

Obama and the Anti-Mexican SB 1070¹

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Henry Romero/REUTERS

President Calderón criticized sb 1070 during his last visit to the United States.

SB 1070: BREWER V. BOLTON

Facing a primary election and convinced it was necessary to resolve a crisis the federal government has refused to fix, Arizona Governor Jan Brewer signed SB 1070, the Safe Neighborhoods, Immigration, and Law Enforcement Act on April 23, 2010. The law actually went into effect, with adjustments and restrictions, however, on July 29, 90 days after being signed into law.

As originally proposed, the law criminalized undocumented immigrants and allowed local authorities to detain anyone about whom they had a “reasonable suspicion” to verify their migratory status. The detainees had the obligation of presenting official identification to prove their legal status, and, if they could not, the authorities could arrest them.¹ The

new law also criminalizes undocumented immigrants who offer themselves for hire in public places and makes it a crime to transport or harbor an unauthorized immigrant, including a family member, if a person knows or “recklessly disregards” the fact that the individual does not have legal status. To make sure the law is really put into practice, it authorizes residents of Arizona to bring lawsuits against municipalities and law enforcement agencies that limit or restrict the enforcement of immigration law, among other things. That is, they are assuming that because illegal immigrants are by definition in violation of federal immigration laws, that makes them criminals and they can be arrested.

SB 1070 was voted exclusively along party lines. No Democrats supported it. That is, this highlights the electoral tendencies of both Governor Brewer, now facing a primary election challenge in a heated race in this year’s election, and Senator John McCain (R-A), the author of the failed immigration reform bill, also up for reelection.

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The United States seeks to declare SB 1070 invalid because it creates tougher law enforcement standards than those enacted by the federal government.

In response, the Obama administration's Justice Department filed a suit against the state of Arizona in an effort to block the law. The United States v. the State of Arizona in federal court in Phoenix seeks to declare SB 1070 invalid because it is preempted by federal law and violates the Supremacy Clause of the United States Constitution by creating tougher law enforcement standards than those enacted by the U.S. government. The Supreme Court has always supported the federal government's primacy in establishing and enforcing immigration policy. SB 1070 goes beyond the intent of federal program 287(g), which allows arrangements with the states to assist in immigration enforcement and which many Latinos and members of Congress have requested be suspended.² The Justice Department also argued that the state's interference in immigration policies would inadmissibly force the federal government to redirect resources away from U.S. government priorities and would trample on the federal government's prerogatives regarding foreign policy.

Susan R. Bolton, a federal judge in Arizona appointed by President Clinton in 2000, blocked the enforcement of several provisions of the law last July 29. She found that many provisions of the Arizona statute would interfere with federal law and policy. Nevertheless, Governor Brewer said the state would appeal. Bolton said that the Arizona police would have to question every person they detained about their immigration status, which would generate a flood of requests to the federal immigration authorities for confirmations, and would probably inadmissibly burden federal resources. She also considered that there was a substantial likelihood that officers would wrongfully arrest or detain legal resident aliens as well as foreign tourists. For all these reasons, she blocked the possibility for local authorities to detain people who looked like they were undocumented. Although Judge Bolton's ruling is not final, it seems likely to at least temporarily halt some of these measures. She must decide in the coming weeks whether the parts of the law she froze should be permanently struck down as unconstitutional.

Meanwhile, unionists, activists, and religious leaders, among others, fearful of final approval, have held marches protesting the law in many cities and have asked President Obama and Congress to revise the broken-down immigration system and pass immigration reform. They argue that SB 1070 will incite racist behavior and similar abuses as happened during the civil rights struggles of years ago. They consider that the situation may lend itself to harassing legal residents of Latino origin and encourage other states to put into practice similar or even more severe measures. It is a matter for concern that the law will jeopardize public safety by making immigrants afraid to contact the police. For many, this kind of law and the debate that has followed its passage can become a hothouse for extremist, racist, and intolerant groups that blame all their problems on immigrants, particularly in times of economic crisis.

