



SB 1070: Enjoined and Limited Provisions
Updated May 23, 2017

Enjoined provisions of SB 1070:

- **Section 3: A.R.S. § 13-1509:** Failure to comply with federal noncitizen-registration requirements is state misdemeanor. Preempted by federal law. *Arizona v. United States*, 132 S. Ct. 2492 (June 25, 2012).
- **Section 4: A.R.S. § 13-2319:** Permanently enjoined by Judge Bolton. *See United States v. State of Arizona*, 119 F. Supp. 3d 955 (D. Ariz. Nov. 7, 2014) (permanent injunction).
 - *Valle Del Sol v. Whiting*, 2015 WL 12030514 (D. Ariz. Sept. 4, 2015) notes that this permanent injunction remains.
 - This provision amended the crime of human smuggling to permit, “in the enforcement of this section,” officers to stop any driver on grounds of “reasonable suspicion” that the person was violating a civil traffic law.
- **Section 5:**
 - **A.R.S. § 13-2928(A) and (B) day labor prohibitions:** Permanently enjoined, *Valle del Sol v. Whiting*, No. CV-10-01061-PHX-SRB, 2015 WL 12030514 (D. Ariz. Sept. 4, 2015), on First Amendment grounds.
 - These provisions made it unlawful for occupants of vehicles stopped on roadways and impeding traffic from trying to hire people for work at another location and for individuals to enter such vehicles in order to be hired.
 - **A.R.S. § 13-2928(C):** Misdemeanor for unauthorized noncitizen to seek or engage in work in Arizona. Preempted by federal law. *Arizona v. United States*, 132 S. Ct. 2492 (June 25, 2012).
 - **A.R.S. § 13-2929:** Separate crime for certain smuggling activities. United States and Arizona stipulation led to a permanent injunction. *See Order, United States v. Arizona*, No. 2:10-cv-01413-SRB, Doc. 200 (D. Ariz. June 9, 2014) (permanently enjoining A.R.S. § 13-2929).
 - This provision made transporting or attempting to transport “an alien in this state, in furtherance of the illegal presence of the

alien in the United States,” with knowledge or reckless disregard as to unlawful presence unlawful. It also made concealing, harboring, shielding, etc. unlawful and made encouraging or inducing that person to come to Arizona unlawful.

- *See also Valle del Sol v. Whiting*, No. CV 10-1061-PHX-SRB, 2012 WL 8021265 (D. Ariz. Sept. 5, 2012) (preliminary injunction); *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006 (9th Cir. 2013) (affirming preliminary injunction).
- **Section 6: A.R.S. § 13-3883(A)(5):** This provision authorized officers to arrest a person without a warrant if the officer had probable cause to believe the person committed any public offense that would make the person removable from U.S. Preempted by federal law. *Arizona v. United States*, 132 S. Ct. 2492 (June 25, 2012).

Limited provisions of SB 1070:

- **Section 2: A.R.S. § 11-1051:** The Arizona Attorney General has issued an opinion regarding the constitutional limits on law enforcement implementation of S.B. 1070 §§ 2(B) and 2(D). Important components of the opinion include the following statements:
 - “Officers shall not prolong a stop or detention for an immigration inquiry to request or obtain verification of immigration status, or prolong a criminal investigation or inquiry in order to accommodate or complete immigration-related tasks.” Informal AG Opinion No. I16-010 at 4.
 - “Officers shall not contact, stop, detain, or arrest an individual based on race, color, or national origin,” unless in accordance with a “timely, reliable, and geographically relevant” specific suspect description or “otherwise authorized by law.” *Id.* at 2.
 - Where “an officer has reasonable suspicion that an individual is unlawfully present in the United States,” the officer may not prolong a stop or detention in order to contact ICE/CBP. *Id.* at 4.
 - An officer may exercise discretion not to investigate immigration status where “not practicable” or where such investigation may hinder a different investigation. *Id.* at 4-5.
 - “[P]robable cause to believe that an individual has committed a civil immigration violation” does not give an officer authority to arrest that individual. An officer “shall not detain” such an individual for any

length of time beyond the time necessary to complete the state-law basis for the stop, where the officer is not acting under § 287(g) authority. *Id.* at 5.

- “Officers shall not arrest an individual simply because the individual lacks proper documentation.” *Id.*
- The Attorney General opinion providing an advisory model policy for law enforcement applying S.B. 1070 and reflecting the Attorney General’s constitutional interpretation of §§ 2(B) and 2(D), Informal Attorney General Opinion No. I16-010 (Sept. 20, 2016), is available online: <https://www.azag.gov/sites/default/files/Issued%20Informal%20Opinion%20I16-010.pdf>
 - Note that, notwithstanding the opinion’s “informal” label, the opinion’s analysis “has the same persuasive weight as the analysis in a formal Attorney General opinion.” Informal AG Opinion No. I16-010 at 1 n.1.

Additional Information:

- The 2015 *Valle del Sol* opinion permanently enjoining the A.R.S. 13-2928(A) and (B) day labor prohibitions has a comprehensive summary of the other enjoined portions of S.B. 1070: *Valle del Sol v. Whiting*, No. CV-10-01061-PHX-SRB, 2015 WL 12030514, at *1 (D. Ariz. Sept. 4, 2015):
 - “Five years of rulings in these cases has narrowed the unresolved issues concerning S.B. 1070’s facial validity. In *Arizona*, the Supreme Court held that although Section 3 of S.B. 1070 was field preempted and that Sections 5(C) and 6 were conflict preempted, Section 2(B) was not preempted on its face. *See Arizona v. United States*, 132 S. Ct. 2492, 2501-10 (2012). The Court permanently enjoined Sections 3, 5(C), and 6. (*See Arizona*, Doc. 180, Sept. 18, 2012 Order.)² The Court later permanently enjoined Section 4, which amended the crime of human smuggling under A.R.S. § 13-2319. (*See id.*, Doc. 215, Nov. 7, 2014 Order.) Like the United States, Plaintiffs moved to enjoin various provisions of S.B. 1070. The Court preliminarily enjoined the portions of Section 5 codified under A.R.S. § 13-2929, which created a separate crime for certain smuggling activities. (Doc. 757, Sept. 5, 2012 Order); *Valle del Sol v. Whiting*, 2012 WL 8021265 (D. Ariz. Sept. 5, 2012), *aff’d*, 732 F.3d 1006 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 1876 (2014). A.R.S. § 13-2929 is now permanently enjoined after the United States and Arizona reached a stipulation in *Arizona*. (*See Arizona*, Doc. 200, June 9, 2014 Order.) The Court also preliminarily enjoined

the portions of Section 5 codified under A.R.S. § 13-2928(A) and (B) involving day labor prohibitions. (Doc. 604, Feb. 29, 2012 Order); *Friendly House v. Whiting*, 846 F. Supp. 2d 1053 (D. Ariz. 2012), *aff'd sub nom. Valle Del Sol Inc. v. Whiting*, 709 F.3d 808 (9th Cir. 2013). The portions of S.B. 1070 that are not enjoined are now in effect.”