



Judge Will Not Strike Down Ariz. Law Before It Goes Into Effect

Federal District Court Judge Susan Bolton, during the course of a July 22 hearing, made it clear to parties attacking and parties defending the new Arizona immigration law, SB 1070, that she will not issue a ruling that invalidates the entire law before it goes into effect on July 29. Her questioning of ACLU lawyer Omar Jadwat may provide some insight into Judge Bolton's rulings in the case. The judge asked Jadwat: "Why can't Arizona be as inhospitable as they wish to people who have remained and entered the United States illegally? Who am I to stop the state of Arizona?"



Judge Bolton asked Arizona State Attorney John Bouma if the Arizona state law pre-empts federal law, which might create problems with the Supremacy Clause of the Constitution. Bouma answered: "Law-enforcement officer have been enforcing federal immigration laws for years." The judge also has questions about the requirement that the immigration status of person under arrest must be determined before that person can be released. Bouma explained that U.S. citizens do not have any "immigration status" and so the provisions of the law relating to when an individual could be released would have no applicability to American citizens.

Nina Perales, counsel for the Mexican American Legal Defense and Education Fund, argued that the new state crime of "willful failure to complete and carry an alien registration document" would create a new class of non-citizens, noting that some of these individuals may be seeking political asylum or be in the midst of naturalization as a citizen. Judge Bolton indicated that the Arizona legal argument in support of this provision may not be adequate, because of possible state pre-emption of federal law.

The tenor of the hearing suggests that Judge Bolton may enjoin enforcement of some provisions of the law but not all the provisions, and that she was giving deference to an Arizona law that was consciously crafted to simply provide for the enforcement of existing federal law. Whatever the rulings of Judge Bolton in District Court, it is likely that the case will wind its way up the federal appellate levels to the Supreme Court.

Politicians and average citizens have taken strong and passionate positions on this issue, which often appears less a legal issue than a political and cultural issue. Polls consistently have shown that Americans support the Arizona law. In Arizona itself, once anemic polls for Governor Jan Brewer (who, as Arizona Secretary of State, became Governor when Janet Napolitano became Secretary of Homeland Security) have completely reversed after her stout defense of the Arizona law, and she is now a strong favorite to win election in November.



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