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University of Nevada, Reno

**Bottom of the Totem Pole:
A Blackian Analysis of the Arizona Immigration Legislation**

A thesis submitted in partial fulfillment
of the requirements for the degree of

Bachelor of Arts in Criminal Justice, Pre-law and the Honors Program

by

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May, 2011

**UNIVERSITY
OF NEVADA
RENO**

THE HONORS PROGRAM

We recommend that the thesis
prepared under our supervision by

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entitled

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Abstract

The Arizona Immigration Legislation, also known as the “Support Our Law Enforcement and Safe Neighborhoods Act”, has created much controversy since being signed into law in April 2010. This legislation, called Senate Bill 1070 (and then revised by House Bill 2162), still in the process of evolving, grants law enforcement officers the ability to request identification of an individual “for any lawful stop, detention or arrest made by a law enforcement official” (House Engrossed S.B. 1070, 2010, p. 2). The bill further criminalizes the act of failing to carry identification, namely “an alien registration document” (House Engrossed S.B. 1070, 2010, p. 4) on the person at all times, along with a plethora of other criminalized acts. The analysis provided by Black’s theory on the behavior of law is categorized as sociological jurisprudence. How this law affects society, whether in the political, judicial, or media realms, is intrinsically linked to how Senate Bill 1070 behaves and the ramifications it will have upon the inhabitants within the Arizona state society as well as upon inhabitants in the United States. This thesis analyzes the text of the immigration legislation, discusses the constitutional and immigration law issues surrounding said legislation, and applies this knowledge to Donald Black’s theory from *The Behavior of Law* (1976, 2008) in order to understand the nature, behavior, and ramifications of Senate Bill 1070.

Acknowledgments

I would like to acknowledge a few people who have been incredibly instrumental in the creation of this thesis.

First, I would like to thank Dr. Robert Chaires and Dr. Susan Lentz for encouraging me to pursue this topic and for allowing me extra research opportunities during my four years here at the University of Nevada, Reno. You have both been amazing mentors during my college journey.

Thank you to the University of Nevada, Reno Honors Program, Dr. Tamara Valentine, and the Undergraduate Research Award program. Without the funding and guidance, this thesis would not be possible. Thank you to Elizabeth Preston for her editing and proofreading.

Finally, I would like to thank Teri and Elsbeth Grimmer for their continuous support. Thank you for the insight, encouragement, and your everlasting patience. I owe much of what I do to you.

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1.0 Introduction

The topic of illegal immigration is not new. In fact, the topic of immigration has been debated by the federal government of the United States since the late 18th Century, beginning with the Alien Act of 1798, and has continued with its ever constant and evolving problem of border management. What is changing with this topic is the issue of enforcement. According to Carol Swain (2007), editor of *Debating Immigration*, “Much of the illegal immigration is from Mexico. According to Douglas Massey, U.S. policy since 1986 has been a policy of contradictions...Rather than reducing illegal immigration, U.S. policies have made it less likely that illegal migrants from Mexico will return home of their own accord.” (p. 3).

However, the Arizona immigration legislation seeks to change the issue of illegal immigration and the current ways of enforcement. The immigration legislation, Senate Bill 1070, specifically states that the true intent behind the construction of the bill is to “work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.” (Senate Engrossed S.B. 1070, 2010, p. 2). (See Appendix on page 73 for actual legislation.)

The frustration of the border states, like Arizona, is understandable since they contain a higher percentage of immigrants within their state borders, although the “color” or race of these illegal immigrants can vary. According to the Pew Hispanic Center, “As of March 2010, 11.2 million unauthorized immigrants were living in the United States, virtually unchanged from a year earlier...” (Passel & Cohn, 2011, p. 1). Additionally, “Unauthorized immigrants represented 28% of the nation’s foreign-born population of 40.2 million in March 2010...” (Passel & Cohn, 2011, p. 10). Furthermore, according to

the Pew Hispanic Center:

... unauthorized immigrants made up 3.7% of the nation's population and 5.2% of its labor force in March 2010. Births to unauthorized immigrant parents accounted for 8% of newborns from March 2009 to March 2010, according to the center's estimates, which are based mainly on data from the government's Current Population Survey. (Passel & Cohn, 2011, p. 1).

However, protected groups get swept up in the broad wording of the bill. This legislation, as this study, demonstrates, goes beyond the normal policing and regulations to do exactly what the bill proposes: *deter* (and more specifically, a specific group of people). While the wording of the legislation claims to only be targeting the illegal immigrants detected within Arizona's state borders, this study shows that the impact of Senate Bill 1070 sends ripples beyond Arizona's state lines to impact the rights of many minorities and immigrants (both legal and illegal) around the nation.

Donald Black, author of *The Behavior of Law*, explains how law behaves with the many social variables in the society. Law is not stagnant or a uniform equation that produces the same answer each time. Rather, law fluctuates with each variable that is introduced during legal interactions. Black (1976, 2008) states, "Behavior is the variable aspect of reality. Everything behaves, living or not..." (p. 1). Thus when changes in the law occur, it becomes necessary to investigate what impacts those laws will have and who will be most affected. Using Black's theory on the behavior of law, this thesis will answer one main question: How does law behave in relation to the Arizona immigration legislation?

By examining this question, the reader will see who benefits from this law, who suffers the ramifications of this legislation, and how society will be altered if this law goes into effect.

2.0 Literature Review

2.1 Overview of the Arizona Immigration Legislation

The Arizona immigration legislation, Senate Bill 1070 (S.B. 1070), was passed by the forty-ninth legislature of the Arizona State Senate in April 2010 in order to enact tougher legislation pertaining to illegal immigration and “relating to unlawfully present aliens” (Senate Engrossed S.B. 1070, 2010, p. i) within the state. Technically called “Support Our Law Enforcement and Safe Neighborhoods Act,” the law was later revised and edited with addendums to address the issues of racial profiling by law enforcement. The subsequent addition was named House Bill 2162 (H.B. 2162), “relating to immigration and border security [and] providing for conditional enactment” (House Bill 2162, 2010, p. 1). Together, these bills give state officials the ability “for any lawful stop, detention, or arrest” (House Bill 2162, 2010, p. 3) and “where reasonable suspicion exists that the person is an alien AND is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation” (House Bill 2162, 2010, p. 4). The Arizona Legislature later released a House Engrossed version of the legislation combining the two bills and re-editing Senate Bill 1070 within the parameters of House Bill 2162.

The Arizona Peace Officer Standards and Training board published their “Peace Officer Training Presentation for the S.B. 1070 Legislation” (P.O.S.T.), including both a video and handouts pertaining to instructing officers on incorporating the new legislation into their daily patrol. According to the handout, “Implementation of the 2010 Arizona Immigration Laws, Statutory Provisions for Peace Officers,” the factors that can be

considered in order to develop reasonable suspicion of unlawful presence include:

- Lack of identification (if otherwise required by law)
- Possession of foreign identification
- Flight and/or preparation for flight
- Engaging in evasive maneuvers, in vehicle, on foot, etc.
- Voluntary statements by the person regarding his or her citizenship or unlawful presence. . .
- Foreign vehicle registration
- Counter-surveillance or lookout activity
- In company of other unlawfully present aliens
- Location, including for example:
 - A place where unlawfully present aliens are known to congregate looking for work
 - A location known for human smuggling or known smuggling routes
- Traveling in tandem
- Vehicle is overcrowded or rides heavily
- Passengers in vehicle attempt to hide or avoid detection
- Prior information about the person
- Inability to provide his or her residential address
- Claim of not knowing others in same vehicle or at same location
- Providing inconsistent or illogical information
- Dress
- Demeanor – for example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact
- Significant difficulty communicating in English (Arizona P.O.S.T., 2010, p. 3-4).

These factors, when considered together, allow the officer to claim reasonable suspicion surrounding the individual's residency status. These elements are not classified as racial profiling according to the United States Supreme Court. States P.O.S.T. (2010):

In the context of applying these new laws, reasonable suspicion exists when an officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion that the person is an unlawfully present alien. The requirement of particularized suspicion encompasses two elements. First, the assessment must be based upon the totality of the circumstances. Second, that assessment must arouse a reasonable suspicion that the particular person is unlawfully present in the United States. (p. 4).

The Supreme Court has ruled that in some cases, it is allowable for a legal stop,

search, and/or seizure. Thomas Clancy (2008), author of *The Fourth Amendment: Its History and Interpretation*, states:

Targeting innocent persons, who are not otherwise suspected of committing a crime, *solely* on the basis of their race is intolerable and impermissible. Some allegations of the unacceptable use of race are simply ignored—at least by the Supreme Court—where there is an objective basis for the search or seizure. Thus, according to the Court, a traffic stop is justified when a traffic violation has occurred, even though the officer is motivated in part to investigate another crime for which justification is lacking. There are other situations where there is a fundamental lack of consensus, such as whether race or ethnicity can be permissibly used as a factor—perhaps one of many—to justify a search or seizure of a person. However, the Supreme Court has permitted apparent ancestry to be a factor in immigration enforcement stops. (p. 539-540).

According to Lentz and Chaires, authors of “Full Speed Ahead: *Illinois v. Lidster* and Suspicionless Vehicle Stops”, the issue of pretextual stops was legitimized by the Supreme Court after the *Whren* decision. Thus making it possible for law enforcement to use race and other characteristics in order to initiate a legal stop. States Lentz and Chaires (2007):

Clearly, if such articulable suspicion exists, there is no need for a pretextual traffic stop. It is important to note that under modern traffic and vehicle codes it is very difficult for anyone to drive more than a short distance without violating some provision. In *Whren v. U.S.* the Supreme Court essentially ruled that where probable cause to stop for a traffic violation is present, an officer’s subjective intent is not a Fourth Amendment issue. The legitimate uses of these pretextual stops remain uncertain. (p. 178).

Thus the Arizona P.O.S.T.’s presentation for training officers on what constitutes reasonable suspicion does not equate to racial profiling because of the Court’s interpretation of the law. While the profiling of such individuals is based on race rather than the actual infringement, the Court has deemed such a practice as legitimate within the legal system. Such a legal perspective can have substantial impacts when discussing

the Arizona immigration legislation. However, as seen from the Court, the P.O.S.T.'s list of unlawful presence characteristics does not constitute racial profiling, despite its inherent profiling nature.

Senator Russell Pearce, the author of S.B. 1070, claims to have written the bill in order to deal with the state's growing problem of illegal immigration. Pearce states, "Illegal is not a race, it is a crime. S.B. 1070 simply codifies federal law into state law and removes excuses and concerns about states' inherent authority to enforce these laws and removes all so called 'sanctuary' policies." ("Enough is Enough", 2010, p. 1).

