



TUCSON HEARING ON SB 1070
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Thank you for the opportunity to discuss the role of the Tucson Police Department in implementing SB 1070 while safeguarding constitutional rights and preserving community trust. The ACLU works to preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU of Arizona is the leading civil rights advocacy organization in the state with over 6,000 members.

The ACLU of Arizona, together with a coalition of civil rights organizations, vigorously opposed SB 1070 when it was first introduced in the state legislature in 2010 and continue that fight in the courts today. Our legal challenge, *Valle del Sol v. Whiting* includes 8 individual and 14 organizational plaintiffs from across the state of Arizona, including several in the City of Tucson.

SB 1070 raises various constitutional issues. First, the law attempts to regulate immigration at a state level despite the fact that the Constitution's Supremacy Clause and the interpretation of the courts both articulate that this is a strictly federal function. Second, the law raises 4th Amendment concerns about the possible detentions resulting from the enforcement of this law. Section 2(B) specifically authorizes officers to investigate any person's immigration status if they are stopped but cannot provide a proper state-identification document. In this sense, the law has concerning implications not only for drivers that may not be carrying licenses (which is not justification within itself for checking a person's immigration status), but also passengers and pedestrians who are not required to carry ID but nonetheless may be investigated if an officer stops them. There is also the likelihood that the law will lead to racial profiling in an attempt to enforce the law. Racial profiling violates the Equal Protection clause of the 14th Amendment and the Due Process clauses of the 5th and 14th Amendments.

The City of Tucson and Chief Villaseñor have been outspoken critics of SB 1070 as declarants and amici to the Supreme Court. In its briefing to the Supreme Court, the City stated that they do not believe that Section 2(B) of SB 1070 can be enforced in a constitutional manner. Given this and other statements and that we are, at least for now, in an implementation stage of Section 2(B), it is absolutely imperative that the City of Tucson and the Police Department hear the experiences of community members and revise its General Orders to comply with the Constitution and restore community trust in this city.

In light of the Supreme Court's decision, it is unlawful to detain any individual for any amount of time, however "reasonable," if the purpose of the detention is solely to verify immigration status and is wholly unrelated to the underlying reason for the stop. As a basic matter, absent reasonable suspicion, TPD should not contact any federal immigration agency for an immigration status check.

The current Tucson Police Department General Order 2119.1 (ver. 7/2010) is not sufficient in its current form to address constitutional concerns or assure community members that they will not be victims of racial profiling, prolonged detention or unlawful arrest.

The General Order delineates when officers may call Immigration and Customs enforcement (ICE) or Customs and Border Protection (CBP), and instructs the officer not detain the subject "longer than necessary to conduct any investigation necessary to complete the original stop." If CBP is unable to make a timely response, Tucson police officers are supposed to fill out a Field Interview (FI) form which includes "the name and address of the person's employer, the subject's residence, any vehicles or additional people associated with them, at the time of the stop." This information is to be obtained before releasing the individual.

TPD must make clear to its officers that it is illegal in any circumstance to extend a detention solely to await a CBP or ICE response. This is especially important in light of statements made by law enforcement that once a status check is made “we will wait to hear back from federal immigration officials before releasing the person.” Although federal immigration officials are required to respond to status inquiries by LEAs, there is no statutory requirement that they do so in a timely manner and as noted in statements and briefing, the reliability of federal immigration databases and response times vary significantly. “Waiting to hear back” will most certainly extend detention time and raise serious constitutional questions.

Unfortunately, the ACLU of Arizona has increasingly received reports from local advocates that in many cases, police contact CBP almost immediately after making a stop, regardless of the reason for the stop and sometimes without even providing a reason. Sometimes, those calls are predicated on the need for assistance by CBP, for example, to request Spanish-English interpreters. In many instances, the sole purpose of calling CBP is to investigate a person’s immigration status. Even when CBP has been called for assistance, such as translation, CBP personnel reportedly use these opportunities to question people about their immigration status. TPD should discontinue contacting CBP or ICE just to check immigration status. It is unlawful and absolutely contributes to distrust between community and the police.

Perhaps most troubling however is the General Order for a “cite and release situation,” which states:

“If the arrestee is to be cited and field released and the officer reasonably suspects that person is undocumented, CBP may be requested to respond or the arrestee may be transported by the officer to CBP. If awaiting CBP response, the arrestee shall only be detained for a reasonable period of time, based on call load and staffing. If CBP is unable to respond within a reasonable period of time, the person shall be cited and field released.”

