
No. 10-16645

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

vs.

**STATE OF ARIZONA AND JANICE K. BREWER, GOVERNOR OF THE STATE OF
ARIZONA, IN HER OFFICIAL CAPACITY,**

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Arizona, Case No. CV 10-1413-PHX-SRB
Hon. Susan Bolton, District Judge, Presiding

**AMICUS BRIEF OF ANTI-DEFAMATION LEAGUE IN SUPPORT OF
APPELLEE AND AFFIRMANCE OF THE PRELIMINARY INJUNCTION**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the Anti-Defamation League (“ADL”) states that it is a 501(c)(3) non-profit organization. ADL has no parent corporation. No publicly owned corporation holds ten percent or more of the stock of ADL. ADL does not issue any stock.

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available at <http://www.azcentral.com/arizonarepublic/news/articles/2010/05/02/20100502arizona-border-violence-mexico.html#ixzz0rUoV3Vu6>.....4

STATEMENT OF INTEREST

The Anti-Defamation League (“ADL”) is the leading nongovernmental organization in the United States that trains law enforcement officers on issues of hate crimes and extremism. ADL provides training through a national network of regional offices to thousands of law enforcement officers to ensure that they know how to recognize and identify hate crimes and investigate them properly and sensitively.¹ ADL has trained law enforcement leaders at its *Advanced Training School: Course on Extremist and Terrorist Threats* in Washington, D.C.² With the United States Holocaust Memorial Museum, ADL has also trained more than 45,000 law enforcement professionals in *Law Enforcement and Society: Lessons of the Holocaust*, a program that examines how law enforcement became co-opted by the Nazi regime during the Holocaust, and that provides law enforcement professionals with an increased understanding of the importance of their relationship to the communities they serve and their role as protectors of civil rights guaranteed by the United States Constitution.³

¹ ADL, *Law Enforcement Training*, http://www.adl.org/learn/adl_law_enforcement/default.htm (last visited Sept. 27, 2010).

² ADL, *Advanced Training School*, http://www.adl.org/learn/learn_main_training/Advanced_Training_School.asp (last visited Sept. 27, 2010).

³ ADL, *Law Enforcement and Society: Lessons of the Holocaust* (Mar. 19, 2009), http://www.adl.org/learn/adl_law_enforcement/LEAS+3-09.htm?LEARN_Cat=Training&LEARN_SubCat=Training_News; Federal
(Continued ...)

ADL also has unmatched expertise concerning the development of federal and state hate crimes legislation. In 1981, ADL drafted a model state hate crime law,⁴ and the District of Columbia and 45 states, including Arizona, have enacted statutes based on or similar to ADL's model.⁵ ADL was a leading advocate for the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009 ("HCPA"), 18 U.S.C. § 249. ADL also has advocated for laws mandating the collection of statistics about hate crimes.

Courts must "pay[] particular attention to the *public consequences*" of granting or vacating a preliminary injunction. (ER 35, quoting *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008) (emphasis added; internal citation omitted).) Through its work with law enforcement and expertise in hate crime, ADL is uniquely situated to assist the Court in evaluating the public consequences of Arizona Senate Bill 1070, as amended ("S.B. 1070"), particularly in connection with the reporting and prevention of hate crimes. While the principal issue before the Court is preemption, and while ADL agrees with Plaintiff-

Federal Bureau of Investigation, *A Different Kind of Training: What New Agents Learn from the Holocaust* (May 30, 2010), http://www.fbi.gov/page2/mar10/leas_033010.html.

⁴ ADL, *Hate Crimes Laws*, <http://www.adl.org/99hatecrime/intro.asp> (last visited Sept. 27, 2010); *ADL Model Legislation*, http://www.adl.org/99hatecrime/text_legis.asp (last visited Sept. 27, 2010).

⁵ Arizona's anti-hate crimes laws are codified at A.R.S. §§ 13-701(D)(15) and 41-1750(A)(3).