However, Pearce also states in his personal website profile that:

Two of my sons are in law enforcement, Colten with Gilbert P.D. and Sean with the Maricopa County Sheriff's Office. On Dec. 16, 2004 Sean was shot in the line of duty by an illegal alien while serving a homicide warrant on an illegal alien. I was in Washington D.C. at the time testifying about our nations failed immigration policies when I was handed a note and told there was an emergency at home and to call immediately. I called home and was told Sean was critically wounded after being shot in the chest and stomach and was being transported to Maricopa County Medical Center. ("Bio", 2010, p.1).

Similar information about his son's injury can also be found on his Arizona State Legislature senator biography page. Such information raises the question of the true intent behind Pearce's legislation. As the *New York Times* states in the "Times Topics" section:

"Mr. Pearce's son, a Maricopa County sheriff's deputy, was shot and wounded in 2004 by an illegal immigrant, and Mr. Pearce, a former sheriff's deputy, was shot and wounded while arresting gang members 20 years ago, he has said. Some have speculated that the events have inspired Mr. Pearce's anti-immigration legislation." ("Times Topics: Russell Pearce", 2010, p. 1-2).

The legislation's initial paragraph clearly paints the true intent behind the

construction of the original and later revised legislation. The bill's intent stems from the state's frustration over the growing problems such as: illegal immigration, drug trafficking, and human trafficking across the southern border of the United States. States the original S.B. 1070:

The legislature declares that the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States. (Senate Engrossed S.B. 1070, 2010, p.1).

The legislation was later amended to begin with, "The legislature finds that there is a compelling interest in the cooperative enforcement of federal immigration laws throughout all of Arizona." (House Engrossed Senate Bill 1070, 2010, p.1). The original bill attempted to counter possible rights violations (other than the provisions set forth by House Bill 2162), by stating that it intended to protect civil rights. The main critique of S.B. 1070 and H.B. 2162 arises from the claim that the legislation makes it permissible for law enforcement officials to encroach upon the rights of U.S. citizens. The *New York Times* states that S.B. 1070,

...coincided with economic anxiety and followed a number of high-profile crimes attributed to illegal immigrants and smuggling, though federal data suggest that crime is falling in Arizona, as it is nationally, despite a surge of immigration. The law's supporters said it reflected frustration over inaction by the federal government, while critics said it would lead to harassment of Hispanics and turn the presumption of innocence upside down. ("Time Topics: S.B. 1070", 2011, p. 1).

S.B. 1070 attempts to counter this critique by stating, "This act shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United

States citizens.” (House Engrossed Senate Bill 1070, 2010, p.19). As seen with the P.O.S.T. instructions for identifying illegal immigrants, it may prove difficult for Arizonan officials to respect the privileges and civil rights of individuals while still using racial factors to constitute reasonable suspicion.

The act also stipulates that each section of the bill must be considered separate and apart from the entirety. This stipulation, which will be later addressed, requires each level of the judicial system to examine the case thoroughly and subject the bill to a section-by-section analysis to consider an injunction and/or the constitutionality of the bill. States S.B. 1070, “If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.” (House Engrossed Senate Bill 1070, 2010, p.19). With this provision in mind, it is necessary to examine the separate section of the bill in accordance with the legal analysis of the Federal District Court of Arizona and the Ninth Circuit Appeals Court. Through analysis of this legislation, the understanding of the impacts of these bills, if found constitutional and enforceable in the state of Arizona, will be profound.

2.2 Court Analysis of the Arizona immigration legislation

Just before Arizona’s immigration legislation was due to go into effect, the Federal District Court of Arizona issued its opinion on the new laws and placed an injunction of sections of the legislation. Due to the fact that the Arizona Legislation stipulates that each section of the bill must be considered separate and apart from the entirety, the Court examined each section and specified which sections would be subject

to the injunction. The Court states that it “is obligated to consider S.B. 1070 on a section by section and provision by provision basis.” (United States v. Arizona, 2010, p. 2). On July 28, 2010 Justice Susan Bolton of the Federal District Court of Arizona ordered the preliminary enjoining of Section 2 (B), Section 3, a portion of Section 5, and Section 6. These sections of S.B. 1070 and H.B. 2162 were halted and prevented Governor Brewer from enforcement in the state of Arizona until the Ninth Circuit Court of Appeals could render a decision. Justice Bolton did not enjoin Section 1, Section 2(A) and (C)-(L), Section 4, a portion of Section 5, and Sections 7-13. The portions that were enjoined and had an injunction issued against it pertain to:

Portion of Section 2 of S.B. 1070

A.R.S. § 11-1051(B):

requiring that an officer make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is a reasonable suspicion that the person is unlawfully present in the United States, and requiring verification of the immigration status of any person arrested prior to releasing that person

Section 3 of S.B. 1070

A.R.S. § 13-1509:

creating a crime for the failure to apply for or carry alien registration papers

Portion of Section 5 of S.B. 1070

A.R.S. § 13-2928(C):

creating a crime for an unauthorized alien to solicit, apply for, or perform work

Section 6 of S.B. 1070

A.R.S. § 13-3883(A)(5):

authorizing the warrantless arrest of a person where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States.

(United States v. Arizona, 2010, p. 4).

Justice Bolton agreed with the United States that the federal government would likely succeed in showing that federal law preempted these sections and that these

sections would cause “irreparable harm” to both the federal government and the public interest if an injunction were not issued.

For section 2(B) the Court determined that bestowing law enforcement officials with the ability to attempt to determine the immigration status of the individual who was stopped would result in unnecessary harassment as well as a violation of civil rights for U.S. citizens. The State of Arizona countered by stating that it did not expect officers to check for every person’s legal status of those who were stopped, but rather only those where suspicion arose. The Court rebuffed the argument by stating:

Arizona goes on to state, “[T]he Arizona Legislature could not have intended to compel Arizona’s law enforcement officers to determine and verify the immigration status of *every single person* arrested – even for United States citizens and when there is absolutely no reason to believe the person is unlawfully present in the country.” (*Id.*) The Court cannot interpret this provision as Arizona suggests. (*United States v. Arizona*, 2010, p. 14).

The Court reasoned that despite the many forms of identification that an individual may provide to law enforcement, these forms of identification do not necessarily prove the legal status of an individual.

Furthermore, such a check would place burden upon a legal immigrant who would violate the protections set forth by Congressional legislation ensuring uniform treatment of all immigrants, and for that matter any stopped individual, in the United States. The Court then argued that the large number of people who are jailed or arrested, but never booked into jail, would cause an extended stay for individuals not charged with a crime, but merely being held until their legal status could be determined. Such detention time, especially extended detention time, for people not yet charged or guilty of any crime is not permissible. The legislation would open the door for individuals to be

considered guilty until proven innocent.

Finally, the Court supplemented this reasoning with the fact that in 2009, Tucson did a “cite and release” procedure that allowed them to stop an individual, “arrest” them, and then immediately release them. The Court states, “Under Section 2(B) of S.B. 1070, all arrestees will be required to prove their immigration status to the satisfaction of state authorities, thus increasing the intrusion of police presence into the lives of legally-present aliens (and even United States citizens), who will necessarily be swept up by this requirement.” (United States v. Arizona, 2010, p. 16). The United States also argued that many groups of immigrants could be technically legal, but lacking the proper paperwork, and could be negatively harmed by such legislation. According to the Court, groups (such as the visitors from the Visa Waiver Program), individuals who have applied to receive asylum, those with temporary protected status or U and T visa applications, and those falling under the jurisdiction of the Violence Against Women Act (VAWA) might be unable to demonstrate documentation to state officials. Furthermore, citizens of the United States are not required to carry identification, and might themselves have an issue of proving valid citizenship to officials. The Court further states:

First, the United States suggests that the impact on lawfully-present aliens is enhanced because this requirement applies to stops for even very minor, non-criminal violations of state law, including jaywalking, failing to have a dog on a leash, or riding a bicycle on the sidewalk. (*Id.* at 28.) Also, the United States argues that the impact will be increased because other provisions in S.B. 1070 put pressure on law enforcement agencies and officials to enforce the immigration laws vigorously. (United States v. Arizona, 2010, p. 19).

As later discussed in this study, the increased pressure to enforce S.B. 1070 vigorously coupled with the P.O.S.T. list of identifying characteristics for reasonable

suspicion would leave some groups and/or individuals more vulnerable to the law than others. Thus for every minor violation, some individuals could be at a higher risk of sustaining a legal contact.

Section 3 of S.B. 1070, the United States argued, would result in the harassment of aliens. In fact, such wording would open the door to pretextual stops, where an official could wait for an ethnic minority to commit a minor infraction in order to initiate a legal contact. The Court reasoned that "...Section 3 alters the penalties established by Congress under the federal registration scheme. Section 3 stands as an obstacle to the uniform, federal registration scheme and is therefore an impermissible attempt by Arizona to regulate alien registration." (United States v. Arizona, 2010, p. 22-3).

Section 5 of S.B. 1070 was found to conflict with the federal setup for punishing employers of illegal aliens and employees who attempted to submit false documents in order to gain employment.

Section 6 of S.B. 1070 was found to specifically target aliens (whether legal or illegal) for crimes that are considered "removable." The state of Arizona defines those public offenses as:

...conduct for which a sentence to a term of imprisonment or of a fine is provided by any law of the state in which it occurred or by any law, regulation or ordinance of a political subdivision of that state and, if the act occurred in a state other than this state, it would be so punishable under the laws, regulations or ordinances of this state or of a political subdivision of this state if the act had occurred in this state. (United States v. Arizona, 2010, p. 30).

However, the Court objected to this section of S.B. 1070 since the definition of removable public offenses allows for the "probable cause to believe the person *committed a crime in another state* that would be considered a crime if it had been committed in

Arizona and that would subject the person to removal from the United States.” (United States v. Arizona, 2010, p. 31). The Court further reasoned that such wording in the legislation would allow for the targeting of immigrants (whether legal or not) since only immigrants could face the possibility of being removed from the country. Such targeting of a group was not allowed by the District Court of Arizona. Furthermore, certain crimes committed in another state may not equate to the same severity in the state of Arizona. For a law enforcement official to check for a crime, compare the crime, attempt to equate that crime to an equal crime in Arizona, and find a relationship between the other state and Arizona’s statutes would leave open an area of law with too much room for error. Such a task is usually reserved for the federal government for this reason.

The Court allowed for some of S.B. 1070 to stand while blocking the most threatening pieces of the legislation. As Judge Bolton states, “The Court therefore finds that preserving the status quo through a preliminary injunction is less harmful than allowing state laws that are likely preempted by federal law to be enforced.” (United States v. Arizona, 2010, p. 35). The case was then appealed to the United States Court of Appeals for the Ninth Circuit.