Civic organizations have organized several marches in cities like Dallas, Chicago, and New York, although the largest was in Los Angeles. The National Council of La Raza, the main Latino coalition, called for a boycott on products from Arizona, and on travel or organizing events there, and for organizations to cancel meetings and conventions previously planned with Arizona as a venue, as long as SB 1070 and HB 2162 are not struck from the books. Many city councils from San Francisco to Boston have encouraged boycotting the state.³

ARIZONA, AN ANTI-IMMIGRANT STATE

The feeling of the majority of Arizona's population and of anti-immigrant groups is very similar to what Brewer and McCain have said, in the sense that the law is the result of the federal government's "failure" not only to stop drug smuggling and illegal entries, but also to discuss and approve a comprehensive immigration reform, something particularly necessary due to recent surges in violence along the U.S.-Mexico border. Similarly, the law expresses the feeling of a population in times of an economic crisis that has severely affected the state, in which immigrants are perceived as responsible for their ills: more than half the population thinks that the Arizona law is "about right" in its handling of illegal immigrants.

Arizona is the country's sixth largest state, with a population of 6.5 million, according to 2009 figures, and a 550-kilometer border with Mexico. The Latino population has grown from 16.2 percent of the state's total inhabitants in 1980 to 31 percent in 2009. Only in the last decade, the Hispanic pop-

ulation jumped from 330,000 in 2000 to 560,000 in 2008; estimates put the number of undocumented migrants at 460,000, of whom 94 percent come from Mexico.⁴ This is why it can be considered an anti-Mexican law.

Such a significant hike in immigration to Arizona in recent years is mainly due to the “rebordering” policy the Clinton administration began. Starting in 1992, different operations were established on the southern border with Mexico to build double and triple fences in the areas most traveled by migrants entering the United States, mainly in California and Texas. This began with Operation Gatekeeper in California, and continued with Blockade/Hold the Line on the Rio Grande and Safeguard in Texas, New Mexico, and Arizona. Detentions increased significantly in Arizona and dropped in California and Texas.⁵ Seventeen years after these operations were set up, instead of simply reducing the number of entries, the flow of migrants has changed somewhat:

- The Arizona desert, despite its harsh, dangerous conditions, has become the favorite crossing point.
- Physical risks and accidents have increased, with a death toll of more than 5,000 along the entire border during this period.
- People tend to stay longer, meaning that traditional circular migration patterns have been replaced by longer stays.
- Networks of *coyotes*, or human smugglers, have begun to participate more, enriching them even more. This makes them the ones who benefit from this reinforced surveillance: at the beginning of the 1990s, they charged US\$300, but today they get about US\$3500 per crossing, which is neither necessarily safe nor successful.

To comprehend the full dimension of the “rebordering” process, it should be noted that before it began in 1992, almost 5,000 border patrol officers were watching the border at different points. By 2009, almost 20,119 agents are on the payroll.⁶

Increased unauthorized migration has had vicious effects on the perception of Arizona citizens, who think that this is the reason spending on education, health, and border reinforcement has increased, thus causing big tensions, reflected in growing anti-immigrant feelings. One example of this is the emergence of the Minuteman Project civic surveillance groups, an initiative that has set a precedent for discrimination. These bitterly divisive feelings have also been seen in the passage of many bills by the Arizona state Congress against the pres-

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ence of undocumented migrants, particularly Mexicans, who now find it more difficult to access education, health care, and jobs, and in general to lead their lives in the community. In 2006 alone, almost 570 bills were introduced in the state about immigration policy-related issues, although many are still pending passage or have already been vetoed. Among the most important of these are the following:

a) *Investigating migratory status by local authorities.* Local authorities would be able to investigate the migratory status of any detainee and cooperate with federal authorities (HB 2461 in 2007); police officers would be able to apply immigration law and will get training to do so (IIMPACT Arizona 2007).

