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Georgia Latino Alliance for Human Rights v. Governor of Georgia: Eleventh Circuit Addresses Georgia's Illegal Immigration Reform and Enforcement Act of 2011

The United States Court of Appeals for the Eleventh Circuit recently addressed challenges to Sections 7 and 8 of the Illegal Immigration Reform and Enforcement Act of 2011 (commonly referred to as HB 87). The Court affirmed the preliminary injunction issued by the District Court against Section 7 of the Act, which is codified in O.C.G.A. §§16-11-200(b), 16-11-201(b), and 16-11-202(b). These code sections established three separate crimes for interactions with illegal aliens. The Court found it likely that these provisions were preempted. However, the Court also held that provisions of the Act, codified in O.C.G.A. § 17-5-100(b), authorizing law enforcement officers who have probable cause to believe an individual has committed some crime to investigate the immigration status of the individual, was likely not preempted and thus, lifted the preliminary injunction issued by the District Court as to this section of the Act. *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, No. 11-13044 (11th Cir. Aug. 20, 2012).

Specifically, the Court compared the creation of the offenses of “transporting or moving an illegal alien,” “concealing or harboring an illegal alien,” and “inducing an alien to enter the state of Georgia,” to the U. S. Supreme Court’s recent ruling in *Arizona v. United States*. In *Arizona v. United States*, the Court struck down a section of Arizona’s law which added a “state-law penalty for conduct proscribed by federal law,” namely the failure to complete and carry alien registration documents, concluding that the Federal Government occupied the field of alien registration. The Court analogized the Supreme Court’s reasoning in *Arizona v. United States* to the present case, and noted that like the federal regulation scheme addressed in *Arizona*, Congress has provided a “full set of standards” to govern the unlawful transport and movement of aliens.

The Court further relied on the Supreme Court’s ruling in *Arizona v. United States* when addressing the constitutionality of Section 8 of the Act. Section 8 authorizes police officers to investigate the immigration status of individuals who cannot produce adequate identification to prove citizenship, provided that probable cause exists that the individual has committed a crime. O.C.G.A. § 17-5-100(b). In implementing this investigatory provision, officers are not permitted to “consider race, color, or national origin, except to the extent permitted by the United States and Georgia Constitutions.” In *Arizona v. United States*, the Supreme Court approved a similar state provision and in light of that holding, the Court likewise concluded that Section 8 is likely not preempted by federal law. Moreover, the Court noted that while the investigatory provision in *Arizona* was mandatory, Section 8 authorizes, but does not require, state officials to conduct an inquiry into immigration status whenever a detained individual cannot produce satisfactory identification. Furthermore, the Georgia statute has the same built-in limitations as the Arizona statute which further led the Court to conclude that it is unlikely that the statute at issue “will be construed in a way that creates a conflict with federal law.” Therefore, the Court upheld the preliminary injunction issued against Section 7 of the Illegal Immigration Reform and Enforcement Act of 2011 but reversed the portion of the District Court’s order enjoining Section 8.

The full text of the opinion may be found at the following link: <http://www.ca11.uscourts.gov/opinions/ops/201113044.pdf>.