

## **SB1070 as engrossed with HB2162**

### **Legal steps to determine status:**

1. The individual has to have broken some other law. The only time police can inquire into immigration status is when they have suspected someone of breaking another law

So immediately you have a suspected lawbreaker and not someone waiting for a bus, crossing a street, or driving their kids to school, etc.

2. Even if the person broke the law, the officer is still not allowed to inquire immigration status unless there are separate facts that the police officer observes giving the officer reasonable suspicion to believe the individual is in this country illegally.

These two components are a high bar to reach. It takes a lot of facts to get reasonable suspicion. So this is something that will not be occurring all the time.

### **Reasonable Suspicion**

“Reasonable suspicion” is a well-known and time-tested legal principal. Over the past four decades, federal courts have issued hundreds of opinions defining those two words.

SB1070 didn’t invent the concept “Reasonable Suspicion”

After answers are evasive, contradictory or downright wrong, the officer slowly builds up reasonable suspicion that the person is committing a crime of illegal presence here in the United States.

Court decisions detail myriad factors that can contribute toward a law enforcement officer’s reasonable suspicion; when several are combined, the “totality of circumstances” that result may create reasonable suspicion that a crime has been committed. Here are some examples of reasonable suspicion factors courts have addressed in the vehicle context:

1. Characteristics of the area in which the vehicle is encountered;
2. Proximity to the border;
3. Usual patterns of traffic on the road;
4. Previous experience with alien traffic;
5. Information about recent illegal crossings in the area;
6. Behavior of the driver;
7. Appearance of the vehicle; and
8. Number, appearance, and behavior of the passengers.<sup>1</sup>

By contrast, reasonable suspicion does not exist where law enforcement attempts justify a stop on the basis that an individual looked like they came from a foreign country, or that they were of Latin-American ancestry.<sup>2</sup>

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<sup>1</sup>3A Am. Jur. 2d *Aliens and Citizens* § 79 (2010).

<sup>2</sup> *Id.*

In other words, SB 1070's reliance on reasonable suspicion is yet another safeguard against racial profiling.

The courts have a long history of reviewing the common-sense determinations made by law enforcement tasked with enforcing our laws each and every day. Contrary to the hype, SB 1070 breaks no new ground when it comes to the concept of reasonable suspicion. Rather, it relies on a bedrock principal of criminal law and court review of law enforcement procedure.

An arrest can only be made if the level of knowledge based upon the person's answers or other facts rises to probable cause that they're here illegally. Hence, there are multiple high bars that must be reached before anything can happen.

### **Determining Status**

Additionally, local law enforcement will not be determining immigration status, but can merely detain based upon reasonable suspicion. Local law enforcement will call Immigration and Customs Enforcement (ICE) or those trained under ICE supervision to be cross certified as ICE officers to determine status.

### **Officer Training**

By the end of July, every police officer will have taken a two hour course on what information in particular can help build a case for reasonable suspicion of being here illegally...and just as important - what information CANNOT be used for reasonable suspicion.

Information that cannot be used which we put into law is a person's race, color or national origin shall be considered but only to the extent that is permitted by the United States and Arizona Constitution.

We specifically wrote into the law multiple times you cannot racially profile an individual.

### **Public Input**

We had multiple public hearings for months on this bill and took input from the civil rights community along with the Chiefs of Police. Based upon their concerns, we wrote in multiple places you cannot use race except as allowed by the United States and Arizona Constitution.

The Arizona Chiefs of Police were concerned that they wouldn't be able to go after more serious crimes when they're committed so we amended the language to say the officer only inquires into immigration after they've reached these two initial thresholds and then only when practical. There's nothing in the law stating the officer must enforce this law except when practical to do so.

It allows for officer discretion when verifying immigration status “*when practicable*” and may not “*if the determination may hinder or obstruct an investigation.*” We give officers discretion over enforcement of our laws everyday, and we trust them to up hold the laws in the most balanced and practical manner they can.

This isn't about Constitutional issues or police distraction but those who support the rule of law versus those who want amnesty for illegal immigrants.

## **Opposition to Arizona Law**

The supporters and opposition to Arizona's have been clearly divided. Supporters of Arizona's law supports the rule of law and want illegal immigrants stopped at the border and the law to be enforced internally. Those who oppose this law want amnesty and to reward those who have crossed the border illegally by being allowed to stay.

There are millions of people who are in their own countries waiting patiently on the waiting list to come into this country legally. Those who oppose Arizona's law want a system where anyone can sneak across the border, get to stay in America and jump the line in front of the millions of people who are waiting patiently to become legal citizens.

The loudest voices opposing Arizona's law were trying to intimidate Governor Brewer into not signing the legislation. She didn't fall for their tactics and they are now trying to intimidate other states saying even if you are considering adopting Arizona's law in your state, we'll boycott you too.

## **Sanctuary Cities**

Certain cities who have boycotted Arizona like San Francisco are saying we're supplanting federal law when they're actually violating federal law by refusing to enforce federal law with their sanctuary city policies. They've promoted a complete disrespect for federal law. While we've incorporated federal law, they're actually supplanting federal law.

## **Federal Government**

Hopefully this will wake up the federal government. The only reason we had to pass this legislation was to protect ourselves from illegal immigration and all its ills because the federal government has failed to secure the border and internal anti-illegal immigration law enforcement and we are going to stand by this law and protect our citizens until the federal government steps up and does what they're supposed to be doing by protecting ALL Americans.

