

Frequently Asked Questions About the Arizona Racial Profiling Law

What is wrong with Arizona SB 1070?

This bill, signed into law on April 23, 2010 by Arizona governor Jan Brewer, requires police officers in Arizona to demand papers proving citizenship or immigration status from people whom they stop, based only on some undefined "reasonable suspicion" that they are in the country unlawfully. But in America, everyone is supposed to be presumed innocent. This turns the presumption of innocence on its head.

Because in most cases it is hard to conceive of any legitimate way law enforcement could develop a suspicion that someone is here unlawfully, the law clearly invites racial profiling by officers who are likely to rely on the way people look in forming any "suspicion" that they are not in this country legally. The law invites discrimination.

Under this law, people who look "foreign" are more likely to be stopped for minor infractions – having a broken taillight, jaywalking or having an overgrown lawn – and then asked for their papers if police believe, just by looking at them, that they could be in the country unlawfully. That means that U.S. citizens and non-citizens alike will be required to carry papers on them at all times. These tactics are the hallmarks of a "police state," more often associated with totalitarian regimes.

What is the ACLU doing about the law?

The ACLU, the Mexican-American Legal Defense and Education Fund (MALDEF) and the National Immigration Law Center (NILC), along with other civil rights groups, have filed a legal challenge to the law in federal court to stop the law from taking effect. The lawsuit charges that the law violates numerous provisions of the U.S. Constitution. Notably, it violates the 14th Amendment's guarantee of equal protection under the law because it unlawfully invites the racial profiling of Latinos and other people who look or sound foreign-born. By interfering with the federal government's authority to regulate and enforce immigration, it also violates the supremacy clause of the Constitution.

How does the law cause racial profiling?

By requiring that all law enforcement officials question people they stop about their citizenship or immigration status if they have an undefined "reasonable suspicion" the person is in this country illegally, SB 1070 is inviting police to rely on appearance and characteristics such as race, ethnicity, and language. How else would a police officer form a suspicion that someone is in this country unlawfully? We have not heard a single example of a legitimate basis for forming such suspicion from any of the law's supporters. Relying on a person's appearance is not "reasonable" and is not constitutional.

This law actually invites racial profiling at two junctures. First, law enforcement might find a reason to stop people on a very minor infraction based on the way they look, and then demand their papers. Or they can stop them for an unbiased reason and then, based

on appearance and nothing else, demand their papers. Americans come in every shape and size, from every background and every corner of the earth. When you consider the long history, even before this law was passed, of racial profiling against people suspected of being in this country illegally, it is pretty easy to see how a law requiring police officers to demand papers based solely on their suspicions will be abused.

Finally, using local police officers who are untrained in the complexities and proper enforcement of federal immigration law is a recipe for racial profiling, particularly in Arizona. Just ask Julio and Julian Mora – a lawful permanent resident and his U.S. citizen son – who were stopped by the Maricopa County Sheriff's Office as they drove on a public street, arrested and forcibly transported to the site of an immigration raid.

For three years, Maricopa County Sheriff Joe Arpaio has deployed hundreds of deputies and volunteer posses to target Latino neighborhoods, rounding up people on the streets, questioning and detaining people driving through traffic stops and the like, including U.S. citizens and lawful residents, based on presumptions that they may be unlawfully present in the United States. Despite civil rights lawsuits and a United States Justice Department investigation into these practices, Arpaio remains unfazed. Two-thirds of Arizonans already live in Maricopa County, and this law will simply require all police officers in the state to act like Arpaio's deputies.

Why won't the amendments to the law prevent racial profiling?

The last-minute language inserted in the bill to answer outrage over racial profiling is a fig leaf, designed to cover the plain fact that apart from appearance, it's hard to imagine any way a police officer could suspect that someone was not in the country legally. What other factors would they use? Accent? Language? That they're near another person who admits that he's undocumented? That they "dress foreign?"

We've already seen this in Maricopa County – home to 2/3 of all Arizonans – where the Sheriff's Office and volunteer posses have conducted mass sweeps of Latino neighborhoods, rounding up people on the street and pulling people out of their cars for alleged violations of minor traffic laws and the like. U.S. citizens and lawful residents have been profiled in this manner just because they look like they could be unlawfully present. In fact, the ACLU is already representing a number of people in this country legally who have been profiled, including Julio and Julian Mora mentioned above.

Stopping drivers because of how they look and then coming up with some reason for the stop other than race is nothing new. We've seen it in other contexts before. African Americans have long been targeted for "driving while black." In the early studies we've seen on the impact of local police engaging in enforcement of immigration laws, there have been clear spikes in the targeting of Latinos for minor, misdemeanor offenses, often with no follow-up prosecution under those minor offenses.

For additional information, see www.acluaz.org/DrivingWhileBlackorBrown.pdf, an ACLU report, "Driving While Black or Brown," that analyses data of highway stops in

Arizona showing minorities are much more likely to be searched and stopped for longer periods of time.

