



N-1 Immigration Issues

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Immigration

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This briefing paper discusses the 2010 Arizona immigration law, the related judicial proceedings, and the decision handed down by the United States Supreme Court in 2012. The article also discusses the E-Verify system, the current Kansas in-state tuition law, and the changes proposed to the in-state tuition law in 2013. For information on Voter ID laws see the Ethics and Elections section of this publication. For information on the use of driver's licenses and other identification documents see the Transportation and Motor Vehicles section of this publication.

2010 Arizona Immigration Law

Background

The Arizona immigration law (the Arizona law), Support Our Law Enforcement and Safe Neighborhoods Act (SB 1070) was signed by Arizona Governor Jan Brewer on April 23, 2010, and was scheduled to go into effect on July 29, 2010. Legal challenges against the law were filed, arguing the law was unconstitutional and non-compliant with civil rights law. The U.S. Department of Justice asked the courts for an injunction against enforcement of the law. A federal judge issued a preliminary injunction that blocked the law's most controversial provisions.

Major Provisions of the Arizona Law

SB 1070:

- Requires reasonable attempts to determine the immigration status of persons lawfully stopped, detained, or arrested where there is reasonable suspicion regarding the immigration status of the person, except if such a determination would hinder or obstruct an investigation;
- Stipulates that if a person is arrested, that person's immigration status must be determined and verified with the federal government before the person is released;
- Imposes criminal sanctions on aliens not carrying the documents required to prove their identity as a lawfully present citizen;
- Presumes lawful presence if a person presents a valid Arizona driver's license or state-issued ID, a tribal enrollment card or ID, or any other valid ID issued by the federal government or

state or local governments after requiring proof of lawful presence;

- Makes the hiring of an illegal alien and the hiring of day laborers off the street a crime;
- Imposes criminal penalties for unlawfully present aliens who knowingly apply for, solicit, or perform work as an employee or independent contractor; and
- Makes it illegal to transport or conceal, harbor, or shield an unlawfully present alien or to encourage an alien to immigrate to Arizona, if the alien is known to be illegal.

According to the Arizona law, race, color, and national origin may not be considered when enforcing any provision of the law, except as permitted under the state and federal constitutions. The Arizona law also prohibits state, county, or local officials from limiting or restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law. It allows any legal Arizona resident to sue any state agency that does not comply with the law. Penalties are assessed for each violation of the law.

2010 Arizona HB 2162

Critics of SB 1070 stated that it encourages racial profiling. To address these concerns, the law subsequently was modified by 2010 HB 2162. That legislation states that race, color, or national origin may not be used as “reasonable suspicion” to determine whether an alien was illegal. HB 2162 also requires a violation of law to occur before a law enforcement officer could request documents to ascertain alien status.

2012 United States Supreme Court Decision

On June 25, 2012, the Supreme Court handed down its ruling in the case of *Arizona v. United States*. At issue was whether federal law preempted certain provisions of Arizona’s immigration law (SB 1070), passed into law in 2010.

Provisions Invalidated by the Court

The Supreme Court struck down provisions related to:

- The new crime of “willful failure to complete or carry an alien registration document”;
- New criminal penalties for unauthorized aliens who “knowingly apply for work, solicit work in a public place, or perform work as an employee or independent contractor”; and
- Allowing state officers to execute warrantless arrests on persons whom the officer has probable cause to believe are removable from the United States.

The Court held that these provisions were preempted by federal law, either because federal law already provided comprehensive regulation in that area or because the newly enacted state laws created an unlawful obstacle to the regulatory scheme chosen by Congress to achieve the goals and objectives of existing federal law.

Provisions Upheld by the Court

The Court upheld a provision of the state law requiring state officers to make a “reasonable attempt to determine the immigration status” of anyone the officers stop, detain, or arrest based on a legitimate basis when “reasonable suspicion exists that the person is an alien and is unlawfully present in the United States.”

The Court concluded that, since the law had not yet been implemented due to litigation and resulting injunctions, there was uncertainty about what the new law meant and how it would be enforced. The Court also held that there was a way to read the Arizona law so that it complied with existing federal law. However, without guidance from the state courts regarding how the Arizona law would be interpreted and enforced, the Court felt it was “inappropriate to assume the provision conflict[ed] with federal law.” The Court’s opinion did not preclude other challenges to this provision of the law after it went into effect.

2013 9th Circuit Court of Appeals Decision

In October of 2013, the 9th Circuit Court of Appeals ruled on another portion of the Arizona immigration law not yet considered by the Supreme Court. The 9th Circuit Court upheld the decision of a lower federal court, blocking enforcement of a provision of the law that makes transporting or harboring persons illegally residing in the county a crime. The provision had been in effect until it was blocked by the lower court in September of 2012. The 9th Circuit Court of Appeals found the provision to be vague and preempted by federal law.

E-Verify

E-Verify is an electronic federal program which employers may use to verify the employment eligibility of their workers. The program was authorized by the Illegal Immigration Reform and Responsibility Act of 1996. Employers submit information taken from a new employee's Form I-9 (Employment Eligibility Verification Form) through E-Verify to the Social Security Administration and U.S. Citizenship and Immigration Services to determine whether the employee is authorized to work in the United States.

Support for E-Verify

The federal argument in favor of the E-Verify system is that employers have safe harbor protection in the event of discovery of unauthorized workers and can avoid penalties; employers can use the system free of charge; the system reduces unauthorized employment and minimizes verification-related discrimination; and it is a quick and easy system to use while maintaining employee privacy. Employers using E-Verify have a better chance of attracting and retaining talented foreign nationals through the H-1B lottery system.

Criticism of E-Verify

Critics of the E-Verify system contend that if the information is not contained in E-Verify for a legal immigrant or U.S. citizen, then the employer would be prevented from hiring such individual, and E-Verify can generate "false positives" (incorrectly shows a mismatch).

Kansas Law

Kansas employers currently are not mandated to participate in E-Verify. Legislation was considered in the 2008 Session of the Kansas Legislature for such a mandate, but that legislation did not pass.

In-State Tuition For Aliens Not Lawfully Present

Current Kansas In-State Tuition Law

In 2004, the Kansas Legislature passed HB 2145 (KSA 76-731a), which defines the criteria for in-state tuition to illegal immigrants. The law states an individual is entitled to in-state tuition if the person "has attended an accredited Kansas high school for three years or more, has either graduated from an accredited Kansas high school or earned a general education development certificate issued in Kansas, regardless of whether the person is or is not a citizen of the United States," and "in the case of a person without lawful immigration status, has filed with the post secondary educational institution an affidavit stating that the person or the person's parents have filed an application to legalize such person's immigration status, or such person will file such application as soon as the person is eligible to do so or, in the case of a person with legal, nonpermanent immigration status, has filed with the postsecondary educational institution an affidavit stating that such person has filed an application to begin the process for citizenship of the United States, or will file such application as soon as the person is eligible to do so."

2013 Proposed Kansas In-State Tuition Legislation

The 2013 Legislature introduced HB 2192. The bill would exclude aliens not lawfully present from the definition of domiciliary resident for purposes of in-state tuition and specifically stated that such persons would not be entitled to in state tuition rates at any state educational institution. The bill received a hearing in the House Federal and State Affairs Committee, but did not advance any further. The bill will carry over to the 2014 Session.

For more information, please contact:

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