Local authorities would have to verify migratory status to register an automobile in the state (HB 2063, HB 2079, HB 2446, HB 2475), recover cars confiscated because the driver did not possess an Arizona driver’s license (Proposition 300 in 2006), and also deny bail to anyone who did not prove legal migratory status (Propositions 100, 102, and 103 in 2006).

b) *Access to public health and educational systems.* Undocumented migrants would not be able to go to health centers or educational institutions (Proposition 200 or HR 4437 in 2004); they would have to prove legal status to be able to go to them (SB 2738 in 2006); the authorities would be able to denounce those who request these services (HB 2448 in 2006); and they would only be allowed emergency health care (SB 1137 in 2006). Officials would be able to send information regarding the immigration status of any individual for the purpose of determining public benefit eligibility (HB 2807 in 2008). Also, state funds for scholarships or financial aid could be restricted for undocumented migrants (Proposition 300 in 2006).

c) *Making English the official language* (Propositions 100, 102, and 103 in 2006).

d) *Sanctions for smugglers and employers.* One bill would allow local authorities to prosecute human smugglers who transport illegal immigrants and make human smuggling a felony punishable by up to three years in prison (SB 1372 in 2005); another would confiscate remittances to Mexico alleging that they will be used for drug trafficking or human smuggling (HB 2464 in 2007 and HB 2842 in 2008).

Employers would have to swear that they have not knowingly hired an undocumented immigrant. Fines would be a minimum of US\$2,500 for a first offense and suspension of the business license for 10 days. If the offense were repeated, it could merit the suspension or cancellation of the employer's business license and fines of up to US\$150,000 (HB 2779 and HB 2745).

e) *Guest Workers Program.* Considered imperative as part of a migratory reform, this kind of program recognizes

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labor market needs that go unsatisfied by local workers (HB 2018 in 2006).

Between 2003 and 2009, an estimated 1,400 bills have been discussed in different states that would criminalize the presence of undocumented migrants. Of all these, almost 100 were passed, and others were struck down as unconstitutional.

THE OBAMA ADMINISTRATION AND CONGRESS⁷

The biggest effect of the Arizona immigration law has been to show up the Congress and the lack of leadership and interest on the part of the Obama administration in developing a project to partially or fully solve the failings of the weak immigration system. Until before the passage of SB 1070, the president had stayed out of the debate, but he has also

not presented an immigration reform bill before Congress as he had promised during his campaign, nor has he lobbied hard in both houses around this issue. But on several occasions he has come out in favor of fortifying the border and punishing employers who hire undocumented migrants rather than establishing a legalization program.

After 18 months of his administration's inaction in this area, President Obama has very astutely made use of SB 1070 to take up the issue of immigration reform in the national debate, pointing out that he considers it urgent and necessary. In his July 1 speech at the American University, he underlined the very important role immigrants have played in society, stating, "Immigrants have always helped to build and defend this country." However, he recognized that "each new wave of immigrants has generated fear and resentments toward newcomers, particularly in times of economic upheaval" like today. The sad truth is that "they live in the shadows; they're vulnerable to unscrupulous businesses who pay them less than the minimum wage or violate worker safety rules." He said it would be "both unwise and unfair" to declare a blanket amnesty for illegal immigrants, but added that "it would be logistically impossible and wildly expensive to round up and deport 11 million illegal immigrants, and it would tear into the fabric of our country. A program for mass deportation would disrupt our economy in ways the most Americans would find intolerable."⁸

Despite the fact that President Obama understands the frustration of Arizona citizens at the growing flow of undocumented migrants, he considers that SB 1070 is the wrong way to resolve the problem. He considers it unconstitutional because migration is an issue that comes under federal jurisdiction, not that of the states. In addition, SB 1070 threatens to undermine the basic notions of fairness as well as the trust between police and their communities, and violates constitutional rights and the 14th amendment, which guarantees equality under the law.

With mid-term elections approaching, Obama has publically recognized Congress's lack of "appetite" for a polemical, explosive issue like an immigration reform bill, plus the political wear and tear of having labored under the enormous pressure brought to bear during the first year and a half of his term to get the health system reform passed, among other priorities. He has publically said that a bipartisan agreement is indispensable and that 60 votes are needed to pass a comprehensive immigration reform. Despite the fact that in theory he has 57 Democrats out of the 100 seats in the

Senate, actually, about 10 of them would not support such a reform because their constituents do not agree with it.

