



Arizona Racial Profiling Law (SB 1070) – Update on Legal Challenges
(revised 9/9/10)

What is the impact of the district court’s July 28, 2010 ruling on Arizona’s racial profiling law?

After extensive legal briefing and a full day of oral argument from lawyers representing the parties, including the ACLU, a federal district court in Phoenix decided to block central provisions of Arizona’s racial profiling law from going into effect on July 29, 2010. The court agreed with the United States Department of Justice, which made arguments that were also made in a parallel case that was filed first by the ACLU, MALDEF, National Immigration Law Center (NILC), Asian Pacific American Legal Center (APALC) – a member of the Asian American Center for Advancing Justice, ACLU of Arizona, National Day Laborer Organizing Network (NDLON) and the National Association for the Advancement of Colored People (NAACP). The court made a preliminary finding that much of the Arizona law impermissibly conflicts with federal immigration law. The court’s ruling affirmed many of the positions taken by the ACLU and its allies in their case seeking a preliminary injunction. The ruling prevented the most troubling parts of Arizona’s racial profiling law from taking effect.

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Which provisions of Arizona’s law were blocked?

The district court granted a preliminary injunction that prohibits enforcement of the following key provisions of the Arizona law pending a final decision on their constitutionality:

- The requirement that police officers investigate the immigration status of all individuals they stop if the officers suspect that they are in the country unlawfully;
- The mandatory detention of individuals who are arrested, even for minor offenses that would normally result in a ticket, if they cannot verify that they are authorized to be in the U.S.;
- State criminal penalties for non-citizens failing to register with the Department of Homeland Security or failing to carry registration documents;
- The provision authorizing warrantless arrest of individuals who are deemed by state or local police officers to be “removable” from the U.S.; and
- State criminal penalties for alleged undocumented immigrants who apply for, solicit, or perform work.

Were any especially worrisome provisions of Arizona's law allowed to take effect?

Although the court's ruling guts the core provisions of Arizona's unconstitutional racial profiling law, the court left several problematic provisions intact. Among them are provisions that make it a crime for drivers to pick up day laborers soliciting work and for day laborers to enter a stopped car for work purposes. The civil rights coalition maintains that these provisions violate free speech protections, and we are confident that they too will be barred as unconstitutional under the First Amendment when the district court makes a final ruling in the case. For the time being, the ACLU and its allies will carefully monitor the implementation of these and other provisions of the Arizona law which are now in effect.

What happens next in the Department of Justice case?

The state of Arizona immediately appealed the district court's ruling to the United States Court of Appeals for the Ninth Circuit. Arizona asked the court to speed up its timeline for the appeal even more than the normal expedited rules for appeals of preliminary injunctions. The court denied Arizona's request and set a briefing schedule that will lead to oral argument taking place during the week of November 1, 2010.

The appeals court will then issue a ruling either affirming or reversing the district court's decision on the preliminary injunction. The side that loses in the appeals court is likely to appeal that decision to the United States Supreme Court. In the meantime, the district court may continue to consider the merits of the issues and will eventually issue a final decision, which itself can be appealed.

Where does that leave the lawsuit brought by the ACLU and allied civil rights organizations?

The lawsuit brought by the ACLU and its allies, *Friendly House v. Halliday*, is still pending before the district court. On July 30, 2010, the ACLU and its allies asked the court to rule on their request that the court block the Arizona law from going into effect while it is litigated. A ruling would allow them to participate directly in the appeals court proceedings. The ACLU and its allies represent plaintiffs with interests and concerns distinct from and in addition to those of the federal government. The federal government's case represents only the interests of the federal government and raises only arguments that SB 1070 is preempted by federal law. The ACLU and its allies' lawsuit raises those arguments but also raises the interests of individuals and organizations who will suffer civil rights violations resulting from the law. For example, one of the plaintiffs in *Friendly House* is a U.S. citizen living in New Mexico who contends that his right to travel is violated by Arizona's law. If the district court issues a preliminary injunction decision in *Friendly House*, these distinct civil rights perspectives would become part of the appeals process. Arizona's appeal in *Friendly House* could be consolidated with the U.S. Department of Justice's case at the Ninth Circuit Court of Appeals.

There are also issues in *Friendly House*, such as a challenge based on racial profiling, which are in neither the Department of Justice's case nor the preliminary injunction motion filed by the ACLU and its allies. If necessary, these issues will also eventually be decided by the district court.