

Judge's ruling on Arizona law a win for Obama

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A federal judge's decision barring police in Arizona from demanding immigration documents from people they suspect of being in the country illegally was a dramatic victory for the Obama administration and civil rights groups that may be hard to overturn, at least in the short run.

U.S. District Judge Susan Bolton in Phoenix issued an injunction blocking Arizona from implementing the heart of its new immigration law Wednesday, less than 24 hours before it was to have taken effect, and endorsed the administration's argument that the state would be interfering with the federal government's enforcement of immigration laws.

The law's key provision would require local police to ask for proof of legal residency from people they stop for other reasons and reasonably suspect of being here illegally. Those detained would have stayed in custody until their legal status was verified.

"The federal government has long rejected a system by which aliens' papers are routinely demanded and checked," the judge said, quoting Justice Department attorneys.

Allowing a state to impose such a system, she said, would create "an unacceptable burden" for legal residents who might not have documentation.

There are a number of reasons legal immigrants might not have such paperwork on them, and thus risk being jailed until verification of their status, Bolton said. They could be applying for political asylum, seeking refuge as victims of domestic violence, or simply not carrying their papers when an officer stops them for a minor offense such as jaywalking.

Major provisions blocked

Her injunction also blocks enforcement of state criminal penalties for noncitizens who are not carrying immigration documents, and of criminal punishment for illegal immigrants who seek work. Bolton noted that federal law and an earlier state law punish only employers who knowingly hire undocumented immigrants. The U.S. Supreme Court has agreed to decide the validity of Arizona's sgate.com/cgi-b

Bolton allowed some relatively minor provisions to take effect today, including increased penalties for smuggling, transporting or harboring illegal immigrants.

Gov. Jan Brewer said she would challenge the ruling quickly in the Ninth U.S. Circuit Court of Appeals in San Francisco. She said the law, SB1070, was needed "to address a crisis we did not create and the federal government has actively refused to fix."

Bolton cited the state's concerns in her ruling.

Arizona passed the law "against a backdrop of rampant illegal immigration, escalating drug and human trafficking crimes, and serious public safety concerns," the judge said. The state has a legitimate interest in controlling unlawful entry and related problems, she said, but it can't undermine federal policy.

The ruling "cries out for appeal," said attorney Richard Samp of the **Washington Legal Foundation**, which represented several Arizona legislators.

Stay unlikely

But other legal analysts said they doubted the appeals court would stay Bolton's ruling and allow the law to take effect immediately. That would require the appellate judges to find that Bolton had made a clear legal error, an unlikely conclusion at this stage of the case, said Carl Tobias, a University of Richmond law professor.

Although the appeals court or the Supreme Court could ultimately overrule Bolton, courts often defer to a judge who has issued an injunction after hearing from both sides, said UC Davis law Professor Vikram Amar. If the injunction stands, the case will return to Bolton for a final ruling, followed by a year or more of appellate review.

Bill Hing, another UC Davis law professor, said the Justice Department's Civil Rights Division - headed by Tony West, a former Oakland attorney - had presented an "ingenious" argument that stressed the government's expertise in setting immigration enforcement priorities and relied on a 1941 Supreme Court ruling.

That ruling, which Bolton cited several times in her decision, struck down a Pennsylvania law requiring all noncitizens to register with the state each year and carry an identification card that police could demand to see. The court said the law conflicted with a milder federal registration statute and with the government's overall authority over immigration.

Feds conciliatory

The Obama administration, which departed from its cautious approach to immigration by suing Arizona, tried to strike a conciliatory tone Wednesday

Department spokeswoman Hannah August.

The city of San Francisco also took part in the legal challenge, joining other local governments in arguing that the Arizona law, if followed elsewhere, would hurt crime-fighting efforts by discouraging immigrants from cooperating with authorities.

Police Chief George Gascón, who formerly held the same job in the Phoenix suburb of Mesa, warned in April that the law would "set back community policing efforts for decades."

Civil rights groups had filed a separate suit arguing that the Arizona law would lead to racial profiling, an issue that Bolton did not discuss Wednesday.

The ruling can be viewed at links.sfgate.com/ZKBJ.

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<http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/07/29/MNE21ELAJ2.DTL>

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