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President Felipe Calderón, Mexican Congress Denounce New Arizona Law Targeting Undocumented Immigrants

by LADB Staff

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The Arizona state legislature's passage of a bill that directly targets undocumented immigrants has drawn strong condemnation from President Felipe Calderón and the Mexican Congress as well as immigrant-rights advocates and politicians in the US, including President Barack Obama. The Arizona measure, which Gov. Jan Brewer signed into law on April 23, requires state and local police to determine the status of people if there is "reasonable suspicion" that they are illegal immigrants and to arrest people who are unable to provide documentation proving they are in the country legally.

The measure also makes it a crime to transport someone who is an illegal immigrant or to hire day laborers off the street. This is the second immigration-related controversy between Mexico and a US state in 2010. In early April, the Chamber of Deputies and the Oklahoma state legislature became embroiled in a war of words regarding Oklahoma's 2009 decision to impose a surcharge on remittances to raise revenues for drug-interdiction efforts in Oklahoma. The Arizona measure, which would go into effect 90 days after the end of the state legislative session, or sometime this summer, would in effect make it a state crime for undocumented immigrants to even be in Arizona. The legislation requires police to make a reasonable attempt "when practicable" to determine the immigration status of a person if reasonable suspicion exists that the person is in the US illegally. Anyone who is stopped would have to produce an Arizona driver license or identification card, a tribal identification card, or any federal, state, or local government-issued identification. Critics argue that the Arizona measure, SB1070, violates the US Constitution on many counts.

They point out that only the federal government has the powers to enforce immigration law. Additionally, the Arizona measure could violate constitutional provisions dealing with civil rights and unreasonable search and seizure. Critics say measure violates civil rights The new law could affect a large segment of Arizona's population. US Census Bureau statistics indicate that roughly one-fourth of Arizona's population is of Latino origin. By some estimates, about 460,000 undocumented immigrants live in Arizona, out of a total of about 11 million throughout the country. "You cannot tell if a person walking on a sidewalk is undocumented or not...[so] this is a mandate for racial profiling," said Pablo Alvarado, director of the National Day Laborer Organizing Network (NDLON). This is the same argument that President Calderón used shortly after learning that Gov. Brewer had signed the measure into law. "The legislation doesn't adequately guarantee respect for people's fundamental rights, not only of Mexicans but of Mexican-Americans who will also be the object of persecution and injustice," Calderón told members of the advisory council of the Instituto de los Mexicanos en el Exterior (IME), which was meeting in Mexico City on April 25.

Calderón said this effort to criminalize immigration opens the door to intolerance and discrimination. "We cannot stand here with our arms crossed and accept an unjust law that opens the door to unacceptable racial discrimination," said the Mexican president. "We will make every

effort to ensure that the dignity of our fellow Mexicans is respected." There has also been some international outcry about SB1070. Among the critics is Organization of American States (OAS) Secretary-General José Miguel Insulza, who described the measure as "clearly discriminatory." But SB1070 proponents say the law is sound because it does not deviate from what federal laws already allow. "The bill basically makes it a penalty under state law to do what is already a crime under federal law," Kris Kobach, a law professor at the University of Missouri-Kansas City School of Law who counseled state Sen. Russell Pearce when he was writing SB1070, told the Phoenix-based Arizona Republic newspaper. "If the state is concurrently prohibiting the same behavior that the federal government is, then the state is not preempted and is acting consistently with Congress' objectives." Calderón to address issue during US visit in May The Calderón government had been watching the measure closely since it first came before the Arizona Senate earlier this year. In a statement from his office in early April, the Mexican president called the legislation an "obstacle" to finding solutions to common problems along the US-Mexico border.

