



Common Myths and Facts Regarding Senate Bill 1070

Prepared by the Office of Governor Janice K. Brewer

While Senate Bill (S.B.) 1070, as amended by House Bill (H.B.) 2162, is characterized by many as the toughest anti-illegal immigration law in the nation, many of its opponents have mischaracterized or exaggerated its provisions. This document seeks to correct those mischaracterizations by referring to the express provisions of S.B. 1070 and relevant federal and state case law. All references to S.B. 1070 include the amendments made by H.B. 2162.

1. **MYTH:** **S.B. 1070 grants new powers to police officers to pull drivers over just to check their immigration status. Police can now just come up to you for no reason and ask for papers.**

FACT: S.B. 1070 is a “secondary enforcement” law. S.B. 1070 requires that there must first be a “lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency . . . in the enforcement of any other law or ordinance. . . .” *A.R.S. § 11-1051(B)*. Much like enforcement of seat belt laws in many states such as Arizona – under S.B. 1070 there must first be reasonable suspicion that you are breaking some OTHER law before an officer can ask a person about their legal status. Only then, after law enforcement officers have a “reasonable suspicion” that another law has been broken, can they inquire about immigration status – but ONLY if that individual’s behavior provides “reasonable suspicion” that the person is here illegally.

“Reasonable Suspicion” is a well-established legal standard defined by the U.S. Supreme Court and used by law enforcement in every state and jurisdiction in the country for decades.

2. **MYTH:** **S.B. 1070 requires police officers in Arizona to stop, ID and arrest anyone they suspect of being in the country illegally.**

FACT: Police officers are authorized, but not required, to determine any person's immigration status if reasonable suspicion exists as explained above. Police officers are only required to: (1) make a “reasonable attempt” to determine a

person's immigration status (2) "when practicable" (3) but not "if the determination may hinder or obstruct an investigation." *Arizona Revised Statutes* ("A.R.S.") § 11-1051(B). The only absolute requirement for law enforcement officers and agencies to confirm a person's immigration status is if they are arrested for another crime. A.R.S. § 11-1051(B).

3. **MYTH:** S.B. 1070 will make racial profiling the law of the land in Arizona and there is the possibility of detaining or arresting someone merely on the basis of physical appearance.

FACT: The opposite is true. S.B. 1070 expressly prohibits racial profiling. Per the express language of the law, police "may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution." A.R.S. § 11-1051(B). In addition, S.B. 1070 provides that these provisions of the law "shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens." A.R.S. § 11-1051(L).

4. **MYTH:** S.B. 1070 is unconstitutional because it intrudes on the federal government's power to enforce immigration laws. Only the federal government has the authority to enforce federal immigration laws.

FACT: It is settled case law that states and local police may enforce criminal provisions of federal immigration law. See *Gonzales v. City of Peoria (AZ)*, 722 F.2d 468 (9th Cir. 1983). The Ninth Circuit Court of Appeals affirmed in *Gonzales v. City of Peoria* that "nothing in federal law precluded...police from enforcing the criminal provisions of the Immigration and Naturalization Act." It is well established that state and local police possess the inherent authority to arrest aliens who have violated the criminal provisions of federal immigration law. It is also important to note that S.B. 1070 expressly provides that a person's immigration status may only be determined by the U.S. Immigration and Customs Enforcement ("ICE"), U.S. Customs and Border Protection, or a law enforcement officer authorized by the federal government to verify immigration status. A.R.S. § 11-1051(E).

5. **MYTH:** S.B. 1070 requires police to enforce federal immigration law without providing training on how to do so.

FACT: Governor Janice K. Brewer issued an executive order requiring the Arizona Peace Officer Standards and Training ("AZPost") Board to provide Arizona's law enforcement with training on S.B. 1070 prior to it taking effect with particular emphasis on training to prevent racial profiling and other illegal practices. *Arizona Executive Order No. 2010-09*. AZPost immediately started preparations to implement that order.

6. **MYTH:** S.B. 1070 allows citizens to sue the State or local governments if they don't arrest enough aliens illegally present in the United States or if a police officer doesn't inquire into every person's immigration status.

FACT: Legal residents are only allowed to sue the State or a local government if it "adopts or implements a policy that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law." *A.R.S. § 11-1051(H)*. This provision takes direct aim at cities that adopt so-called "sanctuary city" policies and not at the decisions of individual police officers.

7. **MYTH:** S.B. 1070 uses German Nazi and Russian Communist techniques that compelled people to turn each other in.

FACT: S.B. 1070 does not have any provision requiring or allowing people to inform on another person's immigration status and turn them in to the police. Such a report would not qualify as "reasonable suspicion" for law enforcement to determine a person's immigration status. As acknowledged by the *Los Angeles Times* (April 20, 2010), this claim is unfounded because S.B. 1070 "would not require people to report suspected illegal immigrants to authorities."

8. **MYTH:** S.B. 1070 may compel local police to ignore more serious crimes because they will be required to enforce federal immigration laws to the “full extent permitted by federal law.”

FACT: Police officers are only required to determine a person's immigration status "when practicable." *A.R.S. § 11-1051(B)*. Individual police officers are not required to enforce federal immigration laws to the "full extent permitted by the law." This provision solely applies to a law enforcement “official or agency” and not to individual police officers. *A.R.S. § 11-1051(A)*. S.B. 1070 prohibits law enforcement officials and agencies from limiting or restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law by adopting so-called “sanctuary city” policies. *A.R.S. § 11-1051(A)*.

9. **MYTH:** S.B. 1070 authorizes Nazi-like requirements for aliens to carry their "papers".

FACT: Federal law already requires aliens to register with the federal government and carry their documentation (*e.g.*, "green card") pursuant to 8 United States Code §§ 1304(e) and 1306(a). A violation of these laws is a federal misdemeanor. S.B. 1070 makes this a concurrent state misdemeanor by mirroring these same sections of federal law. "In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 United States Code Section 1304(e) or 1306(a)." *A.R.S. § 13-1509(A)*. These federal requirements have been in place for decades.

10. **MYTH:** S.B. 1070 does nothing to address the "real" public safety threats to Arizona border violence, drug cartels and human smuggling.

FACT: S.B. 1070 is not intended to be the single solution to Arizona's extraordinary illegal immigration problems. Just as the demand in the United States for illegal drugs fuels the drug traffic, the demand and tolerance of persons who are not authorized to be in Arizona fuels, in part, the human smuggling traffic. Along with many other existing provisions of Arizona law, S.B. 1070 will serve as the best Arizona can do until the federal government fully secures our border and restores integrity to our immigration system. These other existing statutes include the toughest employer sanctions law in the nation (including the mandatory use of E-Verify) and refusal to provide any public benefits to unauthorized aliens.