## **Safeguards for ALL Individuals**

We have two discretionary tools to protect witnesses and victims:

1. If inquiring as to status would hinder an investigation, the officer doesn't have to ask the question as to their status
2. The only time a person is ever allowed to ask about a person's legal status is not only when they suspect they're here illegally but they have to have suspected them already for a violation of the law

Even then, if a witness or a victim has broken a law, the officer still doesn't have to inquire as to their immigration status if it hinders the investigation.

There are multiple protections built into this law to protect everyone from harassment by the police. Both legal residents and illegal immigrants have the same protections built into the law. Yes, we pay a price for protecting civil liberties but we'd rather err on the side of protecting civil liberties and not harass individuals, which is what we've accomplished with this law.

As with everything, the burden of proof rests with the police officer and that does not change here.

We're not giving law enforcement more authority, but more tools.

## **Supremacy Clause**

The Supremacy Clause only occurs when a state or local government passes a law that seeks to supersede or change federal law. If Arizona was to set up its own standards for illegal immigration and began processing people who are in this country illegally, then we would be trumping federal law and would be a clear violation of the Supremacy Clause and a violation of the Constitution. What we've done is merely incorporated federal law into state law.

The Supreme Court since 1976 has recognized that states may enact laws to discourage illegal immigration without being pre-empted by federal law. As long as Congress hasn't expressly forbidden the state law in question, the statute doesn't conflict with federal law and if Congress has not displaced all state laws from the field, it is permitted. That's why Arizona's 2007 law making it illegal to knowingly employ unauthorized aliens was sustained by the United States Court of Appeals for the Ninth Circuit.

## **Burden of Illegal Immigration**

We still have an almost totally open border and virtually no internal illegal immigration enforcement in our state or in the country and because we're being overrun with illegal aliens, drug and human smuggling, street crime and gang activity, Phoenix is now the kidnapping capitol of the United States. We have multiple drop houses throughout the state, shootouts on our streets and police officers being shot and killed, a dead rancher on the border, the criminal activity is out of control.

Beyond the criminal element, illegal immigration is a tremendous drain on state resources costing us billions of dollars in education, medical costs in emergency rooms and the benefits for children of illegal immigrants who were born here but are now full-fledged United State's citizens.

## **Willful Failure to Complete or Carry an Alien Registration Document**

Since 1940, the Alien Registration Act passed by the U.S. Congress has made it a federal crime for aliens to fail to keep such registration documents with them. The Arizona law simply enforces the federal penalty to what was already a federal crime.

Specifies that in addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 1306(a).

## **Supplemental Information**

### ***❖ Unlawfully Picking up Passengers for Work***

Specifies that it is a class 1 misdemeanor for an occupant of a motor vehicle that is stopped on a street, roadway, or highway to attempt to hire or hire and pick up passengers for work at a different location, if the motor vehicle blocks or impedes the normal movement of traffic. Additionally, it is a class 1 misdemeanor for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location, if the motor vehicle blocks or impedes the normal movement of traffic.

### ***❖ Illegal Application Solicitation for Work.***

Creates a class 1 misdemeanor for a person who is unlawfully present who is an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor.

### ***❖ Unlawfully Transporting or Harboring Unlawful Aliens***

Stipulates that it is unlawful for a person who is in violation of a criminal offense to: (a) Transport or move an alien in a means of transportation, or attempt to do so, if the person knows or recklessly disregards the fact that the alien is here unlawfully. (b) Conceal, harbor or shield an alien, or attempt to, if the person knows or recklessly disregards the fact that the alien is here unlawfully. (c) Encourage or induce an alien to come to this state if the person knows or recklessly disregards the fact that doing so would be a violation of law. Violations are designated as a class 1 misdemeanor and subject to a fine of at least \$1,000 unless extenuating circumstance occur.

### ***❖ Employer Sanctions***

Provides employers with the affirmative defense that they were entrapped, but they must admit the substantial elements of the violation. Stipulates that the employer has the burden of proof proving the following by a preponderance of the evidence: a) The idea of committing the violation started with the officer or their agents. b) The officers or their agents urged and induced the employer to commit the violation. c) The employer was not predisposed to commit the violation before the law enforcement officer or agents urged and induced the employer to do so.

❖ ***Lawful Immigration Determination***

Stipulates that the immigration status may be determined by a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status or ICE or CBP pursuant to 8 U.S.C. § 1373(c).

❖ ***Exemptions from Prosecution***

Indemnifies officers against actions brought under these provisions, except if the officer has been adjudged to have acted in bad faith.

❖ ***Protection Against Frivolous Lawsuits (loser pays)***

It protects political sub-divisions from frivolous law suits in that only legal Arizona residents may bring actions against sanctuary cities and allows the court to award court costs and reasonable attorney fees to officials or agencies that prevail in lawsuits challenging their policy.

❖ ***Safety Net for Transporting, Moving, Concealing, Harboring or Shielding an Unlawful Alien.***

It provides a safety net for those inadvertently *transporting, moving, concealing, harboring or shielding an unlawful alien* in that they must do so with knowledge or reckless disregard and additionally be in violation of a criminal offense. This is a protection that does not exist in Federal law, as the Federal corollary does not require an additional crime.