

## RSC Policy Brief

# Arizona Immigration Law: Picking up the Slack?

May 4, 2010 (updated from April 30, 2010)

*“But I will tell you, people won't want to come to Arizona if we don't have a border security measure put into place because they want to travel through Arizona, they want to bring businesses to Arizona, they want to be safe. And it's illegal... It's illegal to cross the border without having papers. And we have over a thousand illegal immigrants coming across the border a day. And of those that are apprehended, 87 percent of them have criminal records. So they're using up our school dollars. They're using up our hospital dollars. They're using up our court dollars. And they're using up our incarceration dollars.”*

*-Arizona Governor Jan Brewer (R)*

**Note:** This policy brief is an update to the document that was sent out on April 30, 2010. Since then, Arizona Governor Jan Brewer signed several changes into law, which are reflected in the text below. Most notably, the word “lawful contact” was changed to “lawful stop, detention or arrest.” The bill also amends the law to state that law enforcement may not consider race, color or national origin in determining legal status of an alien, except to the extent permitted by the United States or Arizona Constitution. Changes are bolded.

On April 23, 2010, Arizona Governor Jan Brewer signed into law SB 1070, the Support Our Law Enforcement and Safe Neighborhoods Act. On April 30, 2010, she signed changes to that law. The bill represents the first state law to make it a state crime to be an illegal immigrant. Supporters argue that this bill is a necessary step in protecting our borders due to a lack of federal enforcement of current immigration laws; opponents argue that this is an overreach of state authority that will result in racial profiling. Below you will find a brief summary of some of its major provisions, an analysis of the rationale behind the law, and its potential implications.

### Summary of Key Provisions

- Prohibits an official or agency in Arizona from restricting the enforcement of federal immigration laws. This section prevents Arizona from creating sanctuary cities where federal immigration law enforcement is limited.
- After a “lawful stop, detention or arrest” is made by a law enforcement official (e.g. for a traffic violation), **“in the enforcement of any other law or ordinance of a county, city or town or this state,” (new language)** the bill directs law enforcement to determine immigration status “where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States...” After that, “a reasonable attempt shall be made, when practicable, to determine the immigration status of the person...” The section goes further to say that the state “may not consider race, color or national origin in implementing the requirements of this subsection...” **The original bill used the phrase, “lawful contact” instead of “lawful stop, detention or arrest” and also stated the state/law enforcement “may not solely (emphasis added) consider race, color or national origin...except to the extent permitted by the United States or Arizona Constitution.”** The word “ordinance” was added so that officers responding to city ordinance violations (e.g. a loud party) would also be

**required to determine immigration status if they have “reasonable suspicion” to believe the violators are illegal immigrants.**

- Presumes that a person who has valid identification (e.g. driver’s license, a tribal enrollment card, or other listed documents) is here legally.
- Prohibits state officials from being able to restrict the sending, receiving, or maintaining of information relating to the immigration status of any individual for official purposes listed in the bill.
- **New: Establishes that an alien’s immigration status may be determined by the following: 1) a law enforcement officer, authorized by the federal government to verify an alien’s immigration status or 2) The US Immigration and Customs Enforcement (ICE) or the US Customs and Border Protection (CBP) pursuant to 8 USC Section 1373 (c), regarding their obligation to respond to inquiries.**
- Allows legal residents to bring an action in Superior Court to challenge an official that implements a policy which limits or restricts the enforcement of federal immigration laws.
- Establishes that “a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S. Code Section 1304(e) or 1306(a).” This refers to areas of the law that require aliens to carry their legalization documents with them.
- Outlines the penalties for failure to carry an alien registration document. **The original bill outlined specific penalties for each class of felony. The new bill removes this language and states “The maximum fine is one hundred dollars and for a first violation of this section the court shall not sentence the person to more than twenty days in jail and for a second or subsequent violation the court shall not sentence the person to more than thirty days in jail.”**
- Establishes that it is unlawful for an occupant of a motor vehicle to hire and pick up day laborers if the vehicle blocks or impedes the normal movement of traffic, and establishes that it is unlawful to pick up any unauthorized alien for work. **Adds language to this section stating that law enforcement “may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States or Arizona Constitution.” Also states that only authorized law enforcement, ICE, and CBP are authorized to verify an alien’s status.**
- **Establishes a joint border security advisory committee comprised of members of the House, Senate, appointed members by the Governor, and others. The committee will analyze border crossing statistics, crime statistics, make recommendations to increase border security, and make other recommendations.**

