

Q&A GUIDE TO ARIZONA'S NEW IMMIGRATION LAW

WHAT YOU NEED TO KNOW ABOUT THE NEW LAW AND
HOW IT CAN IMPACT YOUR STATE

JUNE 2010

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WHY DO I NEED THIS GUIDE?

A few months after passage of Arizona's tough new immigration law (SB 1070), both opponents and proponents are attempting to assess the impact the new law may have on residents of Arizona—citizens and immigrants alike. A [federal district court ruling](#) preliminarily enjoined large parts of the controversial law, meaning that those portions of the new law cannot be implemented. Arizona appealed this decision, and the Ninth Circuit Court of Appeals will hear argument the first week in November. At the same time, approximately 23 states (at last count) are considering similar legislation. Multiple other lawsuits have been filed challenging the constitutionality of the law and have yet to be ruled on, opponents are mounting a boycott, and numerous polls show that a majority of the public both supports the Arizona law and comprehensive immigration reform.

SB 1070 represents, among other things, a growing frustration with our broken immigration system. Ultimately the courts will decide the constitutionality of the law, while time will answer many questions about its impact. In the short term, as other states contemplate copying Arizona's version of immigration reform, there is plenty of evidence to suggest that an enforcement-only strategy—whether attempted at the federal or state level—does not solve the immigration problem.

This guide provides key answers to basic questions about Arizona's law and the judge's decision to stop parts of the law from being implemented—from the substance of the law and myths surrounding it to the legal and fiscal implications. As other states contemplate similar legislation, knowing the answers to basic questions about Arizona's law will prove to be critically important in furthering the discussion.

WHAT IS SB 1070?

SB 1070, also known as the Support Our Law Enforcement and Safe Neighborhoods Act, was signed into law by Arizona governor Jan Brewer on April 23, 2010 and went into effect on July 29, 2010. As enacted, the legislation declares that “the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona.” In other words, the provisions of the bill are designed to eliminate illegal immigration in the state through the use of state and local law enforcement actions. “Attrition through enforcement” has been promoted by groups like the Center for Immigration Studies and the Immigration Reform Law Institute (credited with drafting the bill) as a way to oppose comprehensive immigration reform. These groups are central to similar state and local anti-immigration efforts around the country.

A week after Gov. Brewer signed the law, the state legislature amended it to address some of the most egregious concerns, such as changing the requirement that police must determine immigration status during any “lawful contact” (for instance, saying hello to a bunch of kids in

front of an ice cream stand, giving directions, helping a lost child) to any “lawful stop, detention, or arrest” (for instance, a traffic stop). While this limits the reach of the law somewhat, the legislature also made it clear that police must make immigration inquiries in response to any “law or ordinance of a county, city, or town” which means that noise complaints, leaving a disabled car on the street, or failing to recycle could lead to questions about immigration status. According to correspondence between sponsor Arizona State Senator Russell Pearce and Kris Kobach of the Immigration Reform Law Institute, these two changes made together ensure that virtually any contact could still allow police to “[initiate \[immigration\] queries as well](#).”¹

Similarly, the legislature eliminated language that would prohibit basing a reasonable suspicion that a person is in the country illegally based “solely” on race or ethnicity but gave no guidance as to what constitutes a reasonable suspicion.

Q: What is the current status of the law?

A: On July 28, 2010, the day before SB 1070 was scheduled to go into effect, a federal district court enjoined several of the most controversial parts of the law. Specifically, the court issued a preliminary injunction stopping enforcement of the following provisions that:

- Explicitly requiring state and local law enforcement officials to inquire about immigration status during any lawful stop, detention, or arrest.
- Making it a misdemeanor to fail to carry proper immigration documents with a maximum fine of \$100 and up to 20 days in jail for the first violation and up to 30 days in jail for a subsequent violation.
- Making it illegal for unauthorized immigrants to solicit work in any public space.
- Authorizing local police to make an arrest without a warrant of any person they believe is “removable from the United States.”

Q: What provisions of SB 1070 remain in effect after the district court’s preliminary injunction?

