

 Arizona Daily Star

## Feds sue to block Arizona illegal immigrant law

By Howard Fischer Capitol Media Services | Posted: Tuesday, July 6, 2010 9:02 am

The Department of Justice filed suit this morning asking a federal judge to block Arizona's new law aimed at illegal immigrants from taking effect.

Legal papers filed in U.S. District Court in Phoenix contend SB 1070 "is preempted by federal law and therefore violates the Supremacy Clause of the United States Constitution." The lawsuit says the legislation conflicts with the federal government's need to balance the competing interests of enforcing federal immigration law with the country's diplomatic relations with other countries, including Mexico.

"SB 1070 ... attempts to second-guess federal policies and re-order federal priorities in the area of immigration enforcement and to directly regulate immigration and the condition of an alien's entry and presence in the United States despite the fact that those subjects are federal domains and do not involve any legitimate state interest," wrote Assistant Attorney General Tony West who heads the civil division of the Department of Justice.

But Sen. Russell Pearce, R-Mesa, said the lawsuit has only one purpose: to further what he said is the policy of the Obama administration to promote amnesty for illegal immigrants.

"They are complicit," he said of the administration. "They are aiding and abetting the enemy."

Five other lawsuits already have been filed challenging provision of the law, set to take effect July 29. But none have the weight of the entire federal government behind them.

The law requires police who have stopped someone to check their immigration status if there is "reasonable suspicion" they are in this country illegally. It also imposes criminal penalties on foreigners who fail to federally register or carry their immigration documents.

Other provisions make it a state crime for undocumented workers to seek employment in Arizona and for people to knowingly harbor or transport those who are illegal immigrants.

"SB 1070 pursues only one goal -- "attrition" -- and ignores the many other objectives that Congress has established for the federal immigration system," the lawsuit says. "And even in pursuing attrition, SB 1070 disrupts federal enforcement priorities and resources that focus on aliens who pose a threat to national security or public safety."

Central to the case is whether the Arizona law interferes with what West said is the need of the federal government to decide exactly how and when to enforce immigration laws.

"Assuring effective enforcement of the provisions against illegal immigration and unlawful presence is a highly important interest," West wrote. "But it is not the singular goal of federal immigration laws."

He said the laws also take into account "uniquely national interests" like facilitating trade and commerce, welcoming foreign nationals who visit or immigrate lawfully and ensuring their fair treatment, responding to humanitarian concerns "and otherwise ensuring that the treatment of aliens present in our nation does not harm our foreign relations with the countries from which they come or jeopardize the treatment of U.S. citizens abroad."

Pearce said the Arizona law simply lets the state enforce existing federal immigration laws. But West said that's not the case.

For example, he said federal law does make it illegal to hire an undocumented worker. And there are separate laws aimed at would-be workers who present fraudulent documents.

But nothing in any of those laws, West said, makes it a crime for an illegal immigrant to seek work.

"In fact (Congress) decided that criminal sanctions for seeking or obtaining employment would run counter to the purposes of the immigration system," he wrote.

West also said that Congress has decided that being in this country illegally, absent more, should not subject someone to being charged with a crime and incarcerated. Instead, he said, the law makes them subject to only the civil penalty of removal.

Only when other factors are present, such as when someone returns after being deported, does a crime occur.

In a prepared statement, Attorney General Eric Holder said Arizona "are understandably frustrated with illegal immigration." And he said the federal government has a responsibility to comprehensively address those concerns.

"But diverting federal resources away from dangerous aliens such as terrorism suspects and aliens with criminal records will impact the entire country's safety," the statement said.

"Setting immigration policy and enforcing immigration laws is a national responsibility," Holder continued. "Seeking to address the issue through a patchwork of state laws will only create more problems than it solves."

Homeland Security Secretary Janet Napolitano pointed out that, as Arizona governor, she vetoed similar bills.

"They would have diverted critical law enforcement resources from the most serious threats to public safety and undermined the vital trust between local jurisdictions and the communities they serve," her statement said.

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