### Why Arizona?

The goal of Arizona’s new law is simple: to discourage the unlawful entry and presence of illegal immigrants. And why did Arizona, of all states, become the first to do this? Because Arizona has a problem with illegal immigration and not surprisingly, Arizona residents realize it – according to a recent [Rasmussen poll](#), **70% of likely voters in Arizona favor the bill**. Below are some facts about Arizona crime that provided impetus for the bill:

- According to Mark Krikorian at the Center for Immigration Studies, Arizona has **the fastest growing illegal immigrant population in the country**; 22 percent of felonies in Maricopa County are committed by illegal immigrants; and illegal immigrants are approximately 10 percent of the county’s adult population. These are merely a few of the startling statistics he outlines in his [April 29<sup>th</sup> article](#).
- According to the [National Terror Alert website](#), Phoenix has been dubbed the “**kidnapping capital**” of the U.S. “with more incidents than any other city in the world outside of Mexico City and over 370 cases last year alone.”
- According to a Newsmax article from April 27<sup>th</sup>, “Over the past three years, Border Patrol agents have made **990,000 arrests of immigrants crossing the border illegally in Arizona**, or an average of 900 a day.”

- On March 27, 2010, Rob Krentz, a rancher in southern Arizona was murdered. Arizona Attorney General Terry Goddard has recently announced that the murder was likely committed by a drug-cartel scout. The travesty was the catalyst for many legislators in Arizona to stop waiting for federal action and pass their own reforms to hopefully prevent future such crimes from occurring.

### **Frequently Asked Questions about the Law**

**Will the law invite racial profiling?** Opponents have argued that as a result of this law, law enforcement will unfairly target Hispanics and practice racial profiling. Supporters assert that there are enough safeguards in the bill that will prevent this from occurring. Namely, a law enforcement officer may only inquire about immigration status **if the officer has already engaged in “lawful stop, detention or arrest.”** (e.g. the individual has been pulled over for speeding), and the officer has “reasonable suspicion” that the individual is here illegally. The Arizona law states that enforcement “may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution.” After these requirements are met, an officer may then make a “reasonable attempt...to determine the immigration status of the person.” **The original text stated that law enforcement “may not solely (emphasis added) consider race, color or national origin in the enforcement...”**

It is also important to note that the law was written in accordance with the reasonable suspicion standard in the Supreme Court’s decision of *U.S. v. Brignoni-Ponce* (1975). In this case, the Supreme Court ruled that under the Fourth Amendment, Border Patrol agents on roving patrol may stop a vehicle near the border if they are aware of “specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country.”

**How can Arizona make it a crime not to carry immigration papers?** It has been a federal crime for years for foreign nationals not to carry proof of legal residency. 8 USC 1304 (e) explicitly states: “Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him... Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.” Arizona is simply the first state to make it a state crime not to carry documentation.

### **What’s Next?**

It is possible that the Department of Justice (DOJ) will challenge the legality of the law. The DOJ will likely look to see whether, in their view, it unlawfully preempts current federal law, it violates the Fourth Amendment (unreasonable searches and seizures), or a civil rights abuse is at issue because of assertions that the law will encourage racial profiling. Reports indicate that the White House has already put together a [legal team to discuss strategies](#).

President Obama and many Democrats in the Senate have made it abundantly clear that they believe the Arizona law is “misguided.” It is likely that the Arizona bill has inspired the Democrat leadership to push more fervently for a comprehensive immigration bill, which they claim will prevent more states from taking action and passing laws like Arizona’s. Nevertheless, there have been [conflicting reports](#) as to whether President Obama will throw his weight behind a bill before the end of the year. Reports have also indicated that Majority Leader Harry Reid (D-NV) is willing to push a bill regardless of whether it has Republican support. To that end, Senator Lindsey Graham (R-SC), who had been working on a “compromise” measure, has indicated that [he will not support any bill](#) that is brought up this year.

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