In April 2011, the three-judge panel for the United States Court of Appeals for the Ninth Circuit ruled to uphold the injunction that Judge Susan Bolton of the Federal District Court of Arizona had implemented. According to Marc Lacey of the *New York Times*, “The decision calling the provisions unconstitutional was a victory for the Obama administration, which argued that the law interfered with the federal government’s authority over immigration. Two judges ruled against Arizona, and one dissented in part from them.” (“Appeals Court Rules”, 2011, p. 1). The 2-1 vote confirmed Judge

Bolton's previous injunction and currently continues to prohibit the same sections of the Arizona Immigration Legislation. States the Court:

The district court granted the United States' motion for a preliminary injunction in part, enjoining enforcement of S.B. 1070 Sections 2(B), 3, 5(C), and 6, on the basis that federal law likely preempts these provisions. *Id.* at 1008. Arizona appealed the grant of injunctive relief, arguing that these four sections are not likely preempted; the United States did not cross-appeal the partial denial of injunctive relief. Thus, the United States' likelihood of success on its federal preemption argument against these four sections is the central issue this appeal presents.

We have jurisdiction to review the district court's order under 28 U.S.C. § 1292(a)(1). We hold that the district court did not abuse its discretion by enjoining S.B. 1070 Sections 2(B), 3, 5(C), and 6. Therefore, we affirm the district court's preliminary injunction order enjoining these certain provisions of S.B. 1070. (United States v. Arizona, 2011, p. 4).

The Court essentially confirmed that the United States government was able to preempt the state in the 4 sections in contention and that the injunction against Arizona would still stand. The Court asserts that:

We stress that the question before us is not, as Arizona has portrayed, whether state and local law enforcement officials can *apply* the statute in a constitutional way. Arizona's framing of the *Salerno* issue assumes that S.B. 1070 is not preempted on its face, and then points out allegedly permissible applications of it. This formulation misses the point: there can be no constitutional application of a statute that, on its face, conflicts with Congressional intent and therefore is preempted by the Supremacy Clause. (United States v. Arizona, 2011, p. 7).

The Court first analyzed Section 2(B) and confirmed that the phrasing, which allowed for an officer to check the immigration status of an individual, was actually quite specific and not as optional as Arizona tried to argue. Arizona again argued that the officers did not need to check every individual's status. However, the Court countered saying:

On its face, the text does not support Arizona's reading of Section 2(B).

The second sentence is unambiguous: “*Any* person who is arrested *shall* have the person’s immigration status *determined* before the person is released.” Ariz. Rev. Stat. Ann. § 11-1051(B) (2010) (emphasis added). The all encompassing “any person,” the mandatory “shall,” and the definite “determined,” make this provision incompatible with the first sentence’s qualified “reasonable attempt . . . when practicable,” and qualified “reasonable suspicion.” (United States v. Arizona, 2011, p. 9).

The Court determined that Congress, through federal immigration law, already had provisions that the federal government implemented for immigration issues. It also concluded that Arizona had overstepped its bounds by trying to enforce its legislation over the federal law. States the Court:

Section 2(B) sidesteps Congress’ scheme for permitting the states to assist the federal government with immigration enforcement. Through Section 2(B), Arizona has enacted a mandatory and systematic scheme that conflicts with Congress’ explicit requirement that in the ‘[p]erformance of immigration officer functions by State officers and employees,’ such officers ‘shall be subject to the direction and supervision of the Attorney General.’ 8 U.S.C. § 1357(g)(3). Section 2(B) therefore interferes with Congress’ scheme because Arizona has assumed a role in directing its officers how to enforce the INA. We are not aware of any INA provision demonstrating that Congress intended to permit states to usurp the Attorney General’s role in directing state enforcement of federal immigration laws. (United States v. Arizona, 2011, p. 15).

Thus, the Court ruled that Section 2(B) of S.B. 1070 was pre-empted by the federal government. The Court stated, “Through Section 2(B), Arizona has attempted to hijack a discretionary role that Congress delegated to the Executive.” (United States v. Arizona, 2011, p. 15). Since Arizona had created mandatory immigration status checks for local police, which interferes with federal enforcement agencies and their policies, it was ruled that the federal government and its policies would supersede S.B. 1070. The Court found that this section of S.B. 1070 was inconsistent with other government policies, infringed upon the Attorney General’s powers and enforcement abilities, and

that such a law would have a negative impact on the United States' relationship with other countries.

Citing previous caselaw, the Court stated that when state legislation created negative relations between the federal government and other foreign bodies, then the federal government has the right to preempt said legislation. The Court notes:

The record before this court demonstrates that S.B. 1070 does not threaten a “*likelihood . . . [of] produc[ing] something more than incidental effect;*” rather, Arizona’s law has created *actual* foreign policy problems of a magnitude far greater than incidental. *Garamendi*, 539 U.S. at 419 (emphasis added by Court). Thus far, the following foreign leaders and bodies have publicly criticized Arizona’s law: The Presidents of Mexico, Bolivia, Ecuador, El Salvador, and Guatemala; the governments of Brazil, Colombia, Honduras, and Nicaragua; the national assemblies in Ecuador and Nicaragua and the Central American Parliament; six human rights experts at the United Nations; the Secretary General and many permanent representatives of the Organization of American States; the Inter-American Commission on Human Rights; and the Union of South American Nations. (United States v. Arizona, 2011, p. 19).

Due to the overlap of federal law and state law, the infringement upon the federal government’s duties and powers, the prospect of allowing all fifty states to overlap federal immigration law, and the souring foreign relationship due to this legislation, the Court opted to preempt Section 2(B) of S.B. 1070.

The Court also upheld the injunction against Section 3 of S.B. 1070, which punished an individual for failure to carry registration documents. The Court argued that the state could not punish an individual for violating a federal law. Only the federal government could enforce such regulation and allocate punishment since it was an area of law that states did not traditionally control or enforce. The Court responds,

In addition, S.B. 1070 Section 3 plainly stands in opposition to the Supreme Court’s direction: ‘where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of

regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.’ *Hines*, 312 U.S. at 66-67. (United States v. Arizona, 2011, p. 24).

The Court again ruled to uphold the injunction placed against Section 3 of S.B. 1070. Due to the previous caselaw that stipulated the federal government’s supremacy in national policy over the state’s legislation, the impact of fifty states creating similar legislation, the consequences of such an action, and, finally, its negative effect in foreign relations, the district court’s injunction was upheld.

In Section 5(C) of S.B. 1070, which stipulates that an unlawfully present individual cannot solicit for work or contract for work in the state of Arizona, the Court upheld the district court’s injunction again. The Court stated that historically, the federal government held that the illegal immigrant should be deterred from employment via job availability and penalties for the employer, but not to sanction the illegal immigrant and punish the individual. States the Court:

In *National Center*, we considered whether the INA, through 8 U.S.C. § 1252(a), authorized the Immigration and Naturalization Service (“INS”) to promulgate regulations which ‘imposed a condition against employment in appearance and delivery bonds of aliens awaiting deportation hearings.’ *Id.* at 1351. To decide this question, we carefully reviewed the history of employment-related provisions in the INA’s legislative scheme—including the legislative history of the IRCA amendments. *Id.* at 1364-70. We concluded that ‘[w]hile Congress initially discussed the merits of fining, detaining or adopting criminal sanctions against the *employee*, it ultimately rejected all such proposals. . . . Congress quite clearly was willing to deter illegal immigration by making jobs less available to illegal aliens but not by incarcerating or fining aliens who succeeded in obtaining work.’ *Id.* at 1367-68. (United States v. Arizona, 2011, p. 27).

By citing a plethora of federal statutes and codes, the Court argued that Congress had set up a very specific and particular scheme for immigration and for the enforcement

of illegal immigrants' employment. Because Congress opted not to punish illegal immigrants that solicited for work or even became employed, the Court argued that it did not mean that Arizona could then enforce punitive legislation. Rather, according to the Court, Congress' specific scheme does not allow for such legislation by the state and therefore preempts state action. The Court asserts:

In the context of unauthorized immigrant employment, Congress has deliberately crafted a very particular calibration of force which does not include the criminalization of work. By criminalizing work, S.B. 1070 Section 5(C) constitutes a substantial departure from the approach Congress has chosen to battle this particular problem. Therefore, Arizona's assertion that this provision 'furthers the strong federal policy' does not advance its argument against preemption. Sharing a goal with the United States does not permit Arizona to 'pull[] levers of influence that the federal Act does not reach.' *Crosby*, 530 U.S. at 376. By pulling the lever of criminalizing work—which Congress specifically chose not to pull in the INA—Section 5(C) 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' *Hines*, 312 U.S. at 67. It is therefore likely that federal law preempts Section 5(C). (*United States v. Arizona*, 2011, p. 32).

Again, the Court reasoned that previous caselaw, Congress' intent to regulate illegal immigrants' employment a specific way, and the negative reactions from foreign governments allowed the federal government to preempt the state of Arizona.

Finally, in Section 6, which stipulates that an officer may arrest an individual if the officer has probable cause to believe that the person has committed a removable offense, the Court again upheld the district court's injunction. The Court argued that the out-of-state issue that was presented by the district court allowed for warrantless arrests, and would subject a person to removal for crimes that were either committed in Arizona or outside of Arizona's jurisdiction. The Court concluded that Congress had never intended to allow greater authority to local law enforcement than federal officials; and

therefore the federal government would preempt the state. The Court states:

Thus, Section 6 significantly expands the circumstances in which Congress has allowed state and local officers to arrest immigrants. Federal law does not allow these officers to conduct warrantless arrests based on probable cause of *civil* removability, but Section 6 does. Therefore, Section 6 interferes with the carefully calibrated scheme of immigration enforcement that Congress has adopted, and it appears to be preempted. Arizona suggests, however, that it has the inherent authority to enforce federal *civil* removability without federal authorization, and therefore that the United States will not ultimately prevail on the merits. We do not agree. Contrary to the State's view, we simply are not persuaded that Arizona has the authority to unilaterally transform state and local law enforcement officers into a state-controlled DHS force to carry out its declared policy of attrition. (United States v. Arizona, 2011, p. 35).

Thus, the Court reasoned that Section 6 exceeded the powers that Congress granted to state and local officials and overlapped with the powers that the federal government granted to its own officials. Because the Court did not agree with Arizona's argument that it could enforce the civil provisions of federal immigration law, the Court upheld the district court's injunction. The Court also held that such legislation made by all fifty states would be detrimental and that foreign relationships with the United States would also suffer a negative effect. Therefore, the federal government preempts the state again.

