



STATE OF ARIZONA

JANICE K. BREWER
GOVERNOR

EXECUTIVE OFFICE

June 4, 2010

Eric H. Holder, Jr., Esq.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington DC 20530-0001

Re: Arizona Immigration Law

Dear Mr. Holder:

I appreciate that Mr. Tony West and Mr. Dennis Burke and others from the Department of Justice took the time last week to meet in Phoenix with the legal team I have retained to defend the various legal challenges to SB1070, as amended by HB2162 (collectively SB1070 for ease of reference). I write to you in response to the requests from Messrs. West and Burke that we provide the Department of Justice with the State of Arizona's position as to why the United States need not file its own lawsuit to challenge SB1070.

There are many reasons why the United States should not, and need not, take any action at this time. Here, I will address just three of the reasons: (1) the State of Arizona is taking significant steps to ensure that SB1070 will be implemented and enforced in a constitutional manner; (2) any legal challenge – by the United States or any other party – is premature and unnecessary at this time; and (3) the law itself is not unconstitutional in any event.

I understand that the Department of Justice has expressed concerns about racial profiling. Let me be clear. This law expressly prohibits racial profiling, and the State of Arizona will not allow racial profiling to occur regardless. Indeed, on the day that SB1070 was signed into law, I issued Executive Order 2010-09. This Order, entitled "Establishing Law Enforcement Training for Immigration Laws", directed the Arizona Peace Officer Standards and Training Board to implement a comprehensive training program to be provided to the 170 law enforcement agencies in the State of Arizona. One of the specific directives that I included in this Order was:

3. The course of training established by the Board shall provide clear guidance to law enforcement officials regarding what constitutes reasonable suspicion and shall make clear that an individual's race, color or national origin alone cannot be grounds for reasonable suspicion to believe any law has been violated.

The Arizona Peace Officer Standards and Training Board is now in the process of implementing and conducting this comprehensive training program for all Arizona law enforcement personnel addressing all of the enforcement issues arising out of SB1070. Racial profiling is addressed thoroughly in this training program, which will be finished before July 29, 2010, the date SB1070 goes into effect.

A lawsuit by the United States at this time would also be premature and unnecessary, as a matter of law and as a practical matter. As you are well aware, a constitutional challenge to a law that is constitutional on its face is premature. If the law is later applied in a way that is arguably unconstitutional, then – and only then – is a constitutional challenge appropriate. Here, SB1070 is not being applied in an unconstitutional manner; the law itself is not even in effect yet. And, because of efforts such as the training program discussed above, the State of Arizona is taking all necessary and appropriate actions to ensure that it will not be applied in an unconstitutional manner, just as the federal government does with respect to enforcement of federal immigration and other laws. Indeed, retired United States Customs officers will be participating in the training program to explain how federal officers are trained in various areas of immigration law, including racial profiling.

Moreover, as a practical matter, there is no need for the United States to inject itself into this legal battle. There are already five federal court lawsuits pending that challenge this law. There are 35 lawyers from all over the United States listed as counsel of record in just one of these lawsuits. Every conceivable constitutional and any other legal challenge that can be raised about SB1070 will be thoroughly briefed, argued and then adjudicated by a United States court. With all due respect, federal taxpayer funds could be better dedicated to addressing the underlying immigration issues rather than to duplicative and unnecessary litigation. Indeed, the Administration's political capital would be better focused on providing more resources to the State of Arizona and other border states that are under incredible financial stress because of the underlying immigration problem itself, not on litigation which will require the State of Arizona to incur even more expenses in the way of litigation costs arising out of one more unnecessary lawsuit.

Finally, this law is constitutional. We recognize that the federal government has the exclusive authority to regulate the terms upon which aliens may be admitted to enter and remain in the United States. Nothing in SB1070, however, intrudes upon that authority. The primary purpose of SB1070 is to increase the assistance Arizona's law enforcement officers provide to the understaffed federal agencies that enforce the federal immigration laws under well-established and constitutionally permissible standards. The provisions of SB1070 that require state and local enforcement of federal immigration laws are extremely limited and are triggered *only* when Arizona's law enforcement officers have reason to believe—again, under well-established and constitutionally permissible standards—that a person has engaged in criminal conduct. If an officer has an independent basis to suspect criminal conduct, SB1070 further relies on well-established and constitutionally permissible standards in setting forth the bases upon which officers must inquire into the person's immigration status. SB1070 further narrows

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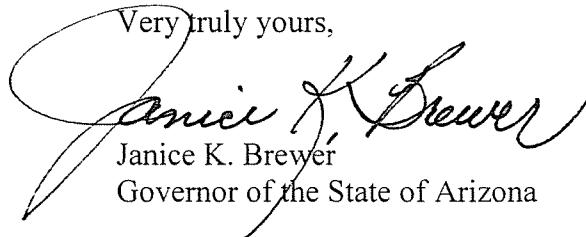
its scope by requiring a reasonable inquiry into a person's immigration status *only* if it is practicable for the officer to make such an inquiry.

As you know, there is ample case law to support the proposition that state and local police officers may inquire into a person's immigration status when the officers have reasonable suspicion to believe that the person is in violation of the federal immigration laws. Moreover, the U.S. Supreme Court has recognized that police officers may inquire into a person's immigration status even *without* a reasonable suspicion to believe that the person is in violation of federal immigration laws if an independent basis exists for a lawful stop, detention, or arrest. I remain thoroughly convinced of both the reasonableness and the constitutionality of SB1070.

As a practical matter, federal courts and federal enforcement agencies have repeatedly recognized the value of having state and local police officers assist in the enforcement of federal immigration laws. The federal government has even implemented a system for the purpose of enhancing its communications with state and local authorities regarding the immigration status of criminals. As a result, there appears to be no reason why the Department of Justice should not welcome the assistance that SB1070 will require Arizona's law enforcement officers to provide to the federal government in the identification and apprehension of illegal aliens.

As discussed during my meeting with the President yesterday, we encourage the United States government to work with -- not against -- the State of Arizona on these critically important immigration issues. In that spirit, I request that the Department of Justice not inject itself into the current litigation and I invite the Department of Justice to instead provide any assistance it can provide to the State of Arizona to help ensure that any Department of Justice concerns are addressed in the training and enforcement of this law.

Very truly yours,



Janice K. Brewer
Governor of the State of Arizona

cc: Tony West, Esq., Assistant United States Attorney General
Dennis Burke, Esq. United States Attorney General for Arizona