



June 27, 2012

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Arizona v. United States:

Supreme Court Holds that State Laws Aimed at Curbing Illegal Immigration are Preempted by Federal Law

In *Arizona v. United States*, Case No. 11-182, 567 U.S. __ (2012), the U.S. Supreme Court found that three of the four challenged provisions of the Arizona state statute (SB 1070) in which the state sought various measures to combat illegal immigration, were preempted since states are precluded from regulating in a field in which Congress, acting within its proper authority, has determined must be regulated by its exclusive governance and the state laws effectively conflicted with the federal laws in place. However, the Court allowed Section 2(B) of the statute to stand, which authorized “state officers to make a reasonable attempt...to determine the immigration status of any person they stop, detain, or arrest on some other legitimate basis if reasonable suspicion exists that the person is an alien and is unlawfully present in the United States”

The first provision which the Court addressed pertained to Section 3 which made failure to comply with federal alien registration requirements a misdemeanor. This section added a state-law penalty for conduct proscribed by federal law. The framework enacted by Congress lead the Court to conclude that the Federal Government has occupied the field of alien registration. In such circumstances, even complementary state regulation is impermissible. Further the Court stated that “If Section 3 of the Arizona statute were valid, every state could give itself independent authority to prosecute federal registration violations ‘diminishing the Federal Government’s control over enforcement’ and ‘detracting from the integrated scheme of regulation created by Congress.’”

The Court then addressed Section 5, which made it a misdemeanor for an unauthorized alien to seek or engage in work in the state. The Court found that when Congress enacted Immigration Reform and Control Act (IRCA) it created a comprehensive framework for combating the employment of illegal aliens. This framework, however, did not impose federal criminal sanctions on the employee side. Further, the legislative history of the IRCA underscored the fact that Congress made a deliberate choice not to impose criminal penalties on aliens who sought to, or engaged in, unauthorized employment. The Court found that the state law was preempted because it stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Although this provision may have attempted to achieve one of the same goals as federal law, it involved a conflict in the method of enforcement and thus, must fail.

Section 6 of S.B. 1070 authorized an officer to arrest without a warrant, a person the officer had “probable cause to believe...had committed any public offense that made the person removable from the US.” The Court stated that as a general rule, it is not a crime for a removable alien



State Prosecution Support

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to remain present in the US. “If the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.” The Court stated this is not the system that Congress created as Federal law specifies limited circumstances in which state officers may perform the functions of an immigration officer. Thus, Section 6 of S.B. 1070 violated the principle that the removal process is entrusted to the discretion of the Federal Government.

In the sole provision that was allowed to stand, Section 2(B) of S.B. 1070, the Court stated that if the provision “only requires state officers to conduct a status check during the course of an authorized, lawful detention or after a detainee has been released, the provision likely would survive preemption - at least absent some showing that it has other consequences that are adverse to federal law and its objectives.” The Court noted that there are limits built into this provision. First, a detainee is presumed not to be an alien unlawfully present in the US if he or she provides a valid Arizona driver’s license or similar identification. Also, officers may not consider race, color, or national origin, except to the extent permitted by law. Lastly, the provision states that it must be “implemented in a manner consistent with federal law regulating immigration, protecting civil rights of all persons and respecting the privileges and immunities of US citizens.” Thus, the Court determined, as it is written, Section 2(B) is not preempted. However, the Court cautioned that there may be other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect.

What this means for Georgia: The Georgia General Assembly enacted a similar piece of legislation, House Bill 87 (HB 87), the Illegal Immigration Reform and Enforcement Act of 2011, which was enjoined pending the outcome of *Arizona v. United States*. In lieu of the US Supreme Court’s decision, it is possible that the Georgia Legislature will have to “go back to square one” for many provisions except perhaps Section 8 which added OCGA § 17-5-100. This statute allows a peace officer who stopped an individual based on probable cause that the individual committed a crime (including a state traffic offense) to verify that the person is lawfully in the United States. This provision is similar to Section 2(B) of S.B. 1070 and as such, will likely stand up to constitutional challenge. Specifically, OCGA § 17-5-100 provides for when an officer may check the immigration status of a lawfully stopped person and it applies only to cases where the officer has probable cause to believe that the person committed a “violation of state or federal law;” a violation of a city or county ordinance would not qualify. Second, the officer is only authorized to run an immigration check if the person does not have certain specified documents, one of which is a valid foreign driver's license under OCGA § 40-5-21(a)(2). Additionally, the race, color or national origin of the suspect cannot be considered, “except to the extent permitted by the Constitutions of Georgia and of the United States.” Only if the conditions specified above are met and the officer “receives verification that such suspect is an illegal alien,” may the officer detain the person or transport the person to “any authorized state or federal detention facility.” OCGA § 17-5-100(e).