

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

The United States of America,)	
)	
Plaintiff,)	
)	CV10-1413-PHX-SRB
)	Phoenix, Arizona
vs.)	July 22, 2010
The State of Arizona; and)	1:28 p.m.
Janice K. Brewer, Governor)	
of the State of Arizona, in)	
her Official Capacity,)	
)	
Defendants.)	

BEFORE: THE HONORABLE SUSAN R. BOLTON, JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

PRELIMINARY INJUNCTION HEARING

Official Court Reporter:
Elizabeth A. Lemke, RDR, CRR, CPE
Sandra Day O'Connor U.S. Courthouse, Suite 312
401 West Washington Street, SPC. 34
Phoenix, Arizona 85003-2150
(602) 322-7247

Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

A P P E A R A N C E S**For the Plaintiff:**

United States Department of Justice
Civil Division

By: **Varu Chilakamarri, Esq.**

Dennis K. Burke, Esq.

20 Massachusetts Avenue NW
Washington, DC 20001

United States Department of Justice
Office of the Solicitor General

By: **Edwin Smiley Kneedler, Esq.**

950 Pennsylvania Avenue, Room 5139
Washington, DC 20003

United States Department of Justice
Civil Division - Federal Programs Branch

By: **Joshua Wilkenfeld, Esq.**

Arthur R. Goldberg, Esq.

20 Massachusetts Avenue
Washington, DC 20530

United States Department of Justice
Civil Rights Division

By: **Monica M. Ramirez, Esq.**

Stuart F. Delery, Esq.

William H. Orrick, III, Esq.

950 Pennsylvania Avenue, NW
Washington, DC 20530

For the Defendants:

SNELL & WILMER LLP

By: **John J. Bouma, Esq.**

Joseph G. Adams, Esq.

Robert A. Henry, Esq.

Kelly Kszwienski, Esq.

One Arizona Center
400 East Van Buren
Phoenix, Arizona 85004

OFFICE OF GOVERNOR JANICE K. BREWER

By: **Joseph A. Kanefield, Esq.**

1700 West Washington Street, 9th Floor
Phoenix, Arizona 85007

1 MR. KNEEDLER: That would be fine. I would like to
2 reserve at least 15 minutes for rebuttal.

3 THE COURT: Okay. I'll tell you when you've hit 45
4 minutes.

5 MR. KNEEDLER: Okay. Thank you.

6 If I may begin with what I understand to be Your
7 Honor's desire to know which specific sections of the Act are
8 being challenged or are being sought to be enjoined here, I
9 would like to just run through that to be clear.

10 The United States challenges Sections 1, 2, 3, and 6.

11 As to Section 4 of the Act, that made one amendment
12 to a preexisting Section 2319 on transportation. We
13 challenged that in our Complaint. We are not today seeking a
14 preliminary injunction against the enforcement of Section
15 2319.

16 We do have concerns that were explained in our
17 Complaint and in our brief, but our prayer for relief here
18 sought a preliminary injunction as to SB 1070 which just made
19 a minor amendment, and we are not pressing a P.I. against
20 Section 4 -- excuse me, against 2319 at this time.

21 As I will --

22 THE COURT: You just eliminated my whole first area
23 of questioning.

24 MR. KNEEDLER: Well, I don't want to take it
25 completely off the table, because for reasons similar to those

1 with the transportation provision in Section 5, we have
2 concerns about it, but also in the way it may tie into
3 Section 2, which I will explain in terms of its
4 administration. But in terms of specifically seeking an
5 injunction against Section 4, we are not seeking that right
6 now.

7 And with respect to Section 5, the employment
8 provision in Section 5, there are actually three employment
9 provisions in the part -- the first part of Section 5. We are
10 not challenging two of those, paragraphs A and B, because they
11 do not turn on alienage for immigration status or past
12 immigration conduct. Those are the ones that have to do with
13 soliciting workers in a way that would stop traffic or seeking
14 to obtain employment in a way that would stop traffic.

15 Those are immigration neutral and don't have
16 immigration consequences, so our employment challenge is only
17 to the one with respect to criminal sanctions for soliciting
18 work or for working in the state.

19 Now, before I go through the particular sections of
20 the Act that we are challenging here, I did want to state
21 generally the principles that we think control the decision in
22 this case. And in describing these principles, I think I
23 would like to distinguish between our challenge to the
24 employment provision in Section 5 and the rest of the Act.

25 The rest of the Act, the provisions we are

1 the other is -- the other states or local officers who are
2 assisting in that are taking their guidance from the entity
3 being assisted, the person with the substantive law -- in this
4 case the INA -- is at issue.

5 When you have the relationship between the United
6 States and its state, that custom, I might say, in terms of
7 who will take the lead, the person with the substantive law,
8 is, of course, dictated by the Supremacy Clause. The United
9 States, in enforcing federal law, is responsible for enforcing
10 it, setting priorities --

11 THE COURT: Could you give me a concrete example of
12 what you're talking about in SB 1070?

13 MR. KNEEDLER: Yes.

14 THE COURT: Rather than just talking about it as
15 general principles?

16 MR. KNEEDLER: Well, our principal objection to --
17 well, it's obviously the point about Section 3, but in Section
18 2, our principal objection to Section 2 is its mandatory
19 nature. It establishes in Section 2(B) a mandatory
20 requirement that the -- whenever there's a stop, that the
21 person's immigration status shall be checked or when there's
22 an arrest, it shall be checked.

23 That is backed up by paragraph A of Section 2 which
24 is -- frankly, it goes beyond simply immigration status
25 checks. It says that -- it requires state and local officers

1 to enforce federal law or prohibits them from adopting a
2 policy that would not enforce federal law to the fullest
3 extent, and of course, that's reenforced by the private right
4 of action later in the statute.

5 THE COURT: Well, let's just take part of B, the part
6 that says everybody that's arrested shall have their
7 immigration status checked.

8 How is there a preemption issue? I mean, I
9 understand there may be other issues related to that, but the
10 United States is arguing preemption.

11 MR. KNEEDLER: Yes.

12 THE COURT: Where's the preemption if everybody who
13 is arrested for some crime has their immigration status
14 checked? So that if it turns out that they're illegal and
15 they have been deported before, we can let ICE know.

16 MR. KNEEDLER: Well, the problem comes from an
17 interference with the -- or the intrusion upon the overall
18 discretionary operation of the enforcement. And as I
19 mentioned earlier --

20 THE COURT: Well, can't ICE just say, "Okay. I know
21 that person is here illegally, but you know, never been
22 deported. We don't want them. When you're done with them,
23 you can release them. No hold."

24 MR. KNEEDLER: But the problems actually start before
25 that though. They start with the initial stop. And if I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, ELIZABETH A. LEMKE, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 23rd day of July, 2010.

s/Elizabeth A. Lemke
ELIZABETH A. LEMKE, RDR, CRR, CPE