

Why Judge Susan Bolton blocked key parts of Arizona's SB 1070

US District Judge Susan Bolton issued a temporary injunction that halted key parts of SB 1070, the Arizona immigration law, that would have required police to check the immigration status of anyone they suspected of being an illegal resident.



Dozens march to protest the SB1070 Arizona immigration law in front of U.S. District Court Thursday, July 22, in Phoenix. US District Judge Susan Bolton is holding multiple hearings on whether the new Arizona immigration law should take effect on July 29.

Ross D. Franklin/AP

By Warren Richey, Staff Writer / July 28, 2010

A federal judge in Phoenix issued a temporary injunction Wednesday blocking implementation of the toughest portions of Arizona's controversial immigration law, known as SB 1070, but the judge allowed other sections of the state statute to stand.

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US District Judge Susan Bolton agreed to block the section of the law that required local and state law enforcement officials to check the immigration status of those they suspected were illegal immigrants.

That was the provision that critics said would lead to racial profiling.

Judge Bolton's decision is an important victory for the Obama administration in the face of a rising tide of concern among several states that the federal government is not effectively enforcing immigration law or

effectively protecting US borders.

Five states have introduced legislation similar to Arizona's law, and 20 others are reportedly considering it.

The ruling adds fuel to an already heated national debate over US immigration policy and sets the stage for more rounds of litigation in a case that could eventually make its way to the US Supreme Court.

In her ruling, Bolton also blocked a portion of the law that required state officials to check the immigration status of anyone in custody in Arizona before they were released from jail.

The judge said the state measure was preempted by federal law because such checks would swamp federal immigration officials who are pursuing different priorities.

"The number of requests that will emanate from Arizona as a result of determining the status of every arrestee is likely to impermissibly burden federal resources and redirect federal agencies away from the priorities they have established," Bolton wrote.

The judge said the same problem would arise under the provision requiring police officers to check the immigration status of suspected illegal immigrants. "Federal resources will be taxed and diverted from federal enforcement priorities as a result of the increase in requests for immigration status determination(s)," she said.

The judge said the provision would also create an impermissible burden on immigrants who are lawfully present in Arizona.

Bolton concluded that there was a likelihood of irreparable harm to the interests of the federal government if certain provisions of SB 1070 took effect.

"The court by no means disregards Arizona's interests in controlling illegal immigration and addressing the concurrent problems with crime, including the trafficking of humans, drugs, guns, and money," Bolton wrote.

"Even though Arizona's interests may be consistent with those of the federal government, it is not in the public interest for Arizona to enforce preempted laws," she said.

Opponents of SB 1070 said the law would lead to illegal racial profiling by state and local law enforcement officials. Supporters countered that the state law was necessary to make up for lax and ineffective border enforcement by the federal government.

The Arizona law was deliberately written with tough and aggressive measures designed to encourage the estimated 460,000 illegal immigrants in Arizona to go home.

SB 1070 sought to make violations of federal immigration law into violations of Arizona law, thus empowering state officials to arrest illegal immigrants under certain circumstances.

In agreeing to issue a preliminary injunction, Bolton embraced arguments by Justice Department lawyers and the Obama administration that SB 1070 is preempted because it interfered with the executive branch's control over immigration policy.

The Obama administration has said its priority is to focus on those illegal immigrants who engage in crime or are otherwise dangerous. Government lawyers said Arizona was attempting to enforce its own immigration policy.

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The judge agreed. She said the state statute created a significant enough conflict with the administration's policies to require judicial intervention.

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Arizona officials had argued that the federal-state disputes that exist are over the intensity of enforcement, not the letter and substance of federal law. They said the Arizona law was written to mirror the provisions of federal immigration law and should thus be appeal proof.

But Bolton, an appointee of President Bill Clinton, said the government would likely suffer irreparable harm should various provisions of the law take effect.

Also blocked by the judge was a section of the law that made it a state crime for any foreign resident of Arizona to fail to carry federally-issued immigration documents at all times. Federal law requires that such documents be carried at all times, but federal officials do not enforce it.

The state law sought to enforce it. In enjoining this part of the law, Judge Bolton said that establishing state penalties for violating a federal requirement altered the penalties established by Congress and thus stood as "an obstacle to the uniform, federal registration scheme."

Bolton's injunction also blocks the portion of the law that made it a state crime for an illegal foreign resident in Arizona to solicit, apply for, or perform work.

Much of the rest of the law remains intact and those provisions are expected to take effect Thursday.

The judge's ruling means that Arizona officials will begin enforcing the remaining parts of the law, even while litigation about the entire law – and the enjoined sections – continues in the courts.

Among that part of the law that will now take full effect is a provision allowing Arizona residents to sue any state office or agency for failing to fully enforce immigration laws.

Also still in the law are provisions creating a new state crime of human smuggling, stopping a motor vehicle to pick up day laborers, and knowingly employing illegal foreign residents.

SB 1070 was passed after years of dissatisfaction among many Arizonans with federal efforts to police the lawless border region with Mexico. Across the border, drug cartels have been waging a bloody tug-of-war with the Mexican government. Drug and human smugglers have become increasingly active in Arizona's rural border areas.

The issue is complicated by politics and the approaching mid-term congressional elections. Democratic strategists are hoping the continuing controversy drives a wedge between Hispanic voters and the Republican Party.

Republicans, on the other hand, are hoping more Americans are concerned about crime and border security than complaints about tough enforcement efforts. But some Republicans are worried about this strategy in the long term given the growing political clout of the Hispanic community in the US.

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