



Frequently Asked Questions - Update on Legal Challenges to Arizona's Racial Profiling Law (SB 1070)

January 25, 2011

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 American Civil Liberties Union, 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 made a preliminary finding that much of the Arizona law impermissibly conflicts with federal immigration law. The ruling has prevented the most troubling parts of Arizona's racial profiling law from taking effect.

There are two main cases challenging the Arizona law. The first was filed 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 second case was filed by the United States Department of Justice, and makes some of the same arguments as the suit filed by the ACLU and its allies. Although the court issued its order blocking the law only in the Department of Justice case, it heard argument in both cases before issuing its decision, and its ruling affirmed several of the positions taken by the civil rights coalition.

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 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 unauthorized workers.

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 seeking a separate preliminary injunction suspending those solicitation provisions, as explained below.

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. A panel of the Court of Appeals heard oral argument in the case on November 1, 2010 and will eventually issue a ruling either affirming or reversing the district court's decision on the preliminary injunction. The side that loses may then seek further review from the entire appeals court and/or the United States Supreme Court.

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. Whiting*, is still pending before the district court, which has denied, in large part, the defendants' motions to dismiss the case.

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, the *Friendly House* suit includes claims based on the First and Fourth Amendments that are not present in the federal government's lawsuit.

On January 7, 2011, the ACLU asked the district court to prohibit Arizona from enforcing two key sections of SB 1070 targeting day laborers, pending a final court ruling on the constitutionality of these provisions. The law creates new criminal offenses,

ostensibly related to traffic safety, that apply only to individuals engaged in protected speech related to employment solicitation. These provisions cause irreparable harm to day laborers and those who seek to employ them by curtailing their First Amendment rights.