A: SB 1070 still:

- Makes it a misdemeanor to attempt to hire day laborers if the driver is impeding the normal flow of traffic.
- Makes it illegal for a worker to get into a car if it is impeding traffic.

- Makes it unlawful for any person to transport, move, conceal, harbor, or shield from detection any unauthorized immigrant if the person knows or recklessly disregards the fact that the immigrant is in the U.S. illegally.
- Mandates the impoundment of any vehicle used to transport, move, conceal, harbor, or shield an unauthorized immigrant.
- Allows officers to detain the person to make inquiries into immigration status if the person cannot produce valid documents.
- Mandates that an officer may not release someone from custody until immigration status has been verified.
- Prohibits cities, towns, and counties from having any policy in place that limits the investigation of violations of federal immigration laws. Many localities have “community policing policies” that enhance trust and cooperation between police and immigrant communities by not asking people who have not been arrested, including victims and witnesses to crimes, for their documents.
- Allows private citizens to sue state law enforcement agencies if the private citizens believe law enforcement is not enforcing federal immigration laws to their liking.

Q: What are the next steps?

A: Arizona has appealed the district court’s decision, and a three judge panel from the 9th Circuit Court of Appeals will hear arguments on the issue in early November. The three judge panel will make a ruling as to the validity of the preliminary injunction, and then the case will go back to the federal district court for arguments and a final district court decision.

Q: Arizona supporters of the law say it just mirrors federal law—what’s wrong with states copying federal law?

A: The Arizona law goes well beyond federal law, copying the words of certain immigration statutes, but imposing new and often more severe penalties than the federal law. This creates difficult and complex jurisdictional issues, as the federal government has been given the exclusive power to regulate immigration law, especially civil immigration law. Thus, even if Arizona law enforcement arrests every undocumented person in the state, it is still up to the federal government to ultimately charge them, put them in immigration proceedings, and if necessary, deport them. In other words, Arizona’s state crimes only mirror federal law in their language, not in their effect. Even federal-state partnerships, such as 287(g) agreements, only give trained law enforcement officers the authority to assist in enforcing federal civil immigration law—carrying out the

consequences (penalties, relief, removal) remains a federal responsibility. Thus, the Arizona law heaps new punishments on people without actually solving the underlying immigration issue, what one immigration law expert has called using an "[iron fist](#)" toward immigrants in order to force the federal government to deport people.²

In the order enjoining various provisions of SB 1070, the court stated that "Congress has created and refined a complex and detailed statutory framework regulating immigration."³ Instead of simply mirroring federal law, the judge found that SB 1070 "will divert resources from the federal government's other responsibilities and priorities."⁴

Q: But if you don't have papers, you are probably here illegally and the federal government is going to want to deport you anyway, so what's the harm?

A: Proponents argue that racial profiling is banned and therefore it's not going to happen, but the law opens the door to intrusive questioning for anyone where there is a suspicion that the individual may be here illegally. While most U.S. citizens do not carry their passports, lack of such documentation could subject people to lengthy questioning, and possibly arrest or detention, if they cannot persuade an officer that they are in the U.S. legally. In particular, critics fear that persons who are Hispanic or dark-skinned, who have accents, or otherwise appear "different" are more likely to face racial profiling given the demographics of illegal immigration.

Determining whether or not someone is in the country unlawfully is not as simple as checking a database. Under the civil immigration system, most people are entitled to appear before an immigration judge before they are officially determined to be here illegally and in the process they have the right to challenge that determination, apply for relief from removal (such as asylum), and have their day in court. The Arizona law circumvents that process, potentially punishing people for being here illegally based solely on the determination of a state law enforcement officer or a federal agency before a full determination has been made.

The federal district court agreed, finding that SB 1070 "imposes an unacceptable burden on lawfully-present aliens":

Legal residents will certainly be swept up by [the provision requiring that you carry your papers], particularly when the impacts of the provisions pressuring law enforcement agencies to enforce immigration laws are considered. Certain categories of people with transitional status and foreign visitors from countries that are part of the Visa Waiver Program will not have readily available documentation of their authorization to remain in the United States, thus potentially subjecting them to arrest or detention.⁵

DEBUNKING THE MYTHS BEHIND SB 1070

SB 1070 and CRIME

Q: Didn't the state legislature need to do something about the crime caused by illegal immigration in Arizona?

