SB 1070: Enjoined and Limited Provisions

Updated May 23, 2017

Enjoined provisions of SB 1070:


  - 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:**
    - 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.
    - 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,
  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
  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.
  o “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
  o 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):
  o “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.) 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.”