In totality, the three-judge panel for the Ninth Circuit Court affirmed all four injunctions that had been placed upon the legislation by the district court. Arizona governor Jan Brewer and Attorney General Tom Horne issued a joint statement that confirmed that the state would continue to fight the issue in the court system. The press release reads:

In the days ahead, Governor Brewer, Attorney General Horne and their legal team – in conjunction with counsel for the Arizona Legislature – will be considering their legal options. Those options include appealing to a

larger, *en banc* panel of the 9th Circuit Court, or seeking an immediate petition for the U.S. Supreme Court to lift the injunction on S.B. 1070. It has always been expected that this legal fight would be a long one. But the Ninth Circuit Court is the most overturned appeals court in the nation for a reason. Both Governor Brewer and Attorney General Horne believe that the constitutionality of S.B. 1070 will eventually be affirmed. (“Joint Statement”, 2011, p. 1).

As a note of clarification, this study is not a pro/con paper that will decide or take side on whether or not the law is right or wrong. This study is an analysis of the topic at hand. Furthermore, whether or not the law is constitutional does not relate to whether the law is right or wrong. The same can be said for the behavior of the law. Just as Black’s theory does not take into account the motivation of the individual, this study will not take into account the motivation of the government to pass or fail stricter immigration laws in the United States. This study is merely an objective analysis. The main purpose of this analysis is to examine the factors that are associated with the legislation and to ascertain the true intent and purpose behind the law.

While the outcome of the issue is uncertain, it is clear that this case is far from over. As this study demonstrates, there are many sides to the issue of immigration, and multiple parties are each fighting for different outcomes. This study shows that on one side, the state and the prison corporations have specific interests in enforcing this legislation. On the other side, other groups and the individuals themselves will want the federal government to preempt and protect the rights of those legally protected individuals who could be swept up by the state’s legislation. However, only time will tell what the final outcome will be.

3.0 Blackian Analysis

3.1 Introduction to Black's theories

Donald Black, author of *The Behavior Of Law*, purports that the face of jurisprudence is evolving. The former model of law, aptly named the “jurisprudential model” (Black, 1989, p. 19), looked at law through the lens of an equation: variables would be plugged in and the result would be automatic and unprejudiced. This concept creates an equation in which “law is fundamentally an affair of rules” (Black, 1989, p. 19). However, as Black notes in his book *Sociological Justice*, this equation is not how law has actually functioned in the past. While it would be convenient to believe that justice is blind and that past legal interactions were done in a manner that was fair and impartial, according to Black the opposite has actually happened. Through Black’s theory on the behavior of law, one must view law via a sociological perspective. Thus, Black’s theory looks at the underlying factors and characteristics of all the players in the field in order to determine what the outcome may be, or to reverse what could become a potentially predictable outcome and achieve a different result. Factors like race, class, education level, societal status, and aristocracy can be taken into account (whether consciously or subconsciously) and these elements can affect the outcome of law and legal interactions. By understanding these factors, one can understand how future laws and legislation will impact society, which groups will benefit, and which groups will suffer from the ramifications of such legislation.

Black’s theory on the behavior of law is best described by a new model of law called “sociological jurisprudence” or the “sociological model of law.” The predecessor to the sociological model, the jurisprudential model, is “practical, concerned with how

cases should be decided,” and “used to reach decisions” (Black, 1989, p. 21).

Conversely, the sociological model is “scientific, concerned with how cases are actually decided” and “used to reach explanations” (Black, 1989, p. 21). Black (1989) writes, “Ideally, the rules alone determine how a case is decided, and those rules generally do not mention the social characteristics of the parties.” (p. 21). Essentially, the jurisprudential model is the basic equation for determining the outcome of the case, and the sociological model explains why that outcome occurred. Black (1989) asserts that,

The sociological model, however, assumes that the handling of a case always reflects the social characteristics of those involved in it. This applies whenever and wherever law is found. It is not merely a matter of differentials according to the race of the parties, their social class, gender, or other characteristics that nowadays attract particular attention. Many other kinds of discrimination exist as well, such as differentials according to the degree of intimacy between the parties, the cultural distance between them, and their degree of organization, interdependence, integration, and respectability. (p. 21).

Black’s theory on the behavior of law attempts to do is explain how such factors affect the results of a legal interaction past the “technical core” (Black, 1989, p. 20). That core, the “rules in the face of evidence” (Black, 1989, p. 20) is what yields the result in the mathematical equation of the jurisprudential model. The societal model takes the technical core into account but also analyzes the contributing outside factors to determine if the law is as impartial as an equation or if there really are outside factors that contribute to the legislation, enforcement, and/or punishment level(s). According to Black (1989), when the two models of law are compared, the differences appear as such:

Figure 1: The Two Models of Law.

	Jurisprudential Model	Sociological Model
Focus	Rules	Social Structure
Process	Logic	Behavior
Scope	Universal	Variable
Perspective	Participant	Observer
Purpose	Practical	Scientific
Goal	Decision	Explanation
		(Black, 1989, p. 21)

Black argues that the roots of sociological jurisprudence stem from earlier theory of law such as legal realism. Black (1989) affirms that, “The central claim of legal realism was that the doctrines of law-the rules and principles-do not by themselves adequately predict and explain how cases are decided.” (p. 5). However, Black is quick to admit that the theory of legal realism has also been critiqued due to the judges’ and juries’ utilization of feelings and personal beliefs in deciding legal outcomes with only application of the written law as an afterthought or legal justification. Black (1989) reasons, “Thus, a famous adage of legal realism was that judicial decisions often have less to do with legal precedent than with what the judge had for breakfast.” (p. 5). Yet, Black’s theory on the behavior of law centers on the dynamics of the particular case, analyzes how the outcome will be derived, and studies why such an outcome is possible. M.P. Baumgartner (1999) writes,

...Black lays out a paradigm and a body of theory that builds on and orders the immense body of empirical information assembled about law. He describes the principal dimensions of legal variations, identifies the major independent variables that explain it, and presents a series of theoretical propositions stating the precise relationship between law and its social environment. As Black himself has characterized this approach in later work, it is designed to generate formulations that are testable, general, simple, supported by the facts, and original (Black, 1995). (p. 5).

According to Black, law is the government’s form of social control (Black, 1976, 2008, p. 2). This social control, albeit only one of the many types of social control that a society can have, is the glue that holds the society together and away from anarchy. As the processes in law increase (whether from legislation, investigation, litigation, mediation, and/or adjudication), the quantity of law also increases. Law, according to Black, is a quantitative variable (Black, 1976, 2008, p. 3). According to Black (1976,

2008), “Any initiation, invocation, or application of law increases its quantity...” (p. 3). The concept behind this governmental social control is that as the steps involved in the process of the law increase (such as moving from arrest to trial), the law and social control will naturally increase. As the law quantity changes, it also begins to vary by the society itself (the groups, the power structure, and the culture). When such variations occur, different styles of social control can emerge. In Black’s theory the four styles of social control pertain to: penal, compensatory, therapeutic, and conciliatory. In light of the diverse types of social control and groups found within the society, the application of law will vary. Some instances may require the conciliatory social control (such as civil mediation) whereas other times the penal social control may be necessary (such as in a criminal case). Black illustrates the four styles of social control as such:

Figure 2: The Four Styles of Social Control.

	Penal	Compensatory	Therapeutic	Conciliatory
Standard	prohibition	obligation	normality	harmony
Problem	guilt	debt	need	conflict
Initiation of case	group	victim	deviant	disputants
Identity of deviant	offender	debtor	victim	disputant
Solution	punishment	payment	help	resolution

(Black, 1976, 2008, p. 5)

However, according to Black (1976, 2008), “in most cases it is possible to identify the dominant style.” (p. 5). When that dominant style of social control, the participants, and the level of law are all identified, the behavior of the legal interaction can easily be predicted. Nevertheless, the theory cannot take into account an individual’s

desires, goals, or reasons for a certain behavior- the theory merely attempts to predict and explain why certain legal interactions behave in a certain way. Black (1976, 2008) maintains that, “Theory of this kind predicts and explains social life without regard to the individual as such...It has no concept of human nature. It has nothing to do with how an individual experiences reality.” (p. 7). Thus, Black’s theory takes into consideration the variables of a legal interaction, but not other aspects that might motivate an individual’s emotional responses or inclinations.

Analysis of the social stratification of interacting individuals, the cultural divide between two members, and the alliances between groups are all contributing factors in determining the reason for an outcome while applying Black’s theory. The analysis depends on five variables: stratification, morphology, culture, organization, and social control. When these five variables come into play in a legal interaction, it makes it more likely that a certain result will occur (for instance, a corporation pursuing civil damages versus an individual) or that certain punishments might be allotted to a specific type of individual (for example a repeat offender versus a juvenile). Black (1989) writes, “The social characteristics of these people constitute the social structure of the case...The status of each supporter similarly contributes to the social structure of the case, as does the social distance between each supporter and everyone else.” (p. 8).

Once the social structure of the case becomes apparent, the legal outcomes are easier to predict. By understanding how stratification, morphology, culture, organization, and social control all interact within the parameters of a legal environment, one can possibly control and/or predict the potential outcome in the legal equation found within the jurisprudential model. Black (1989) explains that, “...structure is crucial to

understanding legal variation from one technically identical case to another. We have discovered that the social structure of a case predicts and explains how it is handled.” (p. 8). By analyzing these layers of Black’s theory and then analyzing the variables found within the Arizona immigration legislation, one will begin to comprehend not only the accuracy of Black’s theory, but also of the magnitude and ramifications for the involved parties in Arizona’s immigration battle.

3.1.1 Stratification

Stratification is the “vertical aspect of social life” (Black, 1976, 2008, p. 11). Essentially, it is the allocation and dispersion of materials that are essential for living. These necessities, whether land, food, supplies, or livestock can range in distribution and, according to Black, are often dispersed unevenly within a population. This uneven distribution causes the allotment issues of strife and luxury—issues that would not occur if the distribution rate were even and proportional. States Black (1976, 2008):

Stratification itself has several variable aspects. One is the magnitude of a difference in wealth, or vertical distance. Another is the degree to which wealth is distributed into layers, each separate from the next, rather than a continuum...This is vertical segmentation. The number of these layers is also variable, as is the size of one in relation to another. (p. 11).

According to Baumgartner (1999), “Social stratification is inequality in the distribution of wealth, power, and honor. A group of perfectly equal people has no social stratification at all.” (p. 8). Black argues that the unequal dispersion of goods or stratification can lead to inequality in society. Those that have luxury can be considered better able to handles problems, like legal interactions, than those dealing with strife or poverty. That inequality will lead to different results regarding the behavior of the law. Black (1976, 2008) writes, “Stratification also explains law, its quantity as well as its

style. It has long been recognized, for example, that wealthier people have a legal advantage..." (p. 12). When different groups have different advantages during a legal interaction, one can suspect that the results will also be quite different. Baumgartner (1999) explains, "Within a stratified society, individuals occupy social positions based on the relative amount of wealth and other resources they control." (p. 8-9). Essentially, Black's theory takes into account a type of caste system that is defined by the individual's amount of wealth and honor or prestige in society. The more an individual has, the more likely that person will fare better in a legal encounter than someone who has less wealth, possessions, and honor.

