

# ARIZONA'S ATTEMPT TO CRACKDOWN ON IMMIGRATION (MOSTLY) REJECTED BY SUPREME COURT

Insights  
Jun 25, 2012

On June 25, 2012, the Supreme Court held that certain provisions of Arizona's immigration statute (signed into law in 2010) were preempted by federal immigration law. The preempted provisions include those making it a criminal offense for an undocumented worker to solicit, apply for, or perform work in the state; making it a misdemeanor for an individual to fail to comply with federal alien-registration requirements; and authorizing state and local officers to arrest persons who the officer has probable cause to believe has committed a public offense making the person removable from the United States.

But the Court upheld the section requiring police officers to make a determination of the immigration status of any person stopped, detained, or arrested before the state courts had an opportunity to interpret the law and without a showing that its enforcement would conflict with federal immigration law and its objectives.

The Court's decision today will impact pending cases involving U.S. Department of Justice (DOJ) challenges to other state immigration laws (including Alabama and South Carolina) currently in federal court.

## **Background**

On April 23, 2010, Arizona enacted 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. It also made it a misdemeanor 1) for an occupant of a motor vehicle to attempt to hire or to hire day laborers; 2) for an individual to fail to carry his or her alien registration while on private or public land; or 3) for a person unlawfully in the U.S. to solicit or perform work in Arizona.

In addition, the law made it a crime to transport or move, conceal, harbor or shield a person in Arizona who is known to be unlawfully present in the U.S. or to encourage or induce a person to come to, enter, or reside in Arizona.

Before the effective date of the law, the DOJ sued the State of Arizona alleging that the law violated both the Supremacy and Commerce Clauses of the Constitution, and was preempted by the Immigration and Nationality Act. Despite the DOJ's request for injunctive relief against the law in its entirety, a U.S. district court granted a preliminary injunction of only four sections on the likelihood that they would be preempted by federal law.

The four enjoined sections were the provisions: 1) requiring that an officer make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is a reasonable suspicion that the person is unlawfully present in the U.S.; 2) making it a crime to fail to apply for or carry alien registration documents; 3) making it a crime for an unauthorized alien to solicit, apply for, or perform work; and 4) authorizing the warrantless arrest of a person where there is probable cause to believe the person had committed a public offense which made the person removable from the U.S.

On April 11, 2011, the U.S. Court of Appeals for the 9th Circuit upheld the district court's injunction of the four provisions and found it likely that the DOJ's preemption arguments would prevail.

### **The Supreme Court's Decision**

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

Although the Supreme Court recognized the impact of unlawful immigration on the State of Arizona, it held that 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. The Court further elaborated that:

Where Congress occupies an entire field, as it has in the field of alien registration, even complementary state regulation is impermissible. Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.

The Supreme Court further held that because Congress made a conscious choice not to impose criminal penalties on individuals who engage in unauthorized work, 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.

The Court also found that the Arizona law attempted to give state officers greater authority than federal immigration officers to arrest individuals who may be removable from the United States, and “violates the principle that the removal process is entrusted to the discretion of the Federal Government.”

The final provision at issue before the Supreme Court was whether state officers could determine the immigration status of individuals stopped, detained, or arrested for a legitimate reason based on reasonable suspicion. 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 Court found the state courts need to definitively interpret the provision before it can be determined whether it creates a conflict with federal law.

In making its decision, the Court makes it clear that the states may enact immigration laws that are tied to their right to regulate business (such as requiring state employers to use E-Verify to verify the employment eligibility of individuals hired in the state) but are prohibited from enacting laws that operate to supplant or contradict federal immigration law. The Court recognized the threat that 50 states enacting their own immigration enforcement laws could have on federal enforcement of the INA.

## **Conclusion**

The Court’s decision today is not likely to cool the immigration debate that continues to rage. The rise in state immigration law enactment has been the product of what the states perceive is the lack of action by the federal government to secure the country’s borders and engage in comprehensive immigration reform. The patchwork quilt nature of state immigration laws will continue to play an important role in the day-to-day operation of businesses despite the parameters and restrictions established by this decision.

For more information contact your Fisher Phillips attorney.

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