Appellee's argument on that issue, ADL submits this brief to address a specific area of public safety that will be harmed if the Preliminary Injunction is vacated. As shown below, unless the District Court's Preliminary Injunction is affirmed, the enjoined provisions of S.B. 1070 will undermine the enforcement of hate crimes in Arizona by driving a sharp wedge between law enforcement and communities whom such laws were designed to protect.

ARGUMENT

If well-ordered liberty means anything, it must mean that all persons should be afforded access to police protection if they become victims of hate crimes. Yet the core provisions of S.B. 1070 that the District Court preliminarily enjoined impede that access for immigrant communities in Arizona, including U.S. Citizens and lawful residents. As the record shows, the state immigration-enforcement regime at issue will deter members of immigrant communities from reporting crimes or serving as witnesses in criminal investigations if implemented. This *amicus* brief provides additional context about a particular and devastating consequence of the rupture in police-community trust in Arizona that S.B. 1070 will otherwise cause – the creation of a law enforcement underclass uniquely vulnerable to increased hate crimes and violence. That consequence is fundamentally at odds with the strong Congressional and Arizona policies embodied in anti-hate crimes legislation, and it demonstrates that the public interest strongly supports affirming the District Court.

I. Federal and State Laws Expressly Prohibit the Commission of Hate Crimes Against People of Color and Immigrants.

ADL has monitored and exposed the increasingly anti-immigrant, anti-Latino and anti-Mexican rhetoric that has surrounded the national debate on immigration reform.⁶ S.B. 1070 was passed against this backdrop of anger and frustration in Arizona. The bill's principal sponsor, State Senator Russell Pearce, has been quoted as suggesting that the nation attempt a mass deportation of undocumented immigrants, praising a similar 1954 effort as "a successful program."⁷ Other supporters of the bill, including Defendant-Appellant Janice K. Brewer, have invoked fears of widespread violence and criminal activity as reasons for the law – even though those fears have been thoroughly debunked by widely-reported criminal statistics showing that border violence in Arizona is at historic lows.⁸ In this climate, it is critically important that law enforcement be able to

⁶ See, e.g., ADL Report, *Immigrants Targeted: Extremist Rhetoric Moves into the Mainstream* (2008), [http://www.adl.org/civil_rights/anti_immigrant/Immigrants%20Targeted %20UPD ATE_2008.pdf](http://www.adl.org/civil_rights/anti_immigrant/Immigrants%20Targeted%20UPD_ATE_2008.pdf).

⁷ E.J. Montini, *Is SB 1070 the End or the beginning?*, Ariz. Republic, May 16, 2010, at B1 available at <http://www.azcentral.com/arizonarepublic/local/articles/2010/05/16/20100516immigration-law-montini.html#ixzz0rUI5AcUz>.

⁸ See, e.g., Randal C. Archibold, *In Border Violence, Perception Is Greater Than Crime Statistics*, N.Y. Times, June 20, 2010, at A16 available at <http://query.nytimes.com/gst/fullpage.html?res=9505E0D61E31F933A15755C0A9669D8B63>; Dennis Wagner, *Violence Is Not up on Arizona Border: Mexico Crime Flares, but Here, Only Flickers*, Ariz. Republic, May 2, 2010, at A1 available at (Continued ...)

police fully the laws against the commission of hate crimes directed at Latinos and immigrant communities.

