissent is a truly repulsive piece of nationalist and racist demagoguery, which should serve as a warning to the entire working class in the United States. He claimed that in Arizona, “Its citizens feel themselves under siege by large numbers of illegal immigrants who invade their property, strain their social services, and even place their lives in jeopardy.”

President Obama made a cynical attempt to promote the anti-immigrant decision as a victory saying: “I am pleased that the Supreme Court has struck down the key provisions of Arizona’s immigration law... no American should ever have to live under a cloud of suspicion because of what they look like.” He was concealing the plain fact that the court upheld precisely the provision that will give police unprecedented authority to do just that.

For her part, Arizona’s Republican Governor Jan Brewer also hailed the decision as a victory, saying, “Today’s decision by the U.S. Supreme Court is a victory for the rule of law... After more than two years of legal challenges, the heart of SB 1070 can now be implemented in accordance with the U.S. Constitution.”

Speaking of the decision as a great gift, she cautioned her rabid supporters, “Our critics are already preparing new litigation tactics in response to their loss at the Supreme Court, and undoubtedly will allege inequities in the implementation of the law.” She was referring to the suggestion, both in Kennedy’s opinion and in statements by immigrant rights groups, that the “show your papers” provision could eventually be ruled unconstitutional if Arizona enforces it in too flagrantly discriminatory a fashion.

The supposed antagonism between Obama and Brewer—including their much-publicized confrontation on an airport tarmac last year—cannot disguise the fact that both the federal government and the state of Arizona are committed to brutal repression of immigrant workers.

This agreement found expression in the common ground found by the liberal and conservative wings of the Supreme Court in upholding unanimously what is arguably SB 1070’s worst provision—section 2(B)—giving Arizona authorities a de facto license to harass and racially profile all workers of Hispanic and Asian descent based solely on their appearance.

This portion of the opinion deserves closer scrutiny. While the court majority found that all the other provisions of SB 1070 are preempted by federal law, it inexplicably ties itself in knots to uphold section 2(B). The court dismisses the possibility that the mandatory immigration checks at police discretion will result in abuse with the ridiculous presumption that Arizona police officers will not consider race while forming their suspicions about one’s immigration status and will not use the law as a means of harassment and increased deportation.

Although it was not mentioned in the opinion, basic Fourth Amendment privacy rights have been eroded enormously over the last 30 years. The legal standards of “reasonable suspicion” and “probable cause” for arrest have been whittled down to merely nominal legal thresholds providing the object of police attention with almost no real protection. The result has been a great expansion in the number of minor offenses that can justify arrest.

This process has given police throughout the country the unprecedented ability to detain nearly anyone in nearly any circumstance, as many workers know from their own bitter experiences. For these reasons it would incredibly easy for a police officer to “find” an offense that would justify arrest after developing a “suspicion” someone is an illegal immigrant.

Once arrested, anyone found to be in the country illegally is reported to ICE and, as a matter of course, shipped to a federal detention center for removal, which occurs in the overwhelming majority of cases. In its zeal to purge an entire scapegoated population from the state, Arizona and other state authorities will doubtless draw in for harassment large numbers of American citizens who have the “wrong” ancestry and appearance.

The court ruling is of a piece with both the Bush and Obama administration’s rapid expansion of police repression in response to growing social inequality domestically over the last decade, which has been, as in this case, greatly facilitated by the judicial system and judges nominated by presidents of both parties.



To contact the WSWS and the
Socialist Equality Party visit:

wsws.org/contact