

## **Why the Supreme Court ruling on immigration is a clear rebuke to Arizona**

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IPC's staff lawyer Ben Winograd published an Opinion Piece for the Christian Science Monitor about the Supreme Court decision regarding Arizona's immigration law:

Monday's mixed Supreme Court decision on the Arizona immigration law has allowed both sides to claim victory. But make no mistake: The court's ruling represents a stinging rebuke for supporters of SB 1070 and other state immigration laws.

The majority opinion not only accepted virtually all of the Obama administration's legal arguments, it also rejected Arizona's primary contention that local police have "inherent" authority to enforce the immigration laws. And while the court permitted one part of SB 1070 to go into effect, it effectively invited future litigants to challenge its application in court.

Thus, regardless of what Arizona Gov. Jan Brewer or other supporters of the law might say, Monday's ruling - which was written by Justice Anthony Kennedy and joined by Chief Justice John Roberts, both Republican appointees - provides a clear sign that states have little, if any, leeway to enact laws like SB 1070. (Although the final vote was 5-3, the margin would have likely been 6-3 had Justice Elena Kagan not recused herself.)

Contrary to popular belief, the question before the justices was not whether Arizona's law violated the Constitution, but whether it conflicted with federal law. Of the four sections under consideration, the court found three were indeed "preempted" by Congress.

One of the provisions blocked by the court, Section 3, made it a crime under state law for immigrants to fail to carry "registration" papers issued by the federal government. Another, Section 5(C), made it a crime for immigrants without employment authorization documents to seek or perform work in Arizona. A third, Section 6, gave local police authority to arrest immigrants - including those with green cards - for having previously committed an offense making them removable from the country.

While the legal rationale varied for each section, the majority struck down all three provisions upon finding them to violate federal law or otherwise disrupt the framework created by Congress. (In a partially dissenting opinion, Justice Samuel Alito said that he, too, believed that Section 3 should be overturned.)

The only provision to survive Monday's ruling was Section 2(B), which requires Arizona police to try to determine the immigration status of people they stop or arrest if "reasonable suspicion" exists that the person in custody is unlawfully present. (The provision received extensive media attention due to widespread concerns that it could invite racial profiling.)

But despite what some supporters of the law have suggested, the majority did not find this provision to be immune from legal challenge. Rather, the court found the provision so confusingly written that Arizona courts should have an opportunity to interpret it first.

And, in a tacit invitation to future litigants, the court noted that it was not foreclosing future challenges based on racial profiling or other legal claims. Thus, while the injunction against Section 2(B) was reversed in theory, Arizona will invite many additional lawsuits if it is applied in practice.

But perhaps the greatest vindication for opponents of SB 1070 was the court's recognition of the importance of prosecutorial discretion, or the notion that law enforcement officials have inherent leeway not to enforce the law to its fullest extent.

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Given its limited resources, federal immigration authorities have in recent years prioritized the removal of undocumented immigrants who have committed crimes, repeatedly violated the immigration laws, or otherwise pose a threat to society. To that end, the Obama administration announced the week before last that it would decline to seek the removal of otherwise law-abiding undocumented immigrants who, among other things, were brought to the country before age 16.

In a caustic dissent, Justice Antonin Scalia mocked the idea that an administration's enforcement priorities should play any role on the court's analysis. But the majority opinion embraced the administration's legal position, noting that a "principal feature of the removal system is the broad discretion exercised by immigration officials." It also recognized that undocumented workers trying to support their families "likely pose less danger than alien smugglers or aliens who commit a serious crime."

Of course, nothing in the Supreme Court's decision should be read to understate the problems Arizona faces by virtue of its location along the border, or the continuing need for Congress to overhaul an immigration system that has not been seriously reformed in nearly 50 years. But the ruling makes clear that when it comes to making and enforcing the immigration laws, the federal government has exclusive authority unless Congress explicitly says otherwise.

"Arizona may have understandable frustrations with the problems caused by illegal immigration," Justice Kennedy pointedly concluded, "but the State may not pursue policies that undermine federal law."

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