The issue of hate crimes is far from theoretical. According to the Federal Bureau of Investigation, hate crimes are at their highest level since 2001.⁹ In 2008 (the last year included in the cited FBI report), 7,783 hate crimes were reported nationwide.¹⁰ Of those, 561 were motivated by the actual or perceived Hispanic ethnicity of the victim.¹¹ In the past 10 years, between 400 and 600 hate crimes against Hispanics have been reported nationally each year.¹² In Arizona, according to the annual report of the Arizona Department of Public Safety, there were 226 hate crime offenses reported in 2009.¹³ Forty-four of the offenses were based on ethnicity, with 37 “Anti-Hispanic” crimes.¹⁴ On June 18, 2010, *The Arizona*

<http://www.azcentral.com/arizonarepublic/news/articles/2010/05/02/20100502arizona-border-violence-mexico.html#ixzz0rUoV3Vu6>); Amanda Lee Myers and Paul Davenport, *Arizona governor says beheadings claim ‘an error,’* Associated Press, Sept. 3, 2010, <http://www.msnbc.msn.com/id/39001126/>.

⁹ ADL, *Ten Year Comparison of FBI Hate Crime Statistics* (rev. Nov. 2009), http://www.adl.org/combating_hate/HCSA_10year.asp.

¹⁰ Federal Bureau of Investigation, *Uniform Crime Report, Hate Crime Statistics*, 2008, table 1 (Nov. 2009), http://www.fbi.gov/ucr/hc2008/data/table_01.html.

¹¹ *Id.*

¹² ADL, *Ten Year Comparison of FBI Hate Crime Statistics* (updated Nov. 2009), http://www.adl.org/combating_hate/HCSA_10year.asp.

¹³ *Arizona Department of Public Safety, 2009 Crime in Arizona Report*, http://www.azdps.gov/About/Reports/docs/Crime_In_Arizona_Report_2009.pdf.

¹⁴ *Id.* at 129.

Republic reported on the Phoenix murder of Juan Varela, which authorities charged as a hate crime.¹⁵

The federal Hate Crimes Prevention Act of 2009, which gives federal prosecutors the power to investigate and prosecute violent crimes where the perpetrator selects the victim because, *inter alia*, of the person's actual or perceived race, color or national origin, evinces a strong Congressional policy against the commission of hate crimes. 18 U.S.C. § 249.¹⁶ Arizona's criminal statutes likewise include stringent prohibitions against the commission of hate crimes. A.R.S. § 13-701(D)(15), for instance, provides that an aggravating factor in criminal sentencing includes "[e]vidence that the defendant committed the crime out of malice toward a victim because of the victim's identity in a group listed in § 41-1750, subsection A, paragraph 3, or because of the defendant's perception of the victim's identity in a group listed in § 41-1750, subsection A, paragraph 3." A.R.S. § 41-1750(A)(3) concerns "prejudice based on race, color, religion, national origin, sexual orientation, gender or disability." These statutes provide that crimes committed out of hatred towards a victim because of his or her actual or perceived

¹⁵ Michael Kiefer and Michael Ferraresi, *Phoenix slaying now termed a hate crime*, *Ariz. Republic*, June 18, 2010, at B6 available at <http://www.azcentral.com/news/articles/2010/06/18/20100618phoenix-murder-called-hate-crime.html>.

¹⁶ See United States Department of Justice, Civil Rights Division, *The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act of 2009*, <http://www.justice.gov/crt/crim/249fin.php> (last visited Sept. 27, 2010).

membership in one of the protected classes are especially offensive to public policy – and warrant aggravated criminal penalties. *See also* A.R.S. § 13-1604 (defining “aggravated criminal damage”). These laws also recognize that when a bias-motivated crime is committed, the victim’s entire community may be left feeling victimized, vulnerable, fearful, isolated and unprotected by the law. The impact of the crime spreads far beyond the already terrible consequences for the individual victim.¹⁷

II. S.B. 1070 Undermines Immigrant Communities’ Trust in Law Enforcement, Eviscerating the Police’s Ability to Enforce Federal and State Anti-Hate Crimes Laws.