Speculations have been made that fewer Democrats in both houses and some Republicans who previously had backed some aspects of the failed immigration reform have shifted their positions. Some Democrats have made it clear they will not support any bill that could be criticized as an “amnesty.” In general, debate in Congress has been timid, and many legislators have taken the opportunity to call on Obama to show leadership and send a proposal to both houses.

It should be pointed out that immigration is not necessarily a topic on which there is a party line. Things are not clear: sometimes the position of conservatives and liberals, Republicans and Democrats is ambiguous. Attitudes on migration are more influenced by regional, class, or ethnic prejudices. For example, some Republican senators have come out in favor of a guest worker program, something employers need; and certain Democrats oppose establishing greater restrictions on family reunification, a verification system, and, of course, limiting eligibility for eventual legalization.

Actually, during the 18 months of the Obama administration, what we have seen is an “enforcement only” policy similar to that of his predecessor George W. Bush. One example is that in answer to pressure from conservative members of Congress in an election year—which causes political anxiety—Obama has ordered 1,200 National Guard troops to boost border security—500 to be sent to Arizona—and asked Congress for an additional US\$600 million to support personnel and improve technology, turning the southern border into the most fortified, heavily monitored border ever dreamed of.⁹

In general, Congress has conducted a very timid debate on immigration. In the Senate, the Republicans have hardened their positions and the Democrats have supported much more restrictive proposals than the 2006 McCain-Kennedy bill. For example, the Schumer Bill presented by Senator Charles E. Schumer (D-NY), greatly emphasizes the fortification of the border and more technology for border surveillance, supports job verification procedures, and argues for a restrictive legalization program. Little has been said about the need to increase the number of visas granted to temporary workers and permanent residents in accordance with the demands of the labor market. Representative Luis Gutiérrez (D-Ill), who recently opposed the Arizona law, was one of the congressmen in 2009 most committed to designing a new immigration bill. While he did say it was necessary to secure

the borders more, he also considered establishing a generous legalization program, incorporating initiatives like the Dream Act and AgJobs (Agricultural Job Opportunities, Benefits and Security Act),¹⁰ canceling round-ups and deportations, and increasing punishment of employers. He thinks a reasonable, fair formula should be created to determine the number of immigrants to be granted entry based on labor market demand and humanitarian needs.

CONCLUSIONS

SB 1070, one of the most aggressive pieces of legislation passed on a state level, highlights Congress and the federal government’s lack of leadership and interest in developing joint bills to partially or completely solve the failings of the immigration system. This federal vacuum has been filled by local initiatives, revealing a lack of understanding of migrants’ con-

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tribution—whether they be documented or not—to the U.S. economy and society. We understand that the mere fact of being present without legal immigration status is a civil violation under federal law, but that is no reason to turn a foreigner into a criminal. Rather, he or she is someone who, in most cases, has been hired by an employer, who, eager for cheap labor to keep the company competitive, is breaking the law, but is seldom punished or penalized.

The passage of SB 1070 has created a hostile, divisive environment and a separatist climate, legitimizing xenophobia and abuse. The perverse effect of this is that it will gradually exclude migrants from the society in which they live and limit their ability to integrate themselves even into their own communities. This law also has a negative influence on other states. Politicians in Ohio, Texas, Missouri, and Utah, among others, have announced plans to introduce similar pieces of legislation, while others may wait to see whether the courts uphold the Arizona law or find it unconstitutional.

It is a short-sighted law because it does not take into account the enormous power and influence of the Latino community in the United States in general, and in the border states in particular.

The politics of immigration has a complex past and an unclear future. This is why the challenge civic organizations in the United States and the Mexican government face is enormous: it includes both defending the human rights of our fellow Mexicans and persuading their counterparts through open, intensive lobbying that the current immigration law is inoperative and contradictory, and not appropriate for today's situation. It does not offer options for the employment of foreigners that the economy constantly demands, which is why there are already about 11 million undocumented migrants in the United States.