A: Despite the claims that SB 1070 was needed to fight crime in the state, Arizona's crime rate has been falling for years.

According to [data](#) from the U.S. Bureau of Justice Statistics, the rates for both property crime and violent crime (including murder, assault, and rape) have been falling in Arizona in recent years.⁶

- The violent crime rate fell from 512 per 100,000 people in 2005 to 447 per 100,000 people in 2008, the last year for which data is available.
- The property crime rate fell from 5,850 per 100,000 people in 2005 to 4,291 per 100,000 people in 2008.
- Rates for murder, aggravated assault, and rape in particular have clearly fallen in recent years.

Q: Don't illegal immigrants cause crime?

A: Unauthorized immigration is not associated with higher crime rates.

- Although the unauthorized immigrant population roughly *tripled* in size to more than 11 million from 1990 to 2008, [data](#) from the Bureau of Justice Statistics indicates that the violent crime rate in the United States *declined* by 37.7 percent during this time and the property crime rate fell by 36.7 percent.⁷
- The decline in crime rates was not just national, but also occurred in border cities and other cities with large immigrant populations such as San Diego, El Paso, Los Angeles, New York, Chicago, and Miami.⁸

Q: But surely there is a rise in border crime related to illegal immigration?

A: Border cities are not necessarily prone to higher crime due simply to their location. As a [story](#) in *Reason Magazine* describes, El Paso, Texas—which is a relatively poor and heavily Latino city that is home to many unauthorized immigrants—is among the safest big cities in the United States, even though it is next door to the violence-ridden Mexican city of Ciudad Juarez.⁹

Q: What about the kidnappings in Phoenix that have received so much media attention?

A: The hysteria and false claims over kidnappings in Phoenix ignore [two inconvenient facts](#). First of all, the victims of most kidnappings in Phoenix are unauthorized immigrants. Second, crime rates in Arizona have been falling for years. Cracking down on the unauthorized immigrants upon whom so many kidnappers prey is a classic case of blaming the victim. Moreover, this blame-the-victim posture diverts attention from the fact that the broken U.S. immigration system has created a lucrative market for kidnappers.

- Despite sensational claims by some politicians and commentators that Phoenix is the number two kidnapping capital of the world after Mexico City, [PolitiFact Texas](#) found that the global data upon which such a comparison might be made simply does not exist. The definition of “kidnapping” varies from place to place, and many kidnappings go unreported to local law-enforcement authorities. Moreover, the experts whom PolitiFact consulted speculated that, if there were such data, other cities in Latin America, Africa, and Asia “would prove to have more kidnappings than Arizona’s capital.”¹⁰
- In explaining the kidnappings that *do* occur in the Phoenix area, police Sgt. Tommy Thompson told [The Arizona Republic](#) in July 2009: “We’re talking about drop houses where people who have used coyotes to get into the country may be held for ransom. And we’re talking about the kidnapping of smugglers and associates. I have no fear that my kids or grandkids will be victims.”¹¹
- A new book by journalist Terry Greene Sterling, entitled [Illegal: Life and Death in Arizona’s Immigration War Zone](#), explores the reality of kidnappings in Arizona by recounting the terrifying experience of two unauthorized immigrants from Mexico who were kidnapped for ransom by the smugglers (*coyotes*) they hired to bring them to the United States. After a five-day journey by foot through the desert along with several other immigrants, they were taken at gunpoint to a filthy “drop house” in a Phoenix suburb, told that the fee for smuggling them had nearly doubled, and threatened with death if they couldn’t produce the extra money.
- Data from the Bureau of Justice Statistics indicate that rates for both property crime and violent crime (including murder, assault, and rape) have [fallen](#) in Arizona in recent years,¹² including in the state’s three [largest cities](#): Phoenix, Tucson, and Mesa.¹³ Furthermore, an investigation by *The Arizona Republic* found that crime rates in Arizona border towns have remained [flat](#) for the past decade despite the surge in unauthorized immigration.¹⁴

SB 1070 AND COMMUNITY SAFETY

Q: Won't strong state immigration enforcement make Arizona's communities safer?

