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GENERAL MEMORANDUM 10-101

Federal Court Blocks Key Parts of Arizona's Controversial Immigration Law

On July 29, 2010, the U.S. District Court for the District of Arizona issued a preliminary injunction blocking several crucial provisions of Arizona's Senate Bill 1070, the "Support Our Law Enforcement and Safe Neighborhoods Act," from going into effect. SB 1070 was signed into law in April of this year and is aimed at stemming the tide of illegal immigration in the State. The new law requires State police officers to determine the status of anyone they lawfully stop and also suspect is an illegal immigrant. The law also makes it a crime to lack immigration papers. The U.S. Department of Justice filed suit in July arguing that Arizona's law unconstitutionally preempts Federal law.

Many tribes oppose SB 1070. The Inter Tribal Council of Arizona (ITCA), the National Congress of American Indians, the Navajo Nation, and the Tohono O'odham Nation — which straddles the Arizona-Mexico border and whose members frequently travel across the border — have all passed resolutions opposing the law. The ITCA argues that the law allows police officers to engage in racial profiling when stopping suspects whom the officers believe are illegal aliens. The ITCA believes that the law will encourage officers to unlawfully detain tribal members who may resemble illegal aliens and, as a practical matter, will force tribal members to carry identification in order to prove citizenship in case they are stopped. The ITCA points out that many tribal members do not speak English and do not possess state-issued birth certificates or other acceptable forms of identification. Furthermore, the ITCA points out that State highway rights-of-way run through reservations and thus allow State officers to make stops within reservation boundaries.

U.S. District Judge Susan Bolton blocked several major provisions of SB 1070 from taking effect until the Court can issue a final decision on the law's constitutionality. Judge Bolton found that certain parts of the law conflict with national Federal immigration policy and will result in the harassment of lawfully present aliens and also will burden Federal resources. The judge also found that the complexity of Federal immigration law would make it likely that police would wrongfully arrest legal residents. As a result, the following provisions will not take effect:

- Requiring police to determine the immigration status of all people stopped or arrested if the police have reasonable suspicion that they are in the country illegally, and requiring the police to verify the status of those stopped before release.

- Making it a crime to fail to register for, or carry, Federal alien papers.
- Barring illegal immigrants from looking for work in public places, or performing work as employees or independent contractors.
- Allowing police officers to make a warrantless arrest when the officer has probable cause to believe that "the person to be arrested has committed any public offense that makes the person removable from the United States."

Certain aspects of the Arizona law that were not challenged by the Department of Justice and were not struck down by Judge Bolton. For example, Judge Bolton did not enjoin a provision prohibiting day laborers from impeding traffic while soliciting work. She also did not enjoin the law's provision authorizing state and local officials to send, receive and maintain information regarding immigration status for purposes of determining eligibility of Arizona residents (including Indians) for Federal or State benefits or services. Other court cases have been brought challenging the law by other plaintiffs such as the American Civil Liberties Union, and these and other provisions of the law may be ruled on in those cases.

Arizona's Governor has appealed the injunction to the Ninth Circuit but it is unlikely that the appeals court will rule in the near future. The Governor has said she will appeal the ruling to the Supreme Court if necessary.

We will continue to update you on this case and its implications.

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