The administration had lobbied heavily for Gov. Brewer to veto the Senate measure. The Arizona governor took several days to make the decision but in the end signed the bill. This prompted a statement from the Secretaría de Relaciones Exteriores (SRE) expressing "regrets" about Gov. Brewer's decision. "Mexico will use all the diplomatic, political, and economic resources at its disposal to present a firm response to this law," Mexico's Ambassador to Washington Arturo Sarukhán said in Washington. Foreign Relations Secretary Patricia Espinosa and Calderón both issued statements indicating that the Arizona law would be at the top of the agenda during the Mexican president's meetings in Washington with President Obama and with US congressional representatives on May 19-20. Calderón is likely to find a sympathetic ear from Obama, who has gone on record as strongly opposing the Arizona measure.

On the day that Gov. Brewer signed the bill into law, the US president issued a statement calling the measure "misguided." Congressional Democrats have also strongly denounced the legislation. "The lunacy of rounding up people because they look a certain way, or are suspected of being in violation of immigration statutes, can only lead to one thing violations of people's basic, fundamental civil rights. Profiling," said Rep. Luis Gutiérrez (D-IL), a member of the Congressional Hispanic Caucus. Among those who have spoken against the law are Reps. Raúl Grijalva and Ed Pastor, both Democrats from Arizona. Grijalva, whose district includes a huge portion of Arizona that straddles the Sonora border, has gone as far as to suggest that "civic, religious, labor, Latino, organizations of color refrain from using Arizona as a convention site, refrain from spending their dollars in the state of Arizona until Arizona turns the clock forward instead of backward and joins the rest of the union." "There has to be an economic sanction for this," said Grijalva. "Our economic sanction is: Do not do business with a state that is propagating the idea that separate but equal treatment under the law...can be codified." And Mexico's SRE has taken the unusual step of issuing a special warning for Mexican citizens living in or traveling to Arizona that they could face harassment in the state.

Even though Arizona will not enact the new law until late summer, the SRE warned that Mexicans could face "a political environment adverse to communities of migrants and all Mexican visitors." The SRE urged Mexicans in Arizona to "act with prudence and respect the framework of local laws," but also asked that they contact one of seven consulates in Arizona if they are unlawfully detained. Even though enforcement details are still unclear, the SRE said that "it should be assumed that any

Mexican citizen could be bothered and questioned for no other reason at any moment." The SRE alert and the news about passage of the Arizona law has already begun to have some repercussions on travel. On April 27, the Mexican airline Aeroméxico said it had to cancel several flights from Hermosillo, Mexico City, and Guadalajara to Phoenix and Tucson because of a sharp decline in ticket sales. Andrés Conesa Labastida, a spokesperson for the airline, said the reductions have left the airline with a single flight from Hermosillo in Sonora state to Phoenix. Opponents call for economic actions against Arizona. There have been other efforts in Mexico and the US to respond to the passage of SB1070 through boycotts.

Calderón hinted that Mexico would not take a business-as-usual approach. "The commercial, tourism, and cultural ties between Mexico and Arizona are severely affected by this type of legislation," said the Mexican president. "This situation, which has us angered and saddened, at the same time drives us to keep going forward." The initiative has united the political parties in the Mexican Congress, which is expected to consider retaliatory measures that would directly affect Arizona's economy. Among the proposals is a recommendation from the center-left Partido de la Revolución Democrática (PRD) that the Sonora state government postpone its commercial agreements with its neighbor to the north to protest the passage of the bill. Sonora and Arizona are two of the states along the US-Mexico border that have cooperated most closely (SourceMex, August 30, 2006).

The problem for Sonora is that any strain in relations could hurt the Mexican state, especially since much of the produce exported to the US from Mexico is grown in Sonora and shipped through Arizona. The Mexican Senate has postponed approval of an agreement between Mexico and the US regarding cooperation on emergencies, including natural disasters and accidents. The accord was signed in October 2008. While the upper house is eventually expected to take up this issue because it would benefit both countries, senators said they wanted to take the opportunity to express their displeasure with SB1070. "There is no willingness to enter a cooperation agreement with a country that has offended us through the passage of SB1070 in Arizona," said Sen. Luis Alberto Villarreal, who chairs the committee on North American foreign relations (Comisión de Relaciones Exteriores para América del Norte) in the upper house. Similarly, César Nava Vázquez, president of the governing Partido Acción Nacional (PAN), urged all Mexicans to refrain from visiting Arizona.