In Black's theory, the stratification creates a vertical distance between those that have luxury and those that have utter poverty. By understanding the level of stratification within a society, it becomes possible to understand the proportion of people or groups that will be subject to more law and which people and groups will be able to avoid long legal processes or legal interactions altogether. According to Black (1976, 2008), "Law varies directly with stratification. Thus, the more stratification a society has, the more law it has." (p. 13). In a homogeneous and economically related society, law would be needed less, if at all. However, Black claims that more law is needed in a society where the level of wealth varies. Furthermore, stratification does not apply to only citizen interactions. Interactions between officials and citizens can also be affected by stratification as well. Black (1976, 2008) states:

Just as stratification varies between one citizen and another, so it does between a citizen and a legal official, such as a policeman, prosecutor, or judge. Law increases with the stratification of this relationship as well... This applies to the relationship between an official and a defendant,

victim, plaintiff, or witness-whoever has a role in the case... The more stratified the relationship, the more law the jury is likely to apply. (p. 16).

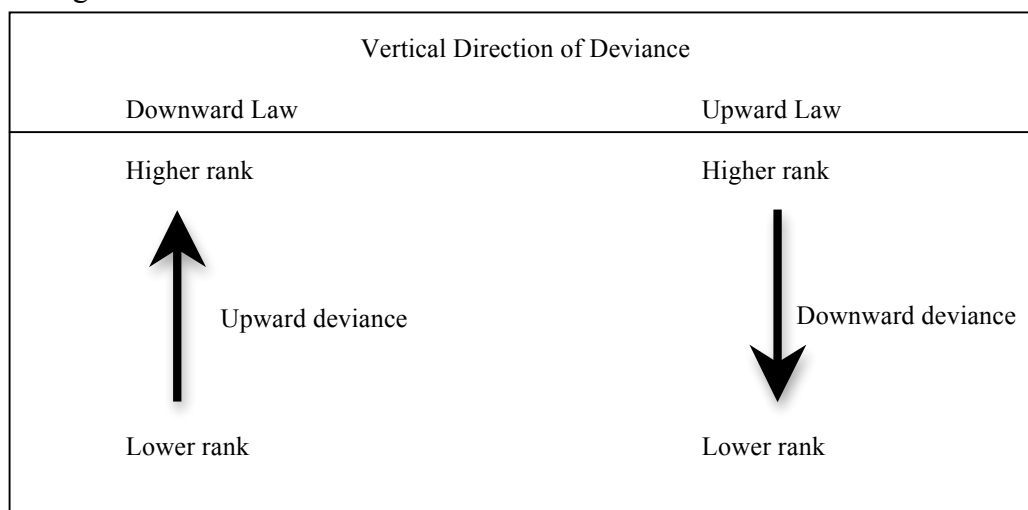
This means that rank and status are of particular importance in Black's theory on the behavior of law. Black (1976, 2008) explains, "If people have an uneven distribution of wealth among themselves, or stratification, each person or group is higher or lower in relation to others." (p. 16). Thus if one individual has more wealth and is able to avoid legal encounters due to that wealth, that individual is then able to also have a higher rank in society. However, if an individual does not have money, it is highly probable that that person would not be able to avoid interaction with the law in some manner, which could result in a lower status. Black (1976, 2008) argues that "...people with less wealth have less law. They are less likely to call upon law in their dealings with one another, and, when they do, they are less successful." (p. 17).

According to Black, the rank of an individual plays an integral part in understanding how law behaves. If a police officer, who outranks a civilian, testifies in court, then that testimony would have more impact and importance than a regular individual. Black (1976, 2008) states, "Law varies directly with rank. This means that, all else constant, the lower ranks have less law than the higher ranks than the higher ranks, and the higher or lower they are, the more or less they have." (p. 17). This vertical distance begins to create an invisible barrier between the stratified groups. If one group is aware that the law will not respond to its needs in the same manner as a higher ranking group, it may resort to resolving conflict internally and use the law only when the group is sure that success would be possible against a higher ranking group.

This vertical distance argument presents the final part of Black’s stratification explanation. According to Black (1976, 2008), “Downward law is greater than upward law.” (p. 21). For example, when a lower group or individual commits an offense against a higher-ranking group or individual and the wealthier individual complains, then the law has a downward direction. If the opposite occurs (a person of wealth commits an offense against a poorer person and that individual complains) then the law has an upward direction.

Black (1976, 2008) writes, “It might be noted that the vertical direction of law is opposite that of deviant behavior: In response to upward deviance law has a downward direction, and in response to downward deviance its direction is upward.” (p. 21). Black asserts that the law is at its greatest when the group or individual with the higher rank and/or wealth complains against a lower individual, which is when a lower ranking individual commits an offense against a higher-ranking individual.

Figure 3: The Vertical Direction of Deviance.



Black (1976, 2008) argues that “[d]ownward law varies directly with vertical distance” but “[u]pward law varies inversely with vertical distance.” (p. 24). Downward law and upward law vary by the status of the group that is offended and by the group that is doing the offending. As Black (1976, 2008) explains,

“The seriousness of an offense by a lower against a higher rank thus increases with the difference in wealth between the parties, whereas the seriousness of an offense by a higher against a lower rank decreases as this difference increases. Hold the victim’s rank constant, then, and law varies inversely with the offender’s rank.” (p. 25).

In essence, Black claims, in his theory, that the more wealth an individual or group has, the more benefits and advantages that person will have in the legal system. If an individual or group is the offender and has less wealth or status from the victim, then this individual or group will have few or no advantages and benefits within the legal system. As Baumgartner (1999) explains, “When people have legal conflicts, where they stand in a status hierarchy relative to everyone else is important predictor of what is likely to happen.” (p. 9). Thus, the greater the distance between the two parties on the social totem pole, the greater the effects of the legal system will be upon the offender.

Finally, the stratification of a case will also predict the type or style of law that will be used in the case. Black (1976, 2008) states, “Downward law is more penal than upward law. In other words, where the offender’s rank is below the victim’s, his conduct is more likely to be punished as a crime than in a case where the direction is the opposite.” (p. 29). Black explains that upward law is compensatory and more therapeutic. For example, a higher-ranking individual who commits an offense against a lower-tiered member might pay a fine and attend counseling versus spending time in jail

or prison. Black (1976, 2008) argues that "...an offender against an inferior is more likely to be defined as sick and in need of treatment." (p. 29).

The style of law will vary with the vertical distance as well. According to Black (1976, 2008), "In a downward direction, the penal law varies directly with vertical distance, and in an upward direction it varies inversely..." (p. 29). Essentially, the wealthier the victim, the greater the punishment for the offender; conversely, the poorer the victim, the more therapeutic or compensatory the punishment will be. Furthermore, conciliatory law will be used if the social status of the two parties is equal. Black (1976, 2008) writes, "Conciliatory law varies inversely with stratification. (p. 30). This means that when the two groups are equal in their status level, they are more likely to find a compromise between the two groups than to punish, compensate, or require therapy for one of the groups. Equals will negotiate to solve the problem, those higher up will punish lower level offenders, and those on the bottom may be compensated or the higher offender may have to seek treatment and not compensate the victim at all.

Therefore, with all else held constant, by examining the offender's rank in relation to their victim's, one will be able to predict whether the offender will be treated with upward or downward law and penal, therapeutic, compensatory, or conciliatory law. The level of the law and the harshness of the punishment will rest on the status level of the offender in relation to the victim.

Morphology

Morphology is the "horizontal aspect of social life" (Black, 1976, 2008, p. 37). In essence, this means that the distribution of people across society will vary. This distribution can include the "division of labor, networks of interactions, intimacy, and

integration” (Black, 1976, 2008, p. 37). Morphology is the differentiation of people and how those different groups rely upon each other. Some individuals will specialize into specific groups, such as, lawyers, law enforcement, and doctors, and each specific group will rely upon a different entity within society in order to fully function. These specializations increase the differentiation between groups, thereby increasing the morphology in society. According to Baumgartner (1999), “Social morphology refers to patterns of interpersonal association and connection.” (p. 9). The degree in which people and/or groups are integrated into the society and the dependence of the two parties is the measurement for social morphology.

Black (1976, 2008) asserts that, “Law varies directly with differentiation, to a point, then reverses itself: The relationship between law and differentiation is curvilinear.” (p. 39). In other words law will increase with differentiation, in order to regulate the interactions between the various and diverse groups. However, the amount of law will decline as symbiosis enters the framework. Black (1976, 2008) states, “As social life evolves beyond interdependence to symbiosis, however, law decreases.” (p. 40). When symbiosis occurs, the groups’ dependence will result in a decrease in law. As seen with the stratification section, the more the groups become similar, the more they will negotiate and reconcile versus punishing or compensating each other. That relational distance also impacts the amount of law that will exist in society. States Black (1976, 2008), “The relationship between law and relational distance is curvilinear.” (p. 41). This means that those with a close relationship or the groups that have reached symbiosis will not or rarely involve the law in conflicts. As the distance between the groups’ relationship expands, more law will be incorporated. The amount of law will peak when

the interaction is between two groups that are strangers. The style of law will also vary with the distance between the two groups. Groups with closer relationships may choose compromise while groups that are unfamiliar with each other may choose penal law.

Black (1976, 2008) explains, “Thus, all else constant, strangers are more likely to oppose one another as adversaries, whereas intimates are more likely to offer help...” (p. 47).

The next section of morphology focuses on the group’s integration within social life. According to Black (1976, 2008), “Law varies directly with integration.” (p. 49). Thus those individuals or groups who are close to the center of society and social life will have “more law than those further out” (Black, 1976, 2008, p. 49). The groups that are closely tied with society will use the law to settle disputes versus groups that reside on the fringes of society. Groups that remain outside the center of social life may have other tactics for dealing with conflict.

The final section of morphology centers around how centrifugal and centripetal law interact with the individuals and groups in society. The first premise of this principle on centrifugal and centripetal law states, “Centrifugal law is greater than centripetal law.” (Black, 1976, 2008, p. 50). Thus, if an individual or group who is not integrated within society commits an offense against an integrated individual or group, the punishment and amount of law involved will be quite severe. This premise is similarly related to the downward/upward law found in stratification. The group that is most closely tied to society will have the benefit of the judicial system in both punishing the offender and being relieved of committing an offense. Black (1976, 2008) also states, “Centrifugal law varies directly with radial distance.” But, “Centripetal law varies inversely with radial distance.” (p. 50). This indicates that the likelihood for success of an integrated

group or person will vary on the integration level of the opposing party. Black (1976, 2008) explains,

...the likelihood of a complaint by an integrated person against a marginal person increases with the difference in integration between them, as does the likelihood that the complaint will succeed. But the likelihood of a complaint in the opposite direction, from a marginal person against someone more integrated, decreases as the difference between them increases, and the same applies to the success of complaint. It follows that, all else constant-including the racial status of the offender-law varies directly with the integration of the victim. And all else constant-including the status of the victim-law varies inversely with the integration of the offender. First consider the offender. (p. 50-51).

