



Written by [Joe Wolverton, II, J.D.](#) on November 28, 2011

## Civil Rights Commission to Probe Effect of State Illegal Immigration Laws

The chairman of the commission, Martin Castro, [explained the purpose of the inquiry](#):

I believe that the enactment of these state immigration enforcement laws presents a pressing national civil rights issue that affects immigrants and US citizens alike. I'm proud that my fellow Commissioners joined me in voting unanimously and in bipartisan manner to have the Commission look into this important issue.



The probe will begin in this trio of southern states where the impact of the new laws has increased the number of “hate crimes” committed against immigrant populations (illegal or naturalized), given rise to instances of racial profiling by law enforcement, or resulted in a denial of equal protection of foreign-born defendants in state court proceedings. The commission will look for other potential abrogations of civil rights, as well, including the access to public education afforded to children of illegal immigrants.

During a hearing to be convened next year, witnesses will be called to testify before the commission as to examples of discrimination experienced in cities throughout the states in question.

The U.S. Civil Rights Commission was created by the Civil Rights Act of 1957, an act signed by President Dwight D. Eisenhower.

The commission is made up of eight commissioners — four of whom are appointed by the President of the United States and two by the President Pro Tempore of the Senate, with the last two positions being filled by appointees submitted by the Speaker of the House of Representatives.

The unique manner of filling positions on the U.S. Commission on Civil Rights was intended to guarantee its independence from partisan influence. It was created with the purpose of monitoring the enforcement of civil rights laws by the federal government. In later years, however, it has recast itself as a civil rights “watchdog,” sniffing out potential civil rights violations on the part of state and local governments.

Currently, the members of the commission include Martin Castro (chairman), Roberta Achtenberg, Todd Gaziano, Gail Heriot, Peter Kirsanow, David Kladney, Abigail Thernstrom, and Michael Yaki. Commission meetings and briefings are open to the general public.



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As has been well-chronicled by *The New American*, each of these states — Alabama, Georgia, and South Carolina — has passed measures designed to stanch the flow of illegal immigrants across their borders. In turn, each of the laws has faced legal challenges, with the lead complainant usually being the Department of Justice. A brief survey of the three states and the DOJ's response to the laws passed there follows:

### **South Carolina**

The U.S. Department of Justice filed a suit in the U.S. District Court for the District of South Carolina seeking to enjoin and have declared invalid the state's recently adopted immigration law.

The measure (S.B. 20) was signed into law in June by Governor Nikki Haley, the daughter of Indian immigrants, and was set to go into effect on January 1, 2012.

According to the complaint filed by the Justice Department, if enforced, the South Carolina law would unlawfully conflict with federal immigration statutes and would contribute to a patchwork of state and local laws many of which would contradict currently operative federal immigration policies and principles.

Specifically, the filing claims:

In our constitutional system, the federal government has preeminent authority to regulate immigration matters and to conduct foreign relations. This authority derives from the Constitution and numerous acts of Congress.

Governor Haley's office doesn't expressly disagree with the DOJ's version of the grant of constitutional authority over immigration; rather, it is the federal government's lack of effective exercise of that power that prompted passage of the strict immigration law.

A spokesman for South Carolina Governor Nikki Haley told the Associated Press, "If the feds were doing their job, we wouldn't have had to address illegal immigration reform at the state level. But until they do, we're going to keep fighting in South Carolina to be able to enforce our laws."

### **Alabama**

The Justice Department has filed a similar complaint against the anti-immigration statute passed by the state legislature of Alabama. This law, like similar measures passed in other states, empowers law enforcement to detain people encountered during routine stops who are suspected of having illegally entered the state of Alabama.

The Department of Justice avers in its lawsuit that Alabama has no authority to legislate in the arena of immigration control, as the federal government has what it describes as "exclusive jurisdiction" over that field of law.

The suit filed by the DOJ in federal district court in Alabama alleges that the state law gives too much power to law enforcement, the exercise of which will result in denial of equal protection to illegal immigrants and the unlawful profiling of immigrants, legal and illegal.

"Today's action makes clear that setting immigration policy and enforcing immigration laws is a national responsibility that cannot be addressed through a patchwork of state immigration laws," Attorney General Eric Holder said in the statement announcing the Alabama suit. "To the extent we find state laws that interfere with the federal government's enforcement of immigration law, we are prepared to bring suit, as we did in Arizona."



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Governor Robert Bentley of Alabama defended his decision to sign the measure into law.

We have a real problem with illegal immigration in this country. I campaigned for the toughest immigration laws, and I'm proud of the Legislature for working tirelessly to create the strongest immigration bill in the country.

## **Georgia**

A federal judge has already blocked portions of the anti-immigration law passed in the state of Georgia. In his ruling, the judge held in favor of the Obama administration, ruling that the Constitution grants exclusive power over the setting of immigration policy to the federal government.

Judge Thomas Thrash, a Clinton appointee, imposed the injunction sought by the DOJ. Specifically, Alabama was enjoined from enforcing provisions in the law that would punish those discovered transporting illegal aliens during the commission of another crime. Further, the order temporarily removed the power given by the law to police to inquire as to the immigration status of those detained during routine stops.

Another portion of the law challenged by the federal government was described in an article published in June by *The New American*:

Georgia's law also requires businesses in the state to check the immigration status of all new hires. That provision will be phased in starting in January. A similar law was passed in Arizona and recently upheld by the U.S. Supreme Court.

Georgia's law was scheduled to take effect on July 1. On June 20, Judge Thrash began to hear arguments after civil liberties groups filed a lawsuit asking the court to declare the law unconstitutional and block its enforcement.

In the case of the several suits filed by the DOJ, the central issue is the right of states to legislate in the arena of immigration. The Obama administration, as has been shown, insists that the federal government has exclusive jurisdiction over immigration policy. The states counter that exigent circumstances have compelled them to take matters into their own hands.

As *The New American* has [pointed out](#) on several occasions, the Constitution grants no such power to the federal government; thus the authority to make laws in that area is retained by the states.

With regard to the investigation being carried out by the Civil Rights Commission, there is no provision of the Constitution that can be construed to have endowed the federal government with the authority to create agencies to watch and approve laws passed by state legislatures.



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