The potential for a boycott has raised a red flag among members of the Arizona Hotel & Lodging Association (AzHLA). "Our members are concerned," said AzHLA president and CEO Debbie Johnson. "They're hearing from a lot of folks who visit, and they're obviously concerned with where this is playing out." Arizona has previously been the target of boycotts. Between 1990 and 1993, the state lost close to 170 conventions because of the state's failure to approve a holiday honoring civil-rights leader Dr. Martin Luther King, Jr. Critics also speak out in US. In the US, the measure has drawn wide condemnation from church leaders, civil-rights advocates, immigrant-rights groups, and editorialists. "The Arizona Legislature has just stepped off the deep end of the immigration debate, passing a harsh and mean-spirited bill that would do little to stop illegal immigration," The New York Times wrote in an April 18 editorial, days before Brewer signed the measure into law. "What it would do is lead to more racial profiling, hobble local law enforcement, and open government agencies to frivolous, politically driven lawsuits." There has also been opposition from municipal leaders in Arizona.

Phoenix Mayor Phil Gordon said he would push for the city attorney to prepare a lawsuit against SB1070 on the grounds that the law is unconstitutional. But there are practical reasons for Phoenix and other municipalities to oppose the measure because they also become exposed to legal action. Around the country, cities and states have spent millions of dollars defending anti-immigrant bills that are much less stringent than the one approved by Arizona, said the National Employment Law Project (NELP). "In Hazelton, Pennsylvania, the city's Illegal Immigration Relief Act was successfully challenged and the city was asked to reimburse the plaintiffs US\$2.4 million in attorney fees. And in Riverside, New Jersey, the 8,000-person town spent US\$82,000 in taxpayer money in legal fees defending an anti-immigrant ordinance before rescinding it. Now Arizonans may be paying for Phoenix to fight the state," said Americas Quarterly. But the cities are caught in a no-win situation, with the possibility of legal action from both sides. State Sen. Pearce and other SB1070 proponents included a clause allowing private citizens to file legal action against city authorities for failing to enforce the law's provisions.

Some say the issue has become entangled in election-year politics, with competitive races anticipated in the Republican primaries for governor and US Senate and the general elections for the US House of Representatives in Arizona. US Sen. John McCain, who is facing a serious challenge from ultraconservative rival J.D. Hayworth, has toughened his stance on immigration and strongly endorsed SB1070. "I think the people of Arizona understandably are frustrated and angry," said McCain. "It's also a commentary on the frustration that our state legislature has that the federal government has not fulfilled its constitutional responsibilities to secure our borders." This is a change in position for McCain, who was one of the lead sponsors, along with the late Sen. Ted Kennedy (D-MA), of immigration-reform legislation that would have included provisions like a guest-worker program and an opportunity for undocumented immigrants to obtain legal status (SourceMex, May 31, 2006). Hayworth, a former US representative who has aligned himself with the Tea Party movement of states-rights and anti-tax conservatives, has been issuing news releases in support of the state legislation for several weeks. Both sides cite need for immigration reform. The controversy regarding the new Arizona law provided an opportunity for both sides to cite the urgent need for immigration reform. Recent efforts to change the US immigration law stalled in Congress during the administration of former President George W. Bush (SourceMex, May 23, 2007 and April 23, 2008).

In the aftermath of Obama's election in 2008, Mexican officials expressed hope that Obama and the Congress would put immigration reform at the top of the US legislative agenda (SourceMex, January 21, 2009). As part of his comments condemning SB1070, Obama also took the opportunity to call on Congress to pass a comprehensive immigration-reform bill. Some of the president's allies in Congress agreed that such an effort is needed. But they suggested that Obama should take more of a leadership role in moving the issue forward. "In the end, it all comes back to the president of the United States and whether he will put his back into comprehensive immigration reform," Gutiérrez, said. Some administration officials, including Homeland Security Secretary Janet Napolitano, are concerned that the lack of a solid national immigration policy could encourage more states to take matters into their own hands. And this is precisely what the Federation for American Immigration Reform (FAIR) is promoting. "The states are laboratories for democracy.