A: Judging from the example of Maricopa County under Sheriff Joe Arpaio, SB 1070 is likely to divert law-enforcement resources away from important crime-fighting tasks, and crime might actually increase. It may also erode the trust between the police and the communities they serve meaning that victims and witnesses to crimes may not come forward and report crimes. This makes everyone in the community less safe.

- The [*East Valley Tribune*](#) found that, as Sheriff Arpaio has diverted his department's resources to immigration enforcement, response times to 911 calls have increased, arrest rates have dropped, and thousands of felony warrants have not been served.¹⁵

Q: Was this law needed to give police the authority to arrest immigrants?

A: No. The police have always had the authority to arrest immigrants for crimes they commit. If a police officer sees an immigrant commit a crime (such as theft or murder) or suspects that an immigrant has committed a crime, that police officer can arrest that immigrant for that crime. The police also have the authority to arrest immigrants for criminal violations of immigration law, such as re-entering the U.S. after being deported. Furthermore, the police have always had the ability to contact ICE and inquire about an arrestee's immigration status, and many prisons and jails have an ICE presence, so that immigrants can be identified and placed into removal proceedings.

However, state and local police have been limited in their authority to enforce civil violations of immigration law, such as working without authorization or failing to carry documents. There are special programs that police can already use to get additional authority; for example police may enter into 287(g) agreements with ICE, which gives them the authority to enforce civil violations of immigration laws. Several police agencies in Arizona have these agreements already.

SB 1070 takes federal, civil violations of immigration law and creates new state crimes, allowing state and local police to make criminal arrests for violations of civil immigration law. Whether or not Arizona can do this is a constitutional issue that will be addressed by the courts.

Q: Will SB 1070 help police catch serious criminals?

A: Probably not. In fact, if police spend their time detaining and questioning people they suspect of being immigrants, it will detract from their ability to investigate and solve more serious crimes. In Maricopa County, Sheriff Arpaio has focused on immigration violations and, as a result, has arrested few major criminals:

- Despite the time and energy spent on immigration enforcement, the [*East Valley Tribune*](#) found that Sheriff Arpaio has had little success in building cases against violent immigrant offenders or those at the top of smuggling rings.¹⁶
- In 2006-2007, Maricopa County sheriff's deputies arrested 578 illegal immigrants in the course of traffic stops, and—of those—498 faced a single charge of conspiracy to smuggle themselves.¹⁷

Q: Do law enforcement officials support this law?

A: According to police officials, laws like Arizona's will make it more difficult for police officers to do their jobs.

Many top law enforcement officials have opposed the law, including the Arizona Association of Chiefs of Police. They say that the law will harm their ability to protect the community and alienate police officers from the communities they serve. The law will also force police officers to devote scarce resources to investigating immigrants' status rather than solving serious crimes.

➤ **Arizona Association of Chiefs of Police**

"The provisions of the bill remain problematic and will negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner. While AACOP recognizes immigration as a significant issue in Arizona, we remain strong in our belief that it is an issue most appropriately addressed at the federal level."¹⁸

➤ **Sheriff Clarence Dupnik, Pima County, AZ**

"...in the past few weeks Arizona became a model for the rest of the country of what not to do. I have an enormous amount of respect for the men and women of my department... But no one can tell them what an illegal immigrant looks like and when it is ok to begin questioning a person along those lines. This law puts them in a no-win situation: They will be forced to offend and anger someone who is perhaps a citizen or here legally when they ask to see his papers—or be accused of nonfeasance because they do not. Law enforcement did not ask for and does not need this new tool. What we do need is assistance from the federal government in the form of effective strategies to secure the border. Additionally, the federal government must take up this issue in the form of comprehensive immigration reform policy."¹⁹