This segment of Black's theory, illustrates how the specialized groups interact within the society. While fascinating, it will not have much impact on the analysis of the Arizona legislation. The other four topics (stratification, culture, organization, and social control) will be fundamental in analyzing the Arizona immigration legislation.

Culture

The next section, culture, is best described as the expressive activities of a particular group or society. As Black (1976, 2008) defines it, "Culture is the symbolic aspect of social life, including expressions of what is true, good, and beautiful." (p. 61). This culture can range from expressive dance, artwork, music, or any form or medium that can specifically translate the values of a particular group to the viewing audience. As Black explains, culture is separate from the way people may experience culture. The culture of a group can be shown and shared with another group, but the experience of another group's culture is entirely separate from the viewing group's culture and values. Culture can also fluctuate in its quantity and behaves differently for each particular group.

Culture can vary in its quantity, and when this happens the law will vary as well. Black (1976, 2008) explains, “Law varies directly with culture.” (p. 63). Thus when a society has little culture, it will also have little law. The same is true for a society rich in culture—it will also be rich in law. This concept of high culture and high law levels is inherently connected to the education level. According to Black, the more culture a group has, the higher the education level for the group will be. However, as Black (1976, 2008) points out, “Accordingly, law varies directly with literacy and education. Literate and educated people are more likely to bring lawsuits against each other...” (p. 64). Therefore as culture increases, education will increase, and law ultimately will increase since it is inherently connected to the culture and education levels.

The next premises of Black’s culture argument rest on the interaction between groups with different or no culture at all. The law will behave differently in each scenario. Black’s first premise states, “Law is greater in a direction toward less culture than toward more culture.” (Black, 1976, 2008, p. 65). This signifies that if a person who has less culture commits an offense against a person with more culture, the law will be greater and the offense is considered more serious. However, in the opposite direction, if a person with more culture commits an offense against a party that has less culture, the offense will be considered less serious.

Black (1976, 2008) next contends that “In a direction toward less culture, law varies directly with cultural distance.” But “In a direction toward more culture, law varies inversely with cultural distance.” (p. 65). Thus if the offender is less educated, the offense is greater. However, if the offender is more educated than the victim, the offense

is the opposite—it is lesser, especially as the gap between the education levels between the two parties widens.

The next premise of Black's cultural theory contends that, "Law varies directly with conventionality." (Black, 1976, 2008, p. 68). This premise implies that as law gets closer to the generally accepted principles of a society (what one could call "mainstream society"), the law of the society will increase. The further one travels from the generally accepted principals, the less law one will encounter. Black contends that groups within the society are more likely to involve law in their interactions with similar groups, than with dissimilar groups. Black (1976, 2008) also purports that "Law is greater in a direction toward less conventionality than toward more conventionality." (p. 69). Thus if an unconventional (or non-mainstream) individual or group commits an offense against a conventional individual or group, the offense will be regarded as more serious than an offense occurring in the opposite direction. A higher educated, wealthier individual would be less accountable for an offense against a lower status, less educated, poorer individual. If the reverse were to happen, the offender (in this case the poorer individual) would be more accountable and the offense would be considered greater. Black contends that as groups' cultures become intermixed and become a new "conventional," the quantity of law will be more equal.

Black (1976, 2008) next contends, "The relationship between law and cultural distance is curvilinear." (p. 74). Like all the other curvilinear models in Black's theory on the behavior of law, at the extremes of the bell curve, the amount of law is the least. The peak of the amount of law is at the crest of the bell curve. When there is little to no diversity, or when there are extreme poles of diversity, then the amount of law is minute.

However, when there is a mix of cultural diversity between the different groups, the amount of law is at its highest. Black (1976, 2008) explains, “Hold constant all but the diversity of culture, compare societies of every kind, and law is greater where culture is more diverse in the daily life of people.” (p. 75). One could contend, particularly when there is little law with extremely diverse groups, that those groups who try to intermingle their cultures, or if one group attempts to adopt the mainstream culture, there will end up being more law and more legal interaction than if the groups were to remain separate.

The style of law also varies with the amount of cultural distance between the groups. Black (1976, 2008) explains, “All else constant, penal law varies directly with cultural distance.” (p. 78). The more closely related the group’s cultures are, the more likely therapeutic or conciliatory law will be applied. The farther apart the groups’ cultures are, the more likely penal and compensatory law will be used.

Organization

Organization is the measurement of cooperation in society. Black (1976, 2008) defines it in the following way: “Organization is the corporate aspect of social life, the capacity for collective action.” (p. 85). According to Baumgartner (1999), “In modern societies, this aspect of social life is embodied most dramatically in the many formally structured groups, such as business corporations, that pursue a common agenda over long periods of time.” (p. 11). Essentially, organization in Black’s theory measures the interaction between individuals and artificial individuals. The level of cooperation between the two types of individuals creates the organizational level of society.

Black’s first premise regarding organization is that, “Law varies directly with organization.” (Black, 1976, 2008, p. 86). This means that the more a society can

cooperate with different groups to achieve goals, the higher the amount of law will exist in society. When an event happens such as a flood or war, the law will increase as more groups team up and work together to solve the problem. As collective action increases, the law increases. Black (1976, 2008) also explains that, “Law is greater in a direction toward less organization than toward more organization.” (p. 92). Therefore, a large organization, or an artificial individual, is more likely to make a complaint against an individual or smaller organization than the opposite occurring.

Black (1976, 2008) continues, “In a direction toward less organization, law varies directly with organizational distance.” But, “In a direction toward more organization, law varies inversely with organizational distance.” (p. 93). The larger and more organized a group is, the more successful its interactions with the law will be. If the opposite occurs and an individual brings a complaint against an organization, then the success rate will be minimal. As Black (1976, 2008) explains, “...all else constant...law varies inversely with the organization of the offender. And, all else constant...law varies directly with the organization of the victim. First consider the offender.” (p. 93).

Essentially, the greater the distance between the organization of the individual and the large corporation the less likely the individual will succeed against the group. However, if the corporation is highly organized and brings a complaint against an individual or smaller group, it will likely succeed. The success or failure rate will depend on the size and organization of the particular offending group that is being examined. Baumgartner (1999) elaborates by writing that,

...there are important social differences between organizations and individuals. Organizations generally command more wealth, expertise, and other resources than individuals, and their relations with outsiders are

likely to be more impersonal and more narrowly focused. In dealings between organizations and individuals, the former generally enjoy an advantage over the latter... (p. 11).

As Black explains, the organization will have a higher likelihood of lodging a complaint against an individual, compared to an individual against an organization. The most law or punishment that will result is when an individual commits an offense against an organization. Since this group has the higher likelihood of making a complaint, the fact that an individual would commit an offense against the organization means that the law will be the greatest in dealing with the offending individual.

Social Control

The final section of Black's theory on the behavior of law entails social control. This, according to Black (1976, 2008), is the "normative aspect of social life." (p. 105). Social control pertains to the various forms of rules and regulations that exist within society to guide an individual to behave a certain way. Law is one facet of social control—a control that is run by the government. However, family, customs, ethics and other behavioral regulations are also other forms of social control. As Baumgartner adds, "Law is not the only method people use to deal with behavior of which they disapprove. It is, in fact, only one of a number of techniques of social control that can be employed." (Baumgartner, 1999, p. 12). This aspect of Black's theory measures the quantity of other non-law authority and analyzes whether law is stronger or weaker in the presence of these other aspects of social control.

When the other aspects of social control are weak, the law becomes stronger. According to Black (1976, 2008), "Law varies inversely with other social control." (p.

107). As the other facets of social control decrease, be it family, cultural, or ethical, the law increases to prevent undesirable behavior. When the social control is strong on a non-legal level, the law does not usually become involved and its influence decreases. For example, if there is a conflict between individuals or a group of the same family or culture, then those involved parties will probably settle the issue internally using specific terms and conditions related to their group instead of involving the law. However, when the non-legal social control has diminished or is non-existent, the law must be evoked in order to settle the dispute. Without the law, resolution would not take place.

Social control defines what is and is not deviant. Black (1976, 2008) states, "...the more social control to which it is subject, the more deviant the conduct is." (p. 9). Similarly, just as social control defines what is deviant behavior by attempting to prevent said behavior, social control also defines who is deviant and who is "respectable" (Black, 1976, 2008, p. 111). Respectability does not vary in the same manner as stratification and wealth. Rather, respectability transcends the issue of wealth. As Black points out, an individual can be wealthy but not respected. The reverse can also occur; an individual may be poor but highly respected within the community. It follows that "Law varies directly with respectability." (Black, 1976, 2008, p. 112). Individuals who are not respectable will have less law amongst themselves, while those who are considered respectable will use more law.

Therefore, if an unrespectable individual attempts to use the law against a respectable person, that person is unlikely to succeed. The opposite also holds true. If a highly respectable individual invokes the law, they have a higher probability of succeeding in a legal interaction. Furthermore, if an individual of low respectability

status commits a crime against an equally low level individual, the result will be minimal or even non-existent in the legal environment. Black claims that such individuals are not likely to bring a claim against the offender.

Black (1976, 2008) also contends, “Law is greater in a direction toward less respectability than toward more respectability.” (p. 114). This indicates that an individual who is less respectable will be subject to the law more often and not enjoy the benefits of the law as often as an individual with a high respectability level. If a highly respectable person lodges a complaint against a lower level individual, then the former will likely succeed versus the opposite occurring. In this instance, status (as found in stratification) can intermingle with respectability. If the individual has high status and respectability, such as a police officer, then the word or testimony of that individual will be worth more than a respectable individual, and even more than a non-respected individual or group.

Black also purports that an individual who has been subject to the law and has less respectability is also “vulnerable” to the law as well. Black (1976, 2008) explains, “Anyone who has been subject to social control has less protection, and any such person is more vulnerable to law as well.” (p. 116). Any individual or group that now carries a record of suffering a sanction by the law will be vulnerable to legal interaction, particularly unsuccessful legal interactions, in the future. Due to the previous legal interaction, the group or individual has lost respectability. With that loss comes the vulnerability to the law, reduced legal protection, and a minimized success rate for sanctions against respectable groups or individuals. According to Black (1976, 2008), “In a direction toward less respectability, law varies directly with normative distance.”

