

Arizona v. United States

By Jerry Grzeca and John Sesini
July 2012



In 2010 the State of Arizona passed a controversial bill aimed at reducing the number of people within its borders who did not have a lawful US immigration status. Lawmakers hoped that harsh enforcement in their state would force the undocumented individuals to leave, and to encourage such immigrants to avoid their state in the future. The resulting bill is known as SB1070. Several other states followed, and many more have proposed similar measures.

But last month, the US Supreme Court struck down several parts of Arizona's law. Its decision in *Arizona v. United States*, will limit all state efforts to control immigration policy going forward.

SB 1070 had three main parts. First, and perhaps most controversially, it authorized state authorities to arrest without a warrant, anyone whom an agent had a "reasonable suspicion" to believe was present in the United States unlawfully. Second, the law made it a misdemeanor in Arizona for any foreign national to fail to carry proof of lawful status or work without permission. And third, it required state police to make a "reasonable attempt" to determine the immigration status of an individual stopped or arrested for other reasons—whenever the officer had a reasonable suspicion that the person stopped was unlawful.

Critics of the bill, including President Barack Obama, argued that immigration law is a federal matter. States, effectively, have no right to take such laws into their own hands. Immigration affects foreign relations, and it is important to have a uniform national law. Further, many feared that the law would lead to racial profiling by local police. Local police officers, the argument went, untrained in federal immigration laws, would simply target Hispanics based on appearance.

The Supreme Court agreed—in part. State police officers cannot arrest individuals simply because they suspect that they are in the United States unlawfully. Nor can state legislatures make crimes out of not carrying immigration documents, or working unlawfully. Federal immigration authorities may make such arrests—if they choose. And the US Congress can pass such bills—if it chooses. Arizona violated the US Constitution when it tried to do so by itself.

However, the Court upheld the "papers please" portion of the law. Arizona is free to require its own police force to investigate the immigration status of individuals stopped or arrested for other crimes and infractions—so long as the police do not racially profile or otherwise violate the rights of the individuals arrested. Effectively, it adopted a "wait and see" approach to the racial profiling question.

Finally it is important to note that the police have always been able to ask about immigration status. Officers can ask anything they want. And that does not change after the Supreme Court's decision. But no state's police can arrest individuals simply because they suspect they are in the US unlawfully. Ultimately, the Supreme Court's decision will likely put a damper on state efforts to regulate immigration. But it will not stop such efforts entirely.

For information about how the Supreme Court's recent decision may affect laws in our state, or for information about any other immigration matter, please contact Grzeca Law Group at (414) 342-3000 or visit our website at www.grzecalaw.com.

Milwaukee: 414-342-3000
Madison: 608-234-5004
Green Bay: 888-471-1400

GRZECA LAW GROUP, S.C.
1434 West State Street
Milwaukee, WI 53233

www.grzecalaw.com
clients@grzecalaw.com