

Q&A on What *Arizona v. United States* May Mean for States with Similar Immigration Laws

In April, the U.S. Supreme Court will hear arguments in *Arizona v. United States*, a case addressing the legality of the Arizona immigration law known as SB 1070. According to the statement of legislative intent, the law was designed to make “attrition through enforcement” the official policy of all state and local agencies in Arizona. Following the passage of SB 1070, numerous other states—including Alabama, Georgia, Indiana, South Carolina, and Utah—passed legislation with similar provisions, which have also been challenged in court.

The Supreme Court’s decision is likely to affect not only the future of SB 1070, but the fate of other state immigration laws being challenged in court. It may settle broader questions at issue regarding state authority to enact similar laws under consideration. For a complete analysis of the Supreme Court case, see our [Q&A Guide to *Arizona v. United States*: What You Need to Know About the Supreme Court Case Involving SB 1070](#).

Q: What is the timeline for the Supreme Court?

A: Oral arguments before the Supreme Court will take place on Wednesday, April 25, 2012. The Court is unlikely to issue a decision before late June—unless the Justices divide 4-4, in which case the outcome will be announced within days of the vote.¹ No state laws will be affected by the Supreme Court decision before a final ruling is announced.

Q: What provisions of SB 1070 will the Supreme Court consider?

A: The Supreme Court will not rule on the entirety of SB 1070; it will only consider the following four provisions that were blocked from taking effect by lower court judges:

- **Section 2(B)** requires state and local police officers to attempt to determine the immigration status of any person lawfully stopped if “reasonable suspicion” exists that the person is unlawfully present in the United States. This section also requires state and local authorities to determine the immigration status of any person placed under arrest, regardless of whether the person is suspected of being in the country unlawfully.
- **Section 3** makes it a crime under Arizona law for unauthorized immigrants to violate the provisions of federal law requiring them to apply for “registration” with the federal government and to carry a registration card if one has been issued to them.
- **Section 5(C)** makes it a crime under Arizona law for immigrants who are not authorized to work in the United States to apply for work, solicit work in a public place, or perform work within the state’s borders.
- **Section 6** authorizes state and local police officers to arrest immigrants without a warrant where “probable cause” exists that they committed a public offense making them removable from the United States.

Q: How does SB 1070 compare to other state immigration laws?

A: Many provisions of Arizona’s law are similar to those enacted in other states. For example, Alabama, South Carolina, and Utah also enacted provisions requiring police officers to investigate the immigration status of all persons they stop if “reasonable suspicion” exists that they are in the country illegally. At the same time, copycat laws in other states also contain unique provisions. For example, unlike SB 1070, Alabama’s HB 56 requires school administrators to ascertain the immigration status of newly enrolling students.

Q: What will happen to copycat laws if the Supreme Court rules against Arizona?

A: The Supreme Court decision will not resolve all of the questions surrounding other state copycat laws. The Supreme Court is only looking at a few provisions of the Arizona law, not all of the provisions of all the laws. Moreover, alternative challenges to the same Arizona provisions under consideration by the Supreme Court are still pending, and may be reasserted. If the Court rules against all or parts of SB 1070, those provisions will remain legally enjoined, and any identical provisions in other states will also be prevented from taking effect. Where copycat laws are not identical to SB 1070, however, lower courts will have to decide if and how the Supreme Court’s decision applies. State legislatures may also try to amend their laws to conform to the Supreme Court’s decision.

Q: If the Supreme Court rules for Arizona, what will be the effect on copycat laws?

A: Again, the effect of the Court’s ruling on other states with copycat laws will depend on the details of the Supreme Court’s decision, and the lower courts’ subsequent rulings in light of that decision. If the challenged provisions of SB 1070 are allowed to be implemented, similar provisions of other state laws will also likely be allowed to go into effect. But separate lawsuits challenging provisions of copycat state laws that were not reviewed by the Supreme Court will move forward and other courts will determine whether those provisions can be implemented.

Q: If the Supreme Court rules in favor of SB 1070, will other states be free to enact similar laws?

A: The question of whether states *may* enact laws like SB 1070 is distinct from whether states *should* enact such laws, or whether they *will* do so. Regardless of what the Supreme Court decides, supporters of state immigration control laws will likely continue to experiment and promote variations of SB 1070. On the other hand, in many states the tide has already turned against laws modeled upon SB 1070, for a variety of reasons.

States that continue to pursue anti-immigrant legislation may face both fiscal and social costs. State immigration enforcement laws cruelly separate families, devastate local economies, and place unnecessary burdens on U.S. citizens and lawful immigrants. The “attrition through enforcement” strategy—or making everyday activities so difficult and the fear of apprehension so great that immigrants “self-deport”—does nothing to address our national immigration problems and places unprecedented legal, fiscal, and economic burdens on states and local communities. For more information on the costs and consequences of state immigration control laws, see IPC’s [*Q&A Guide to State Immigration Laws: What you Need to Know if Your State is Considering Anti-Immigrant Legislation.*](#)

¹ Justice Elena Kagan, who served as Solicitor General prior to her nomination, is recused from the case.