But, “In a direction toward more respectability, law varies inversely with normative distance.” (p. 117). As previously explained, if an individual is a past offender, then that person will likely be subject to more law in the future. If the individual or group is respectable, then a lower amount of law, if any law at all, will be applied to the situation.

f. Conclusion

What can be derived from Black’s theory of law? If presented with a fact pattern, how can one determine what will be the legal conclusion and how will the law behave? How would one analyze the Arizona immigration legislation? Baumgartner answers that,

Every person who becomes involved in any way in a legal matter contributes something to its outcome. Each brings a social identity to the case that affects how it is handled; each helps to determine what Black calls the ‘social structure of the case’...It is, then, through the characteristics of all people who participate in cases that the independent variables...find their entry into the legal arena. (Baumgartner, 1999, p. 13).

By analyzing all the involved parties, one can begin to determine who will succeed, who will be punished, and at what level the individual or group will suffer a sanction. By analyzing the stratification and determining the level of wealth between the participants one can begin to analyze and determine the result of the legislation. Additionally by understanding the culture and how law interacts with this facet of society, one can ascertain who will be punished and to what extent. Finally, by analyzing organization and social control, one will discover who or what will be successful in a legal interaction and who will be considered respectable and highly regarded in the eyes of the law. Each of these facets in Black’s theory plays a role in determining the final outcome of a legal interaction. When all of these factors combine, the answer becomes clear—it becomes necessary to address the issues that prevent some groups, based on

legal limitations due to their identities, from receiving fair treatment in the legal realm and question why such restrictions are allowed to continue. In sum, it becomes necessary to question the behavior of law.

3.2 Blackian Analysis of the Arizona Immigration Legislation

It has been shown in the analysis of Black's theory on the behavior of law that an individual's interaction with law itself is malleable and not a rigid equation that will automatically (and blindly) produce a fair and impartial result. Rather, the factors that permeate U.S. society also seep into the justice system and produce legal results that take into account the status, wealth, respectability, and organizational skills of each participant before rendering a result. As previously explained, there are some groups that are given preferential treatment. The group at the bottom is left to fend for itself and faces the legal system without the perks and benefits that the groups at the top of the totem pole receive.

Black's theory on the behavior law explains how and why law behaves a particular way. His theory explains the infrastructure of the law, answering the questions of why and what particular motivations could be behind the power structure setup in legislation or legal interactions. Black (1976, 2008) explains, "By implication, these propositions also predict and explain many facts usually addressed by theories of deviant behavior, and reformulated, they predict and explain other kinds of social control." (p. ix). While these variables have different layers and distributions in society, when they come together, they create an infrastructure that is powerful enough to predict how law will behave and also show why it behaves in that particular way.

For example, Black (1976, 2008) states, "Law varies inversely with other social control." (p. 107). While on its face this may seem irrelevant to the Arizona immigration legislation, what Black's proposition means is that law becomes stronger as other forms of social control become weaker. Social control can vary in an individual's life, be they family, job, education, etc. However, once those forces of social control are diminished

(such as through an individual's immigration to another location) then the law will increase in strength to compensate for those missing factors of social control. If enough individuals immigrate, then the laws might go into "overdrive" if a large enough population is missing other forms of social control.

This paper analyzes and addresses the following topics: stratification, culture, organization, and social control within the scope of the Arizona immigration legislation. By analyzing said legislation, this paper provides a clear understanding of the factors that controlled the construction of the legislation and the implications for the groups at the bottom of the legal and societal totem pole.

3.2.1 Stratification

Stratification, which is the vertical aspect in societal life, relates to the distributive wealth across a particular society. Those that have more wealth have more distance from those that have the least. That distance in the vertical space between the groups or individuals is what demarcates the advantages and disadvantages each group will have during a legal interaction. As more stratification is created and sustained in a society, so too will more law be introduced and enforced within said society. As Black (1976, 2008) explains, "If people have an uneven distribution of wealth among themselves, or stratification, each person or group is higher or lower in relation to others." (p. 16). This inherent caste system makes the probability of an increase in law highly likely as more "outsiders" begin to move into a particular society.

When a new group immigrates to an area, it can be assumed that a large proportion of newly arrived immigrants (whether legally or illegally present) will be grouped along with other similar individuals somewhere along the economic spectrum

within the new community. Familiarity with others alone is enough to affect stratification. Black (1976, 2008) states, "...for that matter, the same applies across settings of every kind, even within a single community. There is less law among neighbors, colleagues, friends-less wherever people are more equal." (p. 15). Naturally, newly arrived individuals or those perceived not to be "engrained" within the community will be viewed as outsiders and not truly considered a neighbor or friend. When this perception occurs, the law increases. According to Black (1976, 2008), "Legislation increases, as do policing and inspection, litigation, damages, and punishment. People become more litigious." (p. 15).

Similarities can be seen regarding the Arizona immigration legislation.

According to the Arizona State Senate fact sheet for S.B. 1070, the purpose of the legislation is that it,

Requires officials and agencies of the state and political subdivisions to fully comply with and assist in the enforcement of federal immigration laws and gives county attorneys subpoena power in certain investigations of employers. Establishes crimes involving trespassing by illegal aliens, stopping to hire or soliciting work under specified circumstances, and transporting, harboring or concealing unlawful aliens, and their respective penalties. ("Fact Sheet", 2010, p. 1).

According to Black, the increase in legislation is an expected outcome due to the increase in the population of individuals who are considered by society as "unequal" in light of material wealth and economic distribution. When there is an increase in law, as Black points out, there will also be an increase in inspections and investigations. The Arizona State Senate fact sheet for S.B. 1070 shows that with the new legislation will also come an increase in inspections from law enforcement. The bill, S.B. 1070, itself states that the true purpose of the legislation is:

...is to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States. (House Engrossed Senate Bill 1070, 2010, p.1).

Legality of the immigrant aside, the main purpose of the act is to *deter* a particular group from residing in the state. Thereby proving Black's point: stratification will induce certain reactions by the law. Again with legal status aside, would the law deter if an entering group were wealthy? The first underlying issue that affects how the law behaves is wealth. If a society thinks that a particular group is draining the resources from the community instead of enhancing it, then it is highly probable that that society will want to deter that group from settling in the community.

Black also contends that the rank of an individual will also increase or decrease the law. Lower ranks will use and rely upon the law less while higher ranks will depend upon the law more. According to the Arizona State Legislature, Russell Pearce, the President of the Senate and self-proclaimed author S.B. 1070 ("Enough is Enough", 2010, p. 1), is a fifth generation Arizonan. He was also a "Chief Deputy for 23 years with the Maricopa County Sheriff's Office" ("Russell Pearce", 2011, p.1). Moreover, he was the "...first North Mesa Justice of the Peace" ("Russell Pearce", 2011, p.1). He has two sons in law enforcement and he is the current "State Senator from Legislative District 18" ("Russell Pearce", 2011, p.1) among a plethora of other community-based employment opportunities. He is the quintessential higher-ranked and community-engrained individual that Black describes when comparing lower ranks to higher ranks. Pearce undoubtedly outranks an immigrant and he relies heavily upon the law for results (even writing legislation for an intended result).

The final premise of Black's stratification theory describes the direction of the law in relation to the status of the group or individual. As previously discussed, "Downward law is greater than upward law." (Black, 1976, 2008. p. 21). As Black explains, the direction of the law will be opposite of the deviant behavior. If a lower group offends a higher-ranking group, then the law will be stricter and have a downward direction. An offense by a lower ranking individual or group against a higher-ranking group is the greatest offense and warrants the greatest amount of law as a response. Similarly, with the Arizona legislation, the group being offended (the state and its engrained members) are higher ranking than the lower group (the immigrants and new members). However, it is a perceived infringement that the state is attempting to address. According to the Pew Hispanic Center,

According to Pew Hispanic Center tabulations from the 2008 American Community Survey, there are 2 million Hispanics in Arizona, representing 30% of the state's population. One-third (33%) of Arizona Hispanics are foreign born.... The Pew Hispanic Center estimates that approximately 500,000 undocumented immigrants resided in Arizona in 2008. Nearly all (94%) of these undocumented immigrants are from Mexico. Moreover, approximately 10% of Arizona's workforce is undocumented (Passel and Cohn, 2009). (Hispanics and Arizona's New Immigration Law, 2010, p. 5).

Essentially, two-thirds of the Arizonan Hispanics are native or U.S. born. Furthermore, if only 10% of Arizona's workforce and 500,000 out of the 2 million Hispanics in the state are undocumented, does it justify a stricter legislative response than the one imposed by the federal government? Thus, according to Black, a perceived infringement by this group against the state will warrant the largest legal response, and in this case, new legislation with stricter punishments for violations.

This position is further cemented, for example, by §13-2928 of S.B. 1070. This

section of the legislation states that any “unlawful” stopping to pick up and hire passengers for work in a street, solicitation for work at a roadway, or acceptance of work in a roadway are all punishable by law. S.B. 1070 declares:

A. It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

B. It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic. (House Engrossed Senate Bill 1070, 2010, p.7).

It is clear from the language of the statute that the legislature is targeting a group that feels the need to solicit work from the curbside or from the side of a road. One can confidently affirm that someone who works for the state legislature or anyone from the highest ranking community group would not feel the need or even have the inclination to solicit temporary work from a roadway. Of particular importance is the fact that these two sections do not define the legal status of the individuals soliciting for work or those hiring. In fact, section C of §13-2928 clearly differs from section A and B by beginning with the phrase, “ It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien....” (House Engrossed Senate Bill 1070, 2010, p.7). Sections A and B apply the new law to the entire group of individuals in the lower tiered group. Black’s theory is again supported. An infraction by the lowest group (for example, illegal immigration) against a higher group (the state) results in the harshest application of law (preventing the entire lower group for soliciting for temporary work). Black (1989) states,

Insofar as the social structure of a case predicts how it will be

handled...the extent of structural differences among and between cases will determine the extent of legal variations across them. If different degrees of intimacy divide the adversaries from one case to the next, for example, or different levels of social status, or if the legal officials handling them differ in their social characteristics, the legal outcomes will vary to a greater extent than if the cases are more similar. In other words: Legal variation is a direct function of social diversity. (p. 59).

As Black also points out, the stratification in a society also predicts the style of law that is used in each instance. Black (1976, 2008) writes, “Downward law is more penal than upward law.” (p. 29). With this piece of legislation, violation of only section §13-2928 could result in a “Class 1 Misdemeanor” (House Engrossed Senate Bill 1070, 2010, p.7). The entire bill relies upon compensatory and penal law in order to punish the violators of the various sections. Some sections result in penal punishment and/or incarceration while other sections require a payment to the state in the form a fine. Black predicts that societies with little or no stratification will rely upon therapeutic and conciliatory law in order to resolve conflict. With a society that is plagued with stratification, the result of a legal contact will be penal law with an intermixing of compensatory law, which is seen in the Arizona immigration legislation.