A. S.B. 1070 Effectively Transforms All State, County and Local Law Enforcement Officers Into Immigration Agents.

S.B. 1070’s enforcement regime turns police against immigrants and their communities, in furtherance of the statute’s declared goal of promoting “attrition through enforcement.” (S.B. 1070, Section 1 (DktEntry 80, ADD-1).) First, Section 2(B) requires immigration status determinations, when practicable, “for any lawful stop, detention or arrest” made “in the enforcement of *any other law or ordinance of a county, city or town . . .* where reasonable suspicion exists that the person is an alien and unlawfully present in the United States.” A.R.S. § 11-1051(B) (emphasis added). The extraordinary sweep of this mandatory immigration check provision cannot be overstated. It means that law enforcement officers, if they possess

¹⁷ ADL, *Hate Crimes Laws*, <http://www.adl.org/99hatecrime/intro.asp> (last visited Sept. 27, 2010).

“reasonable suspicion” of “unlawful presen[ce],” are *required* to check immigration status when enforcing hundreds or thousands of the even most minor civil infractions, such as neglecting to mow the lawn (Phoenix Municipal Code Part II, § 39-7(D)), failing affix licensing tags to the collar of the family dog (*id.*, Part III, § 8-12), or not properly maintaining a residential pool (*id.*, Part II, § 39-7(C)), not to mention myriad civil traffic infractions and a seemingly infinite list of other state, county and city laws and ordinances.¹⁸ The District Court correctly found that “[l]egal residents will certainly be swept up by this requirement,” which also “imposes an unacceptable burden on lawfully-present aliens.” (ER 19-20.)

Second, Section 2(B)’s requirement that *all* arrestees must have their immigration status determined before release (A.R.S. § 11-1051(B)) will inevitably burden U.S. Citizens who lack ready access to proof of citizenship (including those who do not have entries in United States Department of Homeland Security databases), not to mention lawfully present aliens whose “liberty will be restricted while their status is checked.” (ER 16.)

Third, Section 3, A.R.S. § 13-1509, which criminalizes the failure to comply with certain federal alien registration requirements, and Section 5, A.R.S. § 13-2928(C), which criminalizes working or applying or soliciting for work by

¹⁸ The Phoenix City Code is available at <http://phoenix.gov/CITYCODE/> (last visited Sept. 30, 2010). Arizona’s traffic laws are contained in Title 28 of the Arizona Revised Statutes, available at <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=28> (last visited Sept. 30, 2010).

undocumented aliens, reinforce the broad mandate of S.B. 1070 to promote “attrition through enforcement.” The warrantless arrest provisions of Section 6 of S.B. 1070, A.R.S. § 13-3883(A), which require complex determinations of removability that typically are only made by federal judges, further evinces the extent to which S.B. 1070 seeks to transform all state, county and municipal police officers in Arizona into full-time, all-purpose immigration agents. (ER 31-32.)

B. Police Cannot Enforce the Law If Victims and Witnesses Are Unwilling to Come Forward.

The District Court record is replete with evidence about the breach in trust that these statutes will engender if not preliminarily enjoined. Phoenix Police Chief Jack Harris testified that “[d]eterring, investigating and solving serious and violent crimes are the [Phoenix Police Department’s] top priorities, and it would be impossible for us to do our job without the collaboration and support of community members, including those who may be in the country unlawfully.” (Dist. Ct. Dkt. No. 27-10, Decl. of Jack Harris at 2.) Yet, as Santa Cruz County Sheriff Tony Estrada testified, “[b]eing labeled an ‘immigration officer’ will have serious consequences for community policing”: “[i]t will deter immigrants, including those who are here legally, and other individuals, particularly those in the Latino community, from coming forward and interacting with the police, because they will fear being questioned about their status and possibly arrested for violating one of Arizona’s new state immigration crimes.” (Dist. Ct. Dkt. No. 27-8, Decl. of Santa Cruz County Sheriff Tony Estrada ¶ 11.) This is particularly true for families that live in “mixed status” households, where some members are U.S. citizens or

have legal immigration status, and others do not. (*Id.* ¶ 13.) Consequently, the mandatory immigration check and related provisions of S.B. 1070 will “effectively undermin[e] our . . . ability to protect people from serious crime.” (*Id.* ¶ 14.)