➤ **Chief Robert Davis, San Jose, CA, president of the Major Cities Chiefs Association**

"[Regarding the Arizona legislation, the Major Cities Chiefs Association stands by its policy that] immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities."²⁰

- **Sergeant Brian Soller, Mesa, AZ; President, Mesa Lodge, Fraternal Order of Police**
"If we're getting hammered with calls, is a misdemeanor [trespassing by an illegal immigrant] more important than a stabbing or shooting? No. The problem with this law is that it's an unfunded mandate and could eat up a lot of manpower and cost a lot of money."²¹

THE FINANCIAL COST OF SB 1070

Q: What will it cost to implement SB 1070 in Arizona?

A: Implementation of SB 1070 will be very expensive at a time when the state is already struggling financially.

- The Arizona legislature failed to produce a fiscal analysis on how much SB 1070 will cost the state before passage of the bill. However, a [fact sheet](#) produced by Yuma County Sheriff Ralph E. Ogden in response to similar legislation proposed in 2006 provides some quantifiable data.²² Yuma County is one of Arizona's 15 counties, with a population of about 200,000. The 2006 fact sheet estimates the costs of a similar [bill](#) which would have authorized the police to arrest illegal immigrants on trespassing charges if they were simply present in the state. It shows a staggering potential cost to Yuma County law-enforcement agencies from the moment of arrest to the point of conviction, sentencing and incarceration.²³
- The Sheriff estimated that:
 - Law-enforcement agencies would spend between \$775,880 and \$1,163,820 in processing expenses;
 - Jail costs would be between \$21,195,600 and \$96,086,720;
 - Attorney and staff fees would be \$810,067-\$1,620,134;
 - Additional detention facilities would have to be built at unknown costs.
 - In addition, the Superior Court, Justice Courts, Juvenile Courts, and Municipal Courts would also realize increased costs for additional court staff, interpreters, administrative staff, and pre-trial services.²⁴
 - Multiplying this among all 15 counties means the costs of implementing SB 1070 could rise into the 100s of millions of dollars for the state.

Q: What other costs will the state incur?

- The Mayor of Phoenix [estimated](#) the loss of convention revenue to the state as a result of SB 1070 will be at least \$90 million over 5 years due to boycotts.²⁵
- A report by veteran journalist Jeffrey Kaye found a [state of confusion](#) among law enforcement as to how SB 1070 would be implemented. Kaye detailed divisions

among law enforcement officials—both in how to train law enforcement officers, how to enforce and implement the law, and conflicts as to whether the law is an efficient way to protect Arizona.

- A [study released](#) in July 2007 by the University of Arizona's Udall Center for Studies in Public Policy concluded that economic output would drop annually by at least \$29 billion, or 8.2 percent, if all non-citizens, which include undocumented workers, were removed from Arizona's workforce. About 14 percent of the state's 2.6 million workers are foreign-born, and about two-thirds to three-fourths of non-citizens are undocumented.²⁶
- The Perryman Group [estimated](#) that if all unauthorized immigrants were removed from Arizona, the state would lose \$26.4 billion in economic activity, \$11.7 billion in gross state product, and approximately 140,324 jobs.²⁷

Q: How much will the litigation cost?

- So far [seven lawsuits](#) have been filed to stop implementation of SB 1070 and the costs are yet to be seen. Other states and localities that passed anti-immigrant legislation and ordinances have been caught up in costly litigation to defend their laws. For example:
 - **Fremont, Nebraska** recently passed a ban on hiring or renting property to unauthorized immigrants, yet is having trouble implementing the law because of litigation costs. Officials estimate that defending the law will cost the state an average of \$1 million per year in legal fees, and as a result, Fremont taxpayers are now facing a potential 18 percent increase in property taxes.²⁸
 - **Farmers Branch, Texas** has already spent about \$3.2 million to defend itself since September 2006, when it launched the first of three ordinances. The city has budgeted \$623,000 for legal expenses through the rest of the fiscal year related to the ordinance defense. Legal costs could exceed \$5 million by the end of the fiscal year.²⁹
 - **Hazleton, Pennsylvania's** insurance carrier [is asking](#) a federal judge to rule that it is not responsible for nearly \$2.4 million in attorney fees being sought by the plaintiffs who successfully challenged the city's Illegal Immigration Relief Act.³⁰
 - **Riverside, New Jersey** rescinded an ordinance that penalized renting to or employing unauthorized immigrants after the town of 8,000 accumulated \$82,000 in legal fees.³¹

COPYCAT LEGISLATION

Q: Are other states considering Arizona-like laws?

