

# Derogation of Fundamental Civil Rights: Arizona Legalizes Racial Profiling

Anybody "who looks like an undocumented immigrant" can be arrested

By [Prof. Marjorie Cohn](#)

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*Arizona's new immigration legislation - requiring law enforcement officers to stop everyone whom they have "reasonable suspicion" to believe is an undocumented immigrant and arrest them if they fail to produce their papers - demeans us all by effectively legalizing racial profiling...*

The conservative "states' rights" mantra sweeping our country has led to one of the most egregious wrongs in recent U.S. history. New legislation in Arizona requires law enforcement officers to stop everyone whom they have "reasonable suspicion" to believe is an undocumented immigrant and arrest them if they fail to produce their papers. What constitutes "reasonable suspicion"? When asked what an undocumented person looks like, Arizona Governor Jan Brewer, who signed SB 1070 into law last week, said, "I don't know what an undocumented person looks like." The bill does not prohibit police from relying on race or ethnicity in deciding who to stop. It is unlikely that officers will detain Irish or German immigrants to check their documents. This law unconstitutionally criminalizes "walking while brown" in Arizona.

Former Arizona attorney general Grant Woods explained to Brewer that SB 1070 would vest too much discretion in the state police and lead to racial profiling and expensive legal fees for the state. But the governor evidently succumbed to racist pressure as she faces a reelection campaign. Woods said, "[Brewer] really felt that the majority of Arizonans fall on the side of, 'Let's solve the problem and not worry about the Constitution.'" The polls Brewer apparently relied on, however, employed questionable methodology and were conducted before heavy media coverage of the controversial legislation. No Democrats and all but one Republican Arizona legislator voted for SB 1070.

Undocumented immigrants in Arizona now face six months in jail and a \$500 fine for the first offense - misdemeanor trespass - and an additional \$1,000 fine for the second offense, which becomes a felony.

By establishing a separate state crime for anyone who violates federal immigration law, the new Arizona law contravenes the Supremacy Clause of the Constitution, which grants the federal government exclusive power to regulate U.S. borders.

SB 1070 creates a cause of action for any person to sue a city, town or county if he or she feels the police are not stopping enough undocumented immigrants. Even if a municipality is innocent, it will still be forced to rack up exorbitant legal fees to defend itself against frivolous lawsuits.

The bill also makes it a misdemeanor to attempt to hire or pick up day laborers to work at a different location if the driver impedes the normal flow of traffic, albeit briefly. How many New York taxi drivers impede the flow of traffic when they pick up fares? The law also criminalizes the solicitation of work by an undocumented immigrant in a public place, who gestures or nods to a would-be employer passing by. This part of the legislation is also unconstitutional as courts have held that the solicitation of work is protected speech under the First Amendment.

The new law effectively compels Arizona police to make immigration enforcement their top priority. Indeed several law enforcement groups oppose SB 1070. The Law Enforcement Engagement Initiative, an organization of police officials who favor federal immigration reform, condemned the law, saying it would probably result in racial profiling and threaten public safety because undocumented people would hesitate to come forward and report crimes or cooperate with police for fear of being deported. The Arizona Association of Chiefs of Police also criticized the legislation, saying it will “negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner;” the group believes the immigration issue is best addressed at the federal level.

Many civil rights and faith-based organizations also oppose SB 1070.

The Mexican American Legal Defense & Educational Fund (MALDEF) called the law “tantamount to a declaration of secession.” The National Coalition of Latino Clergy and Christian Leaders Legal Defense Fund – which represents 30,000 evangelical churches nationwide – as well as MALDEF, the National Day Laborer Organizing Network (NDLON), and the American Civil Liberties Union (ACLU), are preparing federal lawsuits challenging the constitutionality of SB 1070.

Cardinal Roger M. Mahony of Los Angeles called the ability of officials to demand documents akin to “Nazism.” Former Arizona Senate majority leader Alfredo Gutierrez said, “This is the most oppressive piece of legislation since the Japanese internment camp act” during World War II. Representative Raul M. Grijalva (Dem.-AZ) called for a convention boycott of Arizona. The American Immigration Lawyers Association (AILA) complied. AILA is moving its fall 2010 conference, scheduled for Arizona, to another state.

Even though SB 1070 will not take effect for at least 90 days, undocumented immigrants in Arizona are terrorized by the new law. A man in Mesa, Arizona looked around nervously as he stood on a street corner waiting for work. “We shop in their stores, we clean their yards, but they want us out and the police will be on us,” Eric Ramirez told the New York Times.

Ironically, expelling unauthorized immigrants from Arizona would be costly. The Perryman Group calculated that Arizona would lose \$26.4 billion in economic activity, \$11.7 billion in gross state product, and approximately 140,324 jobs if all undocumented people were removed from the state.

“This bill does nothing to address human smuggling, the drug cartels, the arms smuggling,” according to Democratic Senator Rebecca Rios.

“And, yes, I believe it will create somewhat of a police state,” she added. “Police in Arizona already treat migrants worse than animals,” said Francisco Loureiro, an immigration activist who runs a shelter in Nogales, Mexico. “There is already a hunt for migrants, and now it will be open season under the cover of a law.”

SB 1070 is the latest, albeit one of the worst, racist attacks on undocumented immigrants. The federal program called 287(g) allows certain state and local law enforcement agencies to engage in federal immigration enforcement activities. But a report released earlier this month by the Department of Homeland Security Office of Inspector General found a lack of oversight and training without adequate safeguards against racial profiling.

We can expect SB 1070 to be replicated around the country as the ugly wave of immigrant-bashing continues. Lawmakers from four other states have sought advice from Michael Hethmon, general counsel for the Immigration Reform Law Institute, who helped draft the Arizona law.

“SB 1070 is tearing our state into two,” said Phoenix Mayor Phil Gordon, who called the bill “bitter, small-minded and full of hate.”

He thinks “it humiliates us in the eyes of America and threatens our economic recovery.” More than 50,000 people signed petitions opposing SB 1070 and 2,500 students from high schools across Phoenix walked out of school and marched to the state Capitol to protest the bill before it passed. On Sunday, about 3,500 people gathered at the Capitol, chanting, “Yes we can,” “We have rights,” and “We are human.”

President Obama criticized SB 1070 as “misguided,” saying it will “undermine basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe.” He called on Congress to enact federal immigration reform.

But Isabel Garcia, co-chair of the Coalition of Human Rights in Tucson, told Democracy Now! that there have been more deportations under the Obama administration than in any other administration. “This administration continues to follow the flawed concept that migration is somehow a law enforcement or national security issue,” she noted.

“And it is not. It is an economic, social, political phenomenon.” She mentioned that NAFTA has displaced millions of workers in Mexico who flood into the United States.

Instead of expressing gratitude for the back-breaking work migrant laborers contribute to our society, there is an increasingly virulent strain of racism that targets non-citizens. Republican lawmakers are joining together to oppose federal immigration reform, opting instead for a “states rights” approach where each state is free to enact its own racist law.

Let us join the voices of compassion and oppose the mean-spirited actions that aim to scapegoat immigrants. Laws like SB 1070 demean us all.

*Marjorie Cohn is a professor at Thomas Jefferson School of Law and immediate past president of the National Lawyers Guild. See [www.marjoriecohn.com](http://www.marjoriecohn.com)*

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