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U.S. Supreme Court Throws Out Most of Arizona's Controversial Anti-Immigrant Law, but Allows Controversial Provision to Stand

by Carlos Navarro

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In a decision that could halt the recent move to enact anti-immigrant legislation across US states, the US Supreme Court on June 25 struck down most elements of Arizona's Senate Bill 1070 (SB1070).

But the high court allowed the provision that enables law-enforcement authorities, under some circumstances, to ask for identification from anyone suspected of not having proper immigration status. Because this provision was allowed to stand, the Mexican government's response to the high court's decision was less than enthusiastic.

The ambivalent message that the Supreme Court gave on SB1070 allowed both detractors and supporters of the Arizona law to claim victory. "Today's ruling appropriately bars the state of Arizona from effectively criminalizing unlawful status in the state and confirms the federal government's exclusive authority to regulate in the area of immigration," Attorney General Eric Holder said in a statement.

But Arizona Gov. Jan Brewer called the decision "a victory for the rule of law. It is also a victory for the Tenth Amendment and all Americans who believe in the inherent right and responsibility of states to defend their citizens. After more than two years of legal challenges, the heart of SB1070 can now be implemented in accordance with the US Constitution.

Court upholds federal authority to determine immigration policy

One of the most important aspects of the court ruling was the decision to uphold the federal government's authority to set immigration policy. SB1070 contained several provisions that spelled out actions against undocumented immigrants, such as establishing criminal penalties against anyone who transports an undocumented immigrant or who hires a day laborer off the street ([SourceMex, April 28, 2010](#)). The court's ruling negates those provisions of SB1070.

"The National Government has significant power to regulate immigration," Justice Anthony Kennedy wrote in the majority opinion, following the court's 5-3 ruling. "Arizona may have understandable frustrations with the problems caused by illegal immigration while that process continues, but the State may not pursue policies that undermine federal law."

Also voting with the majority were Chief Justice John Roberts and Justices Steven Breyer, Ruth Bader Ginsburg, and Sonia Sotomayor. Justice Elena Kagan did not hear the case. Before taking the bench last year, she had been involved in the administration's initial legal opposition to the law as solicitor general.

Justice Antonin Scalia, writing for the minority, argued the court's ruling encroaches on Arizona's sovereign powers. "If securing its territory in this fashion is not within the power of Arizona, we should cease referring to it as a sovereign State," Scalia wrote in a dissent backed by Justices Samuel Alito and Clarence Thomas.

The court's decision to uphold the federal authority to set and enforce immigration law could have repercussions for other states that have passed their own laws targeting undocumented immigrants, including Alabama, Utah, Georgia, South Carolina, and Indiana. The federal government has filed a lawsuit against an anti-immigrant law approved in Alabama in 2011, which prohibits undocumented immigrants from working in the state or soliciting work. The measure would also sanction landlords who rent property to undocumented immigrants and sets penalties for anyone transporting an individual deemed to be in the country illegally ([SourceMex, Aug. 17, 2011](#)).

However, the court allowed one of the most controversial aspects of SB1070, which allows law-enforcement agencies to check a person's immigration status while enforcing other laws if "reasonable suspicion" exists that the person is in the US illegally. With the provision allowed to stand, law-enforcement officers in Alabama and other states might also be allowed to seek identification from anyone they suspect of being an undocumented immigrant.

"Obviously, this decision by the US Supreme Court is extremely bad news for the nearly 7 million undocumented Mexicans who reside in the US," said Jorge A. Bustamante, founder and former president of the Colegio de la Frontera Norte in Tijuana. "Even though all of them do not reside in Arizona, the court's ruling has national implications. This means that state legislatures can now pass or adjust laws allowing police to ask suspected undocumented immigrants for their papers."

Mexican government less than enthusiastic

In its analysis of the court ruling, President Felipe Calderón's administration also criticized the decision that allows law-enforcement officers in Arizona to ask for documentation. "The Mexican government regrets that the court had not found elements to declare Section 2 of SB1070 unconstitutional, which empowers state authorities, under certain circumstances, to verify the migratory status of a person who is detained," the Secretaría de Relaciones Exteriores (SRE) said in a prepared statement.

But the SRE said it was encouraged groups or individuals could still challenge this provision on the premise that they are being racially profiled. "The Mexican government is aware that the court's decision leaves open the possibility that this section could face a review once it becomes a law and once the lower courts establish criteria for its application," said the statement.

The justices acknowledged the ambiguities in the provision that allows states to ask for papers. The court's decision did stipulate that a person could not be stopped solely on the suspicion that they are in the US illegally and that there must be another valid legal reason for the detaining the person in the first place.

"There is a basic uncertainty about what the law means and how it will be enforced," Kennedy wrote, making it clear that Arizona authorities must comply with federal law in conducting the immigration-status checks or face further constitutional challenges.

Immigrant-rights groups say the circumstances under which a person can be stopped are so broad, and can be as minor as jaywalking or littering, that this stipulation is basically meaningless. They point out that there is still a strong potential for racial profiling.

"We remain deeply troubled, though, that the Supreme Court allowed the heart of the problem in SB1070—legitimizing racial profiling—to stand, and failed to decisively remove the bull's eye from the backs of Arizona's Latinos, leaving it to future lawsuits to address. We fear this part of the

decision will open the floodgates to the harassment, abuse, and intimidation of our community in what is already the most hostile place for Hispanics in the country," Janet Murguía, president and chief executive officer of the National Council of La Raza (NCLR), said in a written statement.

The prospect of lawsuits as a result of racial profiling has left law-enforcement agencies in Arizona a bit uneasy. The Arizona Department of Public Safety and the Arizona Association of Chiefs of Police said they were not certain whether officers would soon begin checking motorists' immigration status while enforcing other laws. "We're going to get sued if we do. We're going to get sued if we don't. That's a terrible position to put law-enforcement officers in," Pima County Sheriff Clarence Dupnik told the Associated Press.

US President Barack Obama also expressed concern that immigration-status checks allowed by the ruling could lead to racial profiling by police. In a written statement, Obama said, "No American should ever live under a cloud of suspicion just because of what they look like."

Obama also said the ruling shows the need for Congress to quickly take up comprehensive immigration-reform legislation. Some proposals that have been put forth would set up a system to legalize unauthorized immigrants who are currently in the country ([SourceMex, Jan. 21, 2009](#), and [June 22, 2011](#)).

Still, some experts believe that the recent Supreme Court decision represents a milestone in the immigration debate.

"Short term, this decision keeps immigration as a front-and-center issue in the 2012 election, because it didn't provide closure and essentially told both sides to go at it," Peter Brown, assistant director of the Quinnipiac University Polling Institute, told The Christian Science Monitor. "In the long term, what it means is that state legislatures, at least in some states, will likely have to deal with this in terms of whether they get an Arizona-style law that includes the parts that got the seal of approval."

"The battle over immigration is far from finished," said Bustamante, who is now a sociology professor at the University of Notre Dame in South Bend, Indiana. "The court itself recognized that there is opportunity for future litigation."

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