

Federal court upholds key provision of Arizona law targeting immigrants

Ed Hightower
7 September 2012

A federal court Wednesday refused to block enforcement of the most draconian section of Arizona's anti-immigrant law directing police to determine the immigration status of people they stop while enforcing traffic regulations or other laws.

The Federal District Court in Phoenix, Arizona declined to enjoin enforcement of section 2(B) of the infamous SB 1070, which would require Arizona law enforcement officers to "determine an individual's immigration status during any lawful stop, detention, or arrest where reasonable suspicion exists that the person is unlawfully present in the United States."

At the same time, the court granted a preliminary injunction against the enforcement of provisions of SB 1070 which would criminalize providing aid, shelter and transportation to known undocumented immigrants, which are known as Arizona Revised Statutes (ARS) section 13-2929.

The decision is the latest episode in the ongoing attack on core constitutional rights in the United States, and in particular those of undocumented workers. It paves the way for Arizona police to harass, intimidate and detain persons of Hispanic background in particular, though any person could conceivably appear, on "reasonable suspicion" to be without citizenship papers.

The ruling follows a reactionary US Supreme Court decision in *Arizona v. United States* in June, which unanimously upheld the constitutionality of section 2(B). In that case, it was the Department of Justice, an arm of the executive branch of the federal government, which sued the state of Arizona to block SB 1070.

Justice Anthony Kennedy justified the ruling in the following language:

"The Federal Government has brought suit against a sovereign State to challenge the provision even before

the law has gone into effect. *There is a basic uncertainty about what the law means and how it will be enforced. At this stage, without the benefit of a definitive interpretation from the state courts, it would be inappropriate to assume [Subsection] 2(B) will be construed in a way that creates a conflict with federal law.*"

One has to rub one's eyes at this alleged "uncertainty about what the law means and how it will be enforced," not to mention whether the law, "will be construed in a way that creates a conflict with federal law."

The Fourth Amendment to the US Constitution states, "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment states: "nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

A plain reading of the Fourth and Fourteenth Amendments makes a mockery of Kennedy's uncertainty, which is the product of bad faith, cowardice, or both.

As the *World Socialist Web Site* noted at the time, however, the Obama administration's lawyers at the Department of Justice only argued against the Arizona statute on the grounds that it infringed on the federal government's authority to regulate immigration, under the doctrine of preemption. In other words, the Department of Justice did not argue that the persecution of immigrants or Hispanic persons was wrong in itself; rather, it contended that this was the exclusive domain

of the federal government. Thus, the administration abandoned any opposition to SB 1070 on the grounds that its provisions violated the 4th Amendment protections against unwarranted searches and seizures, as well as the 14th Amendment's equal protection clause.

The Supreme Court also found that ARS 13-2929 did not violate the constitution on the grounds argued by the administration.

The case brought against the Arizona law, *Valle del Sol, et al., v. Michael B. Whiting, et al.*, was not filed by the Department of Justice, but by various activist groups, including the American Civil Liberties Union and proceeds to make the constitutional arguments which the DOJ deliberately bypassed. Regarding section 2(B), the plaintiffs argued that requiring state law enforcement officials to determine a suspect's immigration status on reasonable suspicion that he or she is undocumented violates the Fourth Amendment, effectively permitting a search and/or seizure potentially based on perceived racial characteristics.

(It is worth noting that the judicial phrasing, "reasonable suspicion" has antidemocratic roots, coming from the famous case *Terry v. Ohio*, where the supreme court subverted the constitutional standard of probable cause for police "stop and frisks," giving enormous legal deference to police).

Because section 2(B) inevitably invites police to place persons under unfair scrutiny based on supposed racial characteristics, the plaintiffs argue that it violates the 14th Amendment's equal protection clause.

Judge Susan Bolton heard and ruled on the *Valle del Sol* case. Bolton heard the original *United States v. Arizona* case at the trial court level in 2010, finding that federal law preempted section 2(B), but not 13-2929 at least not on the terms then argued by the DOJ.

Having had her original decision overturned by the highest court in the land, she writes, "this Court will not ignore the clear direction in the *Arizona* opinion that Subsection 2(B) cannot be challenged further on its face before the law takes effect."

Bolton did, however, enjoin the enforcement of section 13-2929 as being totally preempted by federal law. She followed the opinions of two 11th Circuit cases which made similar conclusions about laws in Georgia and Alabama modeled on Arizona's SB 1070.

Lawyers for the plaintiffs say that they intend to

closely monitor instances of racial profiling once 2(B) is implemented. Their hope is that with actual victims of police misconduct and unconstitutional activity before them, the courts will be more inclined to set strict limits on it and possibly strike it down altogether.

Arizona Republican Governor Jan Brewer signed SB 1070 into law in April 2010, complaining that the federal government had failed to secure the state's border with Mexico. She welcomed the latest court ruling, which she interpreted as bringing Arizona "one big step closer to implementing the core provision of SB 1070."

"With this provision, Arizona makes a clear statement that it will not tolerate sanctuary city policies, and will now have thousands of additional officers to collaborate with the federal government as state and local law enforcement do what they always have: enforce the law," she said.

The notion that undocumented immigrants, whether from across the Mexican border or elsewhere, present a social threat is a conscious lie. In order to disorient and divide the working class and to leave it unable to defend its social interests, the ruling class is churning up the most antidemocratic, racist sentiments, while at the same time, creating the legal framework to strip undocumented workers of any legal rights. That the federal courts now play a regular role in this odious process expresses the extent to which the ruling establishment as a whole has decided to abandon democratic norms in favor of authoritarian forms of rule.



To contact the WSWWS and the
Socialist Equality Party visit:

wsws.org/contact