

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

June 14, 2011

What is the impact of the federal court of appeals' April 11, 2011 ruling on Arizona's racial profiling law?

A three-judge panel of the U.S. Court of Appeals for the Ninth Circuit affirmed the Arizona federal district court decision to block the most troubling provisions of the state's racial profiling law, SB 1070. This was a major victory for civil rights and civil liberties. The federal appellate court's decision continues to prevent central provisions of Arizona's racial profiling law from taking effect. A federal district court in Phoenix had previously issued a preliminary injunction, blocking these provisions from taking effect, on July 28, 2010. Like the district court below it, the court of appeals determined that much of the Arizona law impermissibly conflicts with federal immigration law.

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 appellate court issued its ruling to affirm the district court decision to block the law only in the Department of Justice case, the ruling affirmed several of the positions taken by the civil rights coalition.

Which provisions of Arizona's law are blocked?

The district court granted a preliminary injunction – affirmed by the federal appellate court – 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.

What happens next in the Department of Justice case?

Arizona Governor Jan Brewer has announced that the state will seek review of the federal appellate court decision by the United States Supreme Court. The state must file its petition for review by mid-July 2011. The Supreme Court can then decide to either grant or deny the petition. If the Supreme Court denies the petition, then the decision of the Ninth Circuit stands. If the Court grants the petition, it will hear oral argument and consider written legal briefs before issuing a decision in the case.

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.

In January, 2011, the civil rights coalition 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. In May, 2011, the district court declined to grant that motion, instead deciding to await the outcome of a Ninth Circuit case, *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, that raises similar issues. The coalition will consider whether to renew its motion after the *Redondo Beach* decision comes down.

Other aspects of the case remain pending before the district court. Importantly, 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. The civil rights coalition will continue to raise those issues in both the *Friendly House* case and, as appropriate, in the Department of Justice case as well.