A: Yes. Despite the criticism of the Arizona law from Republicans, Democrats, police officials, religious leaders, and civil rights leaders, legislators in at least twenty three states—Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Texas, Utah—have introduced or are considering introducing [similar legislation](#).³²

Q: Isn't it time for states to take matters into their own hands?

A: No. While people are genuinely frustrated over the failure of the federal government to fix our broken immigration system, creating a patchwork of potentially unconstitutional and confusing laws is not an answer. A recent poll conducted by [Politico](#) shows that people don't necessarily want states to jump into the fray as much as they want solutions. While 23% of respondents supported states taking action, 61% supported passing comprehensive immigration reform through Congress.³³ A [CNN poll](#) showed that while 55% of Americans favor SB 1070, an astounding 81% supported a plan that would legalize unauthorized immigrants if they had a job and paid back taxes.³⁴

Q: But the federal government hasn't done anything, has it?

A: For more than two decades, the U.S. government has tried without success to stamp out unauthorized immigration through enforcement efforts at the border and in the interior of the country without fundamentally reforming the broken immigration system that spurs unauthorized immigration in the first place. Ironically, while billions upon billions of dollars have been poured into enforcement, the number of unauthorized immigrants in the United States has increased dramatically.

- On August 13, 2010, President Obama signed into law a \$600 million bill focused on border security. The bill provides \$175.9 million for additional Border Patrol agents, \$50 million for additional ICE agents, \$14 million for additional border fencing, \$32 million for unmanned aerial vehicles on the border, and \$30 million for law enforcement activities targeted at reducing violence along the southwest border.³⁵
- The annual budget of the U.S. Border Patrol stood at \$3.0 billion in Fiscal Year (FY) 2009 - a nine-fold increase since FY 1992. The number of Border Patrol agents stationed along the southwest border with Mexico grew to 16,974 in FY 2009 - a nearly five-fold increase since FY 1992.
- Yet, the unauthorized-immigrant population of the United States has tripled in size, from roughly 3.5 million in 1990 to 11.9 million in 2008.

Q: What is the solution?

A: If we want to avoid creating a patchwork of potentially unconstitutional laws that attempt to regulate national immigration policy state-by-state, then we must fix our broken immigration system. Arizona is not alone in its frustration, but the focus on border security fails to tell the real story of our immigration crisis. The [problems](#) are complex but there are [real solutions](#). The enforcement-only approach to our immigration problems is clearly not yielding the results needed. It is time for Congress and the President to propose comprehensive solutions that recognize the complexity and balance needed for an orderly and fair immigration system. A comprehensive approach to immigration reform recognizes that illegal immigration will never be stopped solely by building fences and putting the National Guard on the border. It requires addressing the reasons people come to the U.S.—to work, to be with family, to build a new life—by ensuring that we have a legal immigration system that meets the demands of our economy and our families, that requires people who are here illegally to register, pay taxes, learn English and commit to the system, and that uses smart workplace, border, and interior enforcement strategies to enforce our laws.

Endnotes

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- ³² Reform Immigration for America, "[State and Local Elected Leaders for Immigration Reform](#)," June 2, 2010.
- ³³ <http://dyn.politico.com/printstory.cfm?uuid=6C306439-18FE-70B2-A82C7AE85F0EC954>
- ³⁴ <http://i2.cdn.turner.com/cnn/2010/images/07/27/rel10f1a.pdf>;
- ³⁵ <http://www.govtrack.us/congress/billtext.xpd?bill=h111-6080>