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THE FOUR KEY SUPREME COURT RULINGS ON ARIZONA'S IMMIGRATION LAW AND WHAT THEY MEAN FOR SOUTH CAROLINA

Publication
Jun 29, 2012

On June 25, 2012, the United States Supreme Court again reviewed Arizona's efforts to address illegal immigration within its borders. In 2011, the Supreme Court upheld challenged portions of Arizona's Legal Arizona Worker Act which made it mandatory to use E-Verify to verify employment eligibility. This time the Supreme Court considered certain provisions of Arizona's Support Our Law Enforcement and Safe Neighborhoods Act, which required law enforcement officers to determine the immigration status of any person if reasonable suspicion existed that the person was unlawfully present in the U.S.

In a 5-3 decision, the Supreme Court upheld the majority of the 9th Circuit's decision and held that three of the four enjoined provisions of the Arizona law violated the Supremacy Clause and were preempted by federal law. The Supreme Court held that:

1. Permitting the state to impose its own penalties for federal offenses, such as failure to comply with federal alien-registration requirements, creates a conflict with the framework adopted by Congress.
2. The Arizona provision seeking to penalize individuals for seeking or engaging in unauthorized employment is preempted as it presents an obstacle to federal regulation and control.
3. The Arizona law attempted to give state officers greater authority than federal immigration officers to arrest individuals who may be removable from the United

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States, and that “violates the principle that the removal process is entrusted to the discretion of the Federal Government.”

4. Because certain limits or safeguards are built into the law – including the presumption of lawful status if able to produce a valid Arizona driver’s license and that race, color, or national origin may not be considered – the Arizona courts need to definitively interpret the provision of whether state officers could determine the immigration status of individuals stopped, detained, or arrested for a legitimate reason based on reasonable suspicion before the Court can determine whether it creates a conflict with federal law.

The Supreme Court’s extensive preemption discussion did nothing to erode last year’s ruling that the states may enact immigration laws that are tied to their right to regulate business so long as those laws do not supplant or contradict federal immigration law. Therefore, the latest Supreme Court decision leaves intact the underpinning of South Carolina’s requirement that employers use E-Verify to verify the employment eligibility of individuals hired in this state.

This article appeared on July 29, 2012 on *Midlandsbiz.com*.