Given the growing anti-immigrant sentiments that have polarized the environment for the discussion and passage of a possible comprehensive immigration reform, particularly regarding a generous, realistic amnesty, perhaps getting smaller pieces of immigration passed is an option. Issuing a larger number of temporary visas for workers currently employed without immigration documents in their labor markets would be an indispensable initiative, consistent with the demand for labor in the United States.

SB 1070 has negatively affected bilateral relations with Mexico. This forced President Calderón to be demanding about the issue on his recent visit to Washington. In his speech before the U.S. Congress—he is the seventh Mexican first executive to make this kind of address; the first was Miguel Alemán in 1947—regarding the Arizona law, he underlined that criminalization is not the way to solve the phenomenon of undocumented migration and that the Mexican embassy and the Mexican consulates in Arizona will step up their actions in the areas of consular assistance, protection, and legal counseling. He correctly pointed out that joint responsibility, trust, and mutual respect should be the basis for addressing common challenges. Nevertheless, for three years, the government has “de-migrationized” the bilateral agenda, making it about drug trafficking instead.

We recognize that President Obama's excellent speech about the need to approve a comprehensive immigration reform was indispensable after 18 months of indifference and that the lawsuit against SB 1070 was a courageous act by his administration in an atmosphere that is increasingly hostile to migrants. We hope he goes on to make it clear that states should not seek to adopt cruel measures like SB 1070 and

that he moves forward with an overhaul of the immigration laws. However, we also hope that these actions are not brought out just for election campaigns and will really lead to more committed measures being adopted and an immigration reform bill being drafted and formally sent to Congress for its discussion and final passage. ■■■

NOTES

- ¹ I wish to thank Érika Veloz and Jazmín Casas for their technical advice.
- ² State of Arizona House of Representatives, “House Bill 2162,” <http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/49leg/2r/bills/hb2162c.htm>.
- ³ The Department of Homeland Security (DHS) has signed more than 70 such agreements, including with the state of Arizona and some of its municipalities. This program, while controversial, appears to be constitutionally sound because it supplements—not supplants—federal authority based on a specific delegation. Doris Meissner and James W. Ziglar, “Why the U.S. Had to Challenge Arizona on Immigration,” *The Washington Post*, July 22, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/07/21/AR2010072104559.html?hpid=opinionsbox1>.
- ⁴ “Hispanic Rights Group Urges Companies to Boycott Arizona,” *Boston Globe*, May 6, 2010. and “Boycotts Put Arizona's Reputation on the Line,” Kristi Keck, CNN, May 8, 2010.
- ⁵ Pew Hispanic Center, “Hispanics and Arizona's New Immigration Law,” April 29, 2010, <http://pewhispanic.org/files/factsheets/68.pdf>.
- ⁶ Detentions in Arizona rose by 351 percent between 1994 and 2000. Frosty Wooldridge, “Five Myths about Illegal Immigration from US Government,” NewsWithViews.com, May 10, 2010.
- ⁷ Department of Homeland Security, “Budget in Brief, FY 2010 and FY 2011,” http://www.dhs.gov/xabout/ge_1170797368531.shtm.
- ⁸ For more information, see Mónica Vereá, “Obama y la reforma migratoria: promesas y acciones,” Jerjes Izcoatl Aguirre Ochoa and José Odón García García, eds., *Comunidades mexicanas en Estados Unidos: Diáspora, integración y desarrollo en México* (Morelia, Michoacán: Instituto de Investigaciones Económicas y Empresariales/Universidad Michoacana de San Nicolás Hidalgo/El Colegio de Tlaxcala A.C., 2010).
- ⁹ Barack Obama, “Remarks on Comprehensive Immigration Reform,” American University School of International Service, Washington, D. C., The White House, July 1, 2010, <http://www.whitehouse.gov/the-press-office/remarks-president-comprehensive-immigration-reform>.
- ¹⁰ These troops will work on intelligence, surveillance, and reconnaissance support and will eventually be replaced by more border patrol and customs agents.
- ¹¹ The Dream Act is a bill that would allow undocumented students who arrived in the United States before the age of 16 to legalize their migratory status by fulfilling certain requirements. The AgJobs bill would grant “earned legalization” to undocumented temporary foreign agricultural laborers.