The federal government is in gridlock," said FAIR. "We're providing models for the day when the ice breaks up on the Hill and the legislative waters flow and the country decides to confront this

problem in a realistic way," said Michael Hethmon, general counsel for the Immigration Reform Law Institute (IRLI), a FAIR affiliate. Hethmon helped draft the language of the Arizona bill. Hethmon said legislators from four other states have approached him for advice about promoting similar initiatives. "Arizona was meant to be the leading edge," Hethmon said. "If you are going to work on developing a state-based response to this enormous problem the lack of a national immigration policy Arizona is the place to do it." Omar Jadwat, the staff attorney who heads the Immigrants Rights' Project (IRP) at the American Civil Liberties Union (ACLU), said states would be taking steps in the wrong direction if they followed Arizona's lead. "Although we are aware that people are trying to convince other legislatures to go down this path, I think it's clear, both as a policy matter and a legal matter, that Arizona's approach is the wrong one," said Jadwat. Still, immigration has become an issue on the agendas in many state legislatures around the country in the past five years.

Statistics from the National Conference of State Legislatures (NCSL) indicate that about 1,500 immigration-related bills were considered in 2009, compared with only 300 in 2005 and 600 in 2006. The numbers increased to 1,500 in 2007 and 1,305 in 2008. Roughly 15% of the measures that were enacted addressed such issues as driver's licenses, health, and education. Oklahoma legislation also controversial. One recent immigration-related measure that created a good deal of cross-border controversy was a 2009 decision by the Oklahoma legislature to impose a 1% fee, a minimum of US \$5.00, on all wire transfers initiated in Oklahoma. Banks and credit unions would be exempt, but all other companies registered to transfer money would have to collect the fee.

The funds collected would be used to fund the drug-interdiction efforts by the Oklahoma Bureau of Narcotics and Dangerous Drugs (OBNDD). There was little controversy when Oklahoma legislators first approved the measure, which went into effect in July 2009. But the issue heated up in early April of this year, when the Mexican Chamber of Deputies approved a resolution denouncing US states that have imposed or are considering imposing taxes or fees on remittances sent by Mexican expatriates back home. In addition to Oklahoma, Arizona and Georgia have imposed a surcharge on remittances (SourceMex, March 08, 2006). In 2009, remittances from expatriates totaled about US\$21.2 billion, a decline of 16% from 2008 (SourceMex, April 14, 2010). The resolution in the lower house specifically mentioned Oklahoma's surcharge, calling it an "immoral, abusive, and harmful" act against immigrants' rights. Deputy Ildefonso Guajardo Villarreal, a member of the opposition Partido Revolucionario Institucional (PRI), was a lead sponsor of the resolution.

The measure also took issue with Oklahoma's decision to link immigration and drug trafficking by using the fee to fund drug-interdiction efforts. The resolution called on Calderón to bring the controversy to the attention of President Obama and Oklahoma Gov. Brad Henry. It also raised the possibility that the Mexican Congress would push for Mexico to impose an embargo on imports of products manufactured in Oklahoma. The state exports about US\$527 million per year to Mexico, much of which is equipment related to the oil industry.

The suggestion of an embargo elicited a strong response from the Oklahoma legislators who sponsored the bill to impose the surcharge on remittances. "This represents an attempt by a foreign nation to interfere with the sovereign actions of a US state," said Republican state Rep. Randy Terrill. "We clearly not only have the right, but the responsibility, to legislate for the public health,

safety, morals, and welfare of our citizens not theirs." Furthermore, said Terrill, Mexico had no right to impose the embargo because it would violate terms of the North American Free Trade Agreement (NAFTA). "The Mexican government should know that the people of Oklahoma will not be bullied or intimidated by anyone, anywhere," he said.

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