The ACLU of Arizona has received reports from individuals and organizations throughout Southern Arizona about cite and release situations that have resulted in prolonged detention, jail and in some cases, even deportation. One such example involves Mrs. A, who has a pending application for residence through a U.S. citizen sibling. Earlier this year, she was driving to the store to buy water for her children. A sheriff’s deputy stopped her, allegedly for an improperly lit license plate, although she was not cited for this offense. Because she did not have a driver’s license, the deputy immediately called Border Patrol. When they arrived, BP agents asked her to drive to her house to inquire as to the status of the rest of her family. Mrs. A and her two teenage children were detained and deported the following day, despite the fact she notified agents she had a U.S. citizen child with disabilities who depends on her care, and despite informing them of her pending application.

Additionally, one of the plaintiffs in our legal challenge to SB 1070, Pedro Espinoza, was pulled over by police officers for not having a bicycle light. The officers asked him questions about his identity and, when he could only produce a student ID, they arrested him and took him to jail. At the jail, detention officers interrogated him about his immigration status. He was held there for two days before being transferred to ICE custody and placed in deportation proceedings. Many community members helped raise money to pay for Pedro’s bond so that he could be released from detention while his deportation proceedings are underway.

The current cite and release provision of the TPD General Order is exactly the type of unconstitutional scenario contemplated by the Supreme Court’s recent decision in *Arizona v. U.S.* If an individual is stopped for an offense for which she can be cited and released, any attempt to call federal law enforcement would prolong the detention time and run afoul of the 4th Amendment.

This legal problem is noted by both the City in its amicus brief to the Supreme Court and by Chief Villaseñor who explained that “[u]nder Section 2(B) if we cannot get immediate confirmation from federal officials of the immigration status of these suspects, we will have to extend their detentions in the field until we get a status determination from federal officials, or book them into jail to await these results. Either situation will result in extended detention of thousands of individuals—even if it is for brief periods of time.”

By the City's own estimation, many of the people likely to be detained pursuant to Section 2(B) will be minor offenders who otherwise would be cited and immediately released. As noted by the district court, the City of Tucson alone arrested and immediately released 36,821 people in fiscal year 2009.

The current TPD General Order does not address questioning victims of crime or witnesses about their immigration status—a major gap in general police practices that puts all of us at risk. Prominent policing organizations including the Major Cities Chiefs Police Association and the Police Executive Research Forum have noted that, “the Arizona law would poison any culture of cooperation in communities most afflicted with crime. Those who believe their immigration status to be subject to question would have little reason to assist the police to solve very serious crimes—against themselves or against lawful immigrants and U.S. citizens—once they know that their involvement will invariably trigger police scrutiny of their immigration background.” It is absolutely critical that the City of Tucson and the Police Department make the relationship with the community right by assuring individuals that they will be safe if they are a victim or come forward to report crime and that the community can trust TPD to provide effective law enforcement services to all Tucsonans.

After reviewing the General Order, I would note that it includes provisions for processing U Visas for victims of crime. The requirement as stated in the General Order that the incident is “an active case” is not correct. Per U.S. Citizenship and Immigration Services (CIS):

- The individual must have suffered substantial physical or mental abuse as a result of having been a victim of a qualifying criminal activity.
- The individual must have information concerning that criminal activity.
- The individual must have been helpful, is being helpful, or is likely to be helpful in the investigation or prosecution of the crime.
- The criminal activity violated U.S. laws

To prevent further erosion of trust with the community and to ensure that rights under the U.S. and Arizona Constitutions are upheld, the ACLU of Arizona offers the following recommendations as a starting point:

- TPD should direct officers not to contact immigration authorities for people they encounter who can be cited and released.
- TPD must make it clear that it is illegal for officers to extend any detention solely to await a CBP or ICE response.
- In cases where individuals have been detained, TPD should follow the federal government's priorities when contacting ICE or CBP for immigration status checks. The federal government has outlined its enforcement priorities to include criminal offenders, recent border violators, and individuals with outstanding orders of removal.
- In cases where the police officer has the discretion to impound a vehicle or allow another party to pick up the vehicle, TPD should direct officers to do the latter. The loss of a vehicle has a serious impact on day-to-day living for many individuals and families and poses a significant cost to get the car out of impound.
- TPD should prohibit officers from questioning passengers about their immigration status absent any suspicion of criminal activity.
- TPD should prohibit officers from questioning victims of crime or witnesses about their immigration status.
- TPD should prohibit officers from questioning juveniles about their immigration status without the presence of an attorney, parent or guardian.
- TPD and the City of Tucson should require data collection and tracking mechanisms to assess information including the race of the person stopped, and other information including arrest/detentions and referrals to federal immigration authorities by TPD pursuant to SB 1070. These records should be available for public inspection.