The Police Foundation, the International Association of Chiefs of Police, the Major Cities Chiefs Association and Arizona Association of Chiefs of Police have expressed similarly grave concerns that deputizing local law enforcement officers to enforce immigration law undermines the trust and cooperation of immigrant communities.¹⁹ For example, a 2009 report by the Police Foundation states that “[i]mmigration enforcement by local police undermines their core public safety mission . . . and exacerbates fear in communities already distrustful of police.”²⁰

According to Police Foundation President Hubert Williams:

Police executives have felt torn between a desire to be helpful and cooperative with federal immigration authorities and a concern that their participation in immigration enforcement efforts will undo the gains they have achieved through community-oriented policing practices directed at gaining the trust and cooperation of immigrant communities. As one police chief pointed out during the project, “How do you police a community that will not talk to you?”²¹

¹⁹ See, e.g., Arizona Association of Chiefs of Police, *Statement on Senate Bill 1070*, http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf (last visited Sept. 27, 2010).

²⁰ Police Foundation, *Law Enforcement Leaders to Discuss How Local Immigration Enforcement Challenges Public Safety Mission* (May 20, 2009), <http://www.policefoundation.org/pdf/strikingRelease.pdf>.

²¹ *Id.*

The Major Cities Chiefs Association agrees. According to its 2006 Position Statement:

Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.²²

C. S.B. 1070 Undercuts Effective Enforcement of the Laws Prohibiting Hate Crimes.

As shown above, close cooperation between local law enforcement and minority communities is essential to the successful reporting and prosecution of hate crimes.²³ Yet Latinos and members of immigrant communities will be deterred from reporting or serving as witnesses regarding a range of criminal activities in the community, including hate crimes, if the core provisions of S.B. 1070 are allowed to go into effect. According to a May 2010 study of Latino *registered voters* in Arizona commissioned by the National Council of La Raza, 85% of Latinos who are legal immigrants or U.S. citizens fear that they will be

²² *Major Cities Chiefs Immigration Committee Recommendations* (June 2006), http://www.majorcitieschiefs.org/pdfpublic/MCC_Position_Statement_REVISED_CEF_2009.pdf (emphasis added).

²³ See notes 1, 3-4, *supra*.

racially profiled under S.B. 1070. Because of the new law, **47%** report that in the future they would be less likely to report a crime or volunteer information to the police.²⁴ Because these poll numbers do not reflect the attitudes of *non-registered voters* (including people who are more likely to be undocumented), the chasm between police and the Latino community caused by S.B. 1070 is much wider than that reflected by the study itself.

The enjoined provisions of S.B. 1070 are contrary to the strong public policies against hate crimes embodied in federal and Arizona law, and are inimical to the public's strong interest in advancing public safety and civil rights. Rather than making neighborhoods safer, the "Support Our Law Enforcement and Safe Neighborhoods Act" – as the bill's sponsors titled the statute – will have exactly the opposite effect, especially in Arizona's Latino and immigrant communities.²⁵

CONCLUSION

For the foregoing reasons, the Preliminary Injunction should be affirmed.

²⁴ Latino Decisions, *Political Implications of Immigration in 2010: Latino Voters in Arizona*, (May 14, 2010), <http://latinodecisions.files.wordpress.com/2010/05/ld-nclr-presentation-may11.pdf>.

²⁵ Senate Bill 1070, at 16, <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>.

RESPECTFULLY SUBMITTED this 30th day of September, 2010.

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CERTIFICATE OF COMPLIANCE

I certify that, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rules 29-2(c)(2) and 32-1, the foregoing Amicus Brief is proportionately spaced, has a typeface of 14 points or more, and contains 2,291 words.

DATED this 30th day of September, 2010.

s/ Peter S. Kozinets
Peter S. Kozinets

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2010, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system on the following:

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