

## Immigration Alert

JUNE 26, 2012

### ***Arizona v. United States***: Supreme Court Reaffirms Federal Government's Power in Immigration Arena

In a 5-3 decision authored by Justice Kennedy, the Supreme Court struck down most of the main provisions of an Arizona law targeting illegal immigration. The law, known as the "Support Our Law Enforcement and Safe Neighborhoods Act" or "S.B. 1070," codified Arizona's policy of "attrition through enforcement." This policy presumes that undocumented individuals will leave the United States in response to unfavorable or hostile laws. Four provisions of the law were at issue in this case:

- Section 3, criminalizing the "willful failure to complete or carry an alien registration document ..."
- Section 5(C), providing that it is a misdemeanor for "an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor in [Arizona]."
- Section 6, enabling a police officer to proceed with a warrantless arrest "... if the officer has probable cause to believe ... [the individual] has committed any public offense that makes [him or her] removable from the United States."
- Section 2B, empowering Arizona police officers to determine the immigration status of any individual stopped or arrested should "reasonable suspicion" exist that the person is illegally in the country.

In striking down Sections 3, 5(C), and 6, the Court advanced principles of federalism and preemption to expose how the provisions conflict, and in some cases undermine, the national government's immigration regime. Accordingly, the Court found that these three provisions were preempted by federal law.

The Court did, nonetheless, uphold Section 2B. In so doing, the Court narrowly construed the provision, thus preventing an expansive application of the law. It also left open the possibility of civil rights challenges in the future. We expect to see challenges to this provision of the law, which will undoubtedly result in racial profiling in Arizona and states with similar laws.

Various states throughout the country have laws on their books that deal with immigration issues and many others are considering implementing immigration-related statutes. Employers must be mindful of both the federal and state laws that impact their businesses to ensure proper compliance. Mintz Levin will continue to monitor developments in Arizona and other states that have similar statutes.

For employers, the Court's ruling in *Arizona v. United States* does not disturb current worksite obligations. Employers must remain vigilant not to hire or employ any undocumented worker, and must be prepared to handle a worksite raid. Federal and state contractors who are subject to E-Verify must ensure that they are using E-Verify properly and that covered subcontractors have also enrolled in the E-Verify program. An employer who violates federal immigration laws may be subject to civil sanctions and/or criminal prosecution.

Please contact your Mintz Levin attorney if you have any questions about your compliance program.

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