What's wrong with having Arizona police enforce immigration?

As many top law enforcement officials, including the Arizona Association of Chiefs of Police, have already acknowledged, this law will significantly harm the public trust that law enforcement officials need in order to protect the people of Arizona and will alienate police officers from the communities they serve. The law will force police officers to devote scarce resources to investigating false threats rather than solving serious crimes. The criminal justice system is compromised because crime victims are more vulnerable and will be unwilling to report crimes and witnesses will be afraid to cooperate out of fear that they will be targeted. Local cops will be put into the difficult position of relying on biased presumptions – and racial profiling – when asking anyone who looks or sounds foreign to confirm their citizenship or immigration status.

Additionally, the few instances where the federal government has deputized local law enforcement in Arizona to enforce immigration laws under the federal 287(g) program has proved to be disastrous, resulting in racial profiling and other civil rights and civil liberties abuses. The Maricopa County Sheriff's Office is already under investigation by the U.S. Justice Department and the ACLU has brought two lawsuits specifically challenging the targeting of Latino motorists, including U.S. citizens and lawful residents, for harassment and violations of civil liberties.

What is "reasonable suspicion" that someone is in the country unlawfully?

No one, including the Governor who signed this bill into law, has come up with a good explanation for what that means in the context of this law. How is a cop on the street supposed to tell that someone is unauthorized to be in the United States just by looking at them? Generally, "reasonable suspicion" is a legal term describing the circumstances under which an officer can prevent someone from walking or driving away. It's more than just a hunch and requires an officer to rely on objective facts that lead him or her to believe a crime has been or is being committed. The rampant racial profiling we've seen in Maricopa County even before SB 1070 was passed and the fact that no legitimate grounds have been presented for forming such suspicion in this context give us no confidence that this is a workable standard in Arizona for this kind of law.

What is the difference between this law and the federal law?

The Arizona law goes well beyond federal law because it mandates that all local police and sheriffs demand papers from people they stop and believe may be in the country without authorization. Nowhere is such requirement in federal law. This law reverses the presumption of innocence, forcing police officers on the street to demand that people prove they are U.S. citizens or otherwise in the country legally. The racial profiling this law invites with its undefined standard for what constitutes "reasonable suspicion" that someone is in the country unlawfully would violate the Constitution's guarantee of equal protection under the law and federal civil rights protections.

There are a number of ways in which the Arizona law directly conflicts with federal law regarding the regulation and enforcement of immigration. As a threshold matter, SB 1070 presumes that the citizenship or immigration status of individuals can be determined simply, outside the complex administrative procedures set up under our nation's immigration laws. It cannot. Moreover, the Arizona law would also impose different state penalties against people for conduct, such as authorization to work in the United States that is directly regulated under federal law. Not only is this unconstitutional under the supremacy clause, but it is also bad policy as the United States cannot have a patchwork of conflicting immigration laws depending on what state you happen to find yourself in.

The proponents of the law claim that this isn't preempted by federal law because it is "concurrent enforcement," which is legal. In other words, they say that this is just enforcing federal law. What do you say to that?

This is not about enforcing federal law, it is about creating new state laws and a new state system that requires local police and sheriffs to ask people they stop for their papers in a way that promotes racial profiling of Latinos and other presumed immigrants. Additionally, SB1070 criminalizes conduct that is not criminal under federal law, like working without employment authorization.

The proponents of this law have trotted out their so-called doctrine of "concurrent enforcement" in defense of anti-immigrant housing laws in New Jersey, Pennsylvania, California, Missouri, and Texas, and in every one of those cases the housing restrictions have been struck down. The even more-extreme SB 1070 should meet a similar fate.

Isn't it already a crime not to carry papers?

While there are federal laws requiring certain non-citizens to carry papers issued to them by the federal government, the federal provisions cited in this bill do not require what Arizona is compelling in its law. Trained federal immigration officials review immigration documents in specific circumstances when they encounter individuals who they know are not citizens. They don't just approach people who look like they could be immigrants and ask them to produce their papers. Similarly, for many good reasons, federal law does not require cops on the street who are not even adequately trained on the complexities of federal immigration law to ask people they stop to show their papers.

Wouldn't you agree that being in this country illegally is a crime? Don't we expect police officers to stop crime?

This law would transform Arizona into a police state where all Latino residents, and others who look or sound foreign, are treated like potential criminal suspects. Federal immigration policy is very complicated, carrying both civil and criminal penalties. Congress has chosen not to make it a crime simply to be in the United States without authorization. That's what the marches of millions of people across the country in 2005 were all about. Nothing prevents police from investigating real criminal conduct and activity within the limits of our Constitution. This Arizona law is un-American because it goes beyond that and undermines our values of fairness and equality for all people.