

Immigration Alert: Federal Court Issues Preliminary Injunction Against the Most Controversial Sections of Arizona Immigration Law

7/28/2010

Overview

In April 2010, the Arizona State Legislature passed and Governor Janice K. Brewer signed into law Arizona Senate Bill 1070 in an effort to deal with illegal immigration, escalating drug and human trafficking, and other public safety concerns. The new law, set to go into effect on Thursday, July 29, 2010, empowers Arizona's state and local police forces to enforce strict new provisions against illegal immigrants in the state. Among its various provisions, S.B. 1070 requires that state and local police officers in Arizona check a person's immigration status when enforcing other laws, and it further authorizes officers to make warrantless arrests of any individuals when probable cause exists to believe that the person has committed a public offense that would make that individual removable from the U.S.

On July 28, 2010, U.S. District Court Judge Susan R. Bolton issued a ruling in the case of *United States v. State of Arizona et al*, in which the federal government as plaintiff challenged the constitutionality of S.B. 1070 on the grounds that the power to regulate immigration rests solely in the federal government, and that the Arizona law is therefore preempted by federal law. In her ruling, Judge Bolton found that the U.S. is "likely to succeed on the merits in showing that" some sections of S.B. 1070 are preempted by federal law, and therefore issued a preliminary injunction on those sections.

Sections of S.B. 1070 Enjoined by Judge Bolton's Ruling

As noted in Judge Bolton's decision, S.B. 1070 contains a "severability clause, providing that '[i]f a provision of this act or its application... is held invalid, the invalidity does not affect the other provisions or applications of the act...'" Given the severability of the law's provisions, Judge Bolton stated that "the Court cannot and will not enjoin S.B. 1070 in its entirety."

In her ruling, Judge Bolton concluded that the federal government is likely to succeed in demonstrating that the following provisions of S.B. 1070 are preempted by federal law:

Section of S.B. 1070 and Arizona Revised Statutes (A.R.S.)	Provisions
Portion of Section 2 of S.B. 1070 A.R.S. § 11-1051(B)	requiring that an officer make a reasonable attempt to determine the immigration status of a person stopped, detained, or arrested if there is a reasonable suspicion that the person is unlawfully present in the United States, and requiring verification of the

	immigration status of any person arrested prior to releasing that person
Section 3 of S.B. 1070 A.R.S. § 13-1509	creating a crime for the failure to apply for or carry alien registration papers
Portion of Section 5 of S.B. 1070	creating a crime for an unauthorized alien to solicit, apply for, or perform work
Section 6 of S.B. 1070 A.R.S. § 13-3883(A)(5)	authorizing the warrantless arrest of a person where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States

Conclusion

Judge Bolton's ruling places an injunction on the most controversial aspects of the Arizona immigration law, notably its authorization of warrantless arrests of those individuals believed to be illegal immigrants, its requirement of Arizona officers to determine the immigration status while enforcing other laws, and its requirement that immigrants carry relevant papers detailing their status at all times. However, while the judge's decision has delayed the enforcement of these controversial provisions of the bill, there is great public debate over the bill (and indeed there is a continuing national debate regarding the rights of individual states to enforce immigration laws); therefore, it is likely that the case may eventually be heard by the U.S. Supreme Court.

We will continue to provide our clients with updates regarding the status of the implementation of this law.

For assistance in this area please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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