Culture

Culture, which is the symbolic aspect of society life, includes “expression of what is true, good, and beautiful.” (Black, 1976, 2008, p. 61). In essence, anything that translates the values of a particular group can be regarded as culture. Poetry, religion, values, science, and technology can all be regarded as facets of a group’s culture. Black (1976, 2008) explains that “Law varies directly with culture” (p. 63), meaning that when there is little culture there is a low amount of law. However, when there is a high level of culture, especially during the intermixing of various different cultures, the law will be

greater.

Black (1976, 2008) also asserts that “Law varies directly with conventionality.” (p. 68). As previously discussed, society has generally accepted principles which are considered “mainstream”. When law moves closer to the mainstream of society it increases; and law decreases as it moves further away from the mainstream. However, “Law is greater in a direction toward less conventionality than toward more conventionality.” (Black, 1976, 2008, p. 69). If a group or individual has culture, which is considered not “mainstream” and commits an offense against an individual or group with mainstream culture, then the offense and the law involved are greater than if the reverse were to occur.

Black (1976, 2008) also states, “The relationship between law and cultural distance is curvilinear.” (p. 74). The peak of the involvement of law occurs when multiple cultures are intermixing versus when there is no culture or when the cultural diversity is so great that blending is not possible. Black (1976, 2008) adds, “...law is greater where culture is more diverse in the daily life of people.” (p. 75).

With the Arizona immigration issue, another facet of the problem lies with the intermixing of the cultures. Just as Black predicted, when the cultures begin to blend, the law is at its peak. However, the “mainstream” American culture is radically different from the influx of cultures from south of the border that the law becomes greater towards the culture that is “toward less conventionality” (Black, 1976, 2008, p. 69). Thus, if one were to express his/her culture in a society with a high level of law existing in society, then that person could become vulnerable to the law. Black (1976, 2008) emphasizes that “Any person who is unconventional in his dress, speech, manner, ideas, or anything else,

is more vulnerable to law of every kind...In general, the more a person resembles his neighbors, the more he blend into the crowd, the more immunity from law he enjoys.” (p. 71).

For example, S.B. 1070 states in §11-1051:

B. For any lawful stop, detention or arrest made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town or this state *where reasonable suspicion exists that the person is an alien and is unlawfully present* in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. (House Engrossed Senate Bill 1070, 2010, p.2). (Emphasis added).

However, the phrase “where reasonable suspicion exists,” begs the question, What does raise a suspicion of illegality without racial profiling entering the picture? According to *Black’s Law Dictionary*, the definition of suspicion and *reasonable suspicion* vary significantly.

Suspicion: “The apprehension or imagination of the existence of something wrong based only on inconclusive or slight evidence, or possibly even no evidence.” (“Suspicion”, 2009, p. 1585).

Reasonable suspicion: “A particularized and objective basis, supported by specific and articulable facts, for suspecting a person of criminal activity. A police officer must have a reasonable suspicion to stop a person in a public place.” (“Reasonable suspicion”, 2009, p. 1585).

The bright line for determining “reasonable suspicion” becomes muddied with the Arizona’s P.O.S.T. list of identifying characteristics. Traveling in tandem or different

demeanor seems to be based more within the parameters of “suspicion” instead of “reasonable suspicion.” Such identifiers seem to open the door to pretextual stops rather than truly legal interactions.

So what are the effects of “reasonable suspicion” as defined by Arizona?

According to L. Darnell Weeden, author of the article entitled, “It is Discriminatory for Arizona or Society to Engage in the Anti-Immigration Practice of Profiling Hispanics for Speaking Spanish,” individuals may feel vulnerable to the law if they speak Spanish in public. Weeden (2010) defines that the term “Hispanic in appearance” denoting,

“...anyone who is at great risk of being label as an undocumented or unauthorized immigrant from Mexico. The point of such legislation is that any person in Arizona whose appearance suggests that she may be linked to Mexico is likely to be presumed as an undocumented alien, regardless of her actual immigration status, citizenship or country of origin.” (109).

A major concern with the Arizona legislation is the impact these laws will have upon the ability to speak Spanish in public. Weeden fears that speaking one’s native tongue (Spanish) in public will give incentive to law enforcement to find reasons to initiate a lawful contact after hearing an individual speaking his/her native tongue.

It is obvious the scope of S.B. 1070 includes citizens because one cannot reasonably tell by sight alone if a person is an immigrant or citizen. Under the Supreme Court's regrettable interpretation of the constitution's protection against unreasonable searches and seizures, it is permissible for law enforcement officers in Arizona to practice de facto national origin or ethnic profiling by lawfully stopping a person for a minor traffic violation while specifically targeting them for a violation of Arizona's anti-Hispanic immigrant law. (Weeden, 2010, p. 113).

Weeden further argues that speaking Spanish in public would give law enforcement officers reasonable suspicion that an individual might be an illegal immigrant. The cascading effect of such fear would result in a mandatory, but unofficial,

policy of speaking English in public in order to diminish suspicion or detection. Weeden (2010) elaborates by writing,

A person speaking Spanish in public in Arizona is likely to be targeted for traffic stops or jay walking by the police in order to justify checking that person's immigration status. In Arizona, if an individual is stopped by the police, even for a minor traffic violation, the implications of S.B. 1070 come into effect. The officer is substantially certain to presume that a person is in Arizona illegally and demand proof of federal immigration status if he or she is Hispanic in appearance and speaks to the police in Spanish. (p. 113-114).

The unofficial policy of English only would, in essence, create a chilling effect on the speech of the Spanish-speaking individuals. Weeden (2010) adds:

In Whren the Supreme Court held that a brief stopping of a driver based on probable cause that he committed a minor traffic offense does not breach the Fourth Amendment's ban against unreasonable seizures, although a reasonable officer would not have blocked the drivers movement for some other law enforcement purpose. n31 As a practical matter, a person Hispanic in appearance will be burdened with carrying identification to show he is lawfully in Arizona, while those who are not Hispanic in appearance will generally not have to meet such a burden. Arizona's anti-Hispanic immigrant law, S.B. 1070, is likely to have a chilling effect on the right of a person of Hispanic appearance to express cultural identity by speaking Spanish in the public square because of the unreasonable risk of ethnic and national origin profiling by the police. (p. 113).

As Black has written, anything that makes an individual “unconventional”, including his speech, makes him more vulnerable to the law. Those that blend in with the mainstream enjoy more protection, while those that do not or cannot hide their unconventional characteristics and culture will be subject to more law.

Organization

Organization relates to the collective or cooperation aspect between individuals and corporations. The types of organizations that exist within society and the quantity of

organizations in a particular society affect how much law exists within a society. Black (1976, 2008) contends that, “Law is greater in a direction toward less organization than toward more organization.” (p. 92). Therefore, a business or other group will be more likely to lodge a complaint about an issue and is more likely to succeed in the long run. According to Black (1976, 2008), “All else constant, then, a business or other organization is more likely to complain to the police about an individual than vice versa, and, when this happens, an arrest is more likely, as is a confession, prosecution, conviction, and severe sentence...Similarly, a group is more likely to bring a lawsuit to win...” (p. 92). As seen in the stratification section, the highest-ranking group can be classified as the group(s) with the most organization. The most organized group will usually be the most stratified. The most stratified groups typically have the most protection and immunity from the law. Black (1976, 2008) affirms this by stating, “Organization provides an immunity from law, and the more organized the offender, the more of this immunity is enjoyed.” (p. 93).

First and foremost, the state is the most organized collective in a society. The state makes the rules and enforces the rules. When law originates from a specific organization, one can infer that this particular group will also enjoy particular immunity from the law itself. For example, when examining the Arizona immigration legislation, one can see that the state provides an incentive for itself to enforce the legislation. S.B. 1070 § 11-1051 declares:

H. A person who is a legal resident of this state may bring an action in superior court to challenge any official or agency of this state or a county, city, town, or other political subdivision of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws, including 8 United States Code Sections 1373 and

1644, to less than the full extent permitted by federal law. (House Engrossed Senate Bill 1070, 2010, p.4).

The state relies upon the justification that a citizen could sue the state if a particular entity does not fully enforce the legislation. Such circular wording justifies and excuses the state from such action and strict enforcement due to the threat of a civil action from a shadowy and vengeful citizen-even though such a weakness was put in place by the state. The group that is the most organized enjoys the most protection. The state of Arizona wishes to have the strictest and strongest enforcement of the legislation from all state entities. To ensure this level of enforcement, the state allows for the threat of civil lawsuits. However, the state does not want to be sued and will be forced to apply the strictest and strongest enforcement of the legislation from all state entities. In essence, the state tries to appear duty-bound with circumscribed power. The state furthers verifies such a claim with the following from S.B. 1070 § 11-1051:

...If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than five hundred dollars and not more than five thousand dollars for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.

I. A court shall collect the civil penalty prescribed in subsection H of this section and remit the civil penalty to the state treasurer for deposit in the Gang and Immigration Intelligence Team Enforcement Mission Fund established by section 41-1724. (House Engrossed Senate Bill 1070, 2010, p.4).

Essentially, the state would allow itself to be sued and then pay itself to enforce the legislation. Besides having to pay for the legal costs of the prevailing individual, official, or agency, the state would lose no money from such a suit. However, the implication would be that the state would try to avoid such a civil action, which would, in

turn, justify the strict enforcement of the legislation. Another implication of this segment of the law is that it allows for any person to sue the government for enforcement. Now any private citizen could sue for perceived illegal immigration and force the Arizona to enforce the legislation to the strictest standard.

Secondly, the more organized a group becomes, the more successful it is in its complaint and invocation of law. If two organizations come together to create law, one can safely assume that the organizational skills of these two groups will be the most successful against the lower tiered groups and/or individuals. According to National Public Radio (NPR), there are connections between the Arizona immigration legislation and the private prison corporations. Laura Sullivan, author of the article “Prison Economics Help Drive Ariz. Immigration Law” writes:

NPR spent the past several months analyzing hundreds of pages of campaign finance reports, lobbying documents and corporate records. What they show is a quiet, behind-the-scenes effort to help draft and pass Arizona Senate Bill 1070 by an industry that stands to benefit from it: the private prison industry.

The law could send hundreds of thousands of illegal immigrants to prison in a way never done before. And it could mean hundreds of millions of dollars in profits to private prison companies responsible for housing them.

Arizona State Sen. Russell Pearce says the bill was his idea. He says it's not about prisons. It's about what's best for the country. . . . But instead of taking his idea to the Arizona statehouse floor, Pearce first took it to a hotel conference room.

It was last December at the Grand Hyatt in Washington, D.C. Inside, there was a meeting of a secretive group called the American Legislative Exchange Council. Insiders call it ALEC. (“Prison Economics”, 2010, p. 2).

The newsgroup alleges that Pearce, who claims to have written the bill himself,

met with the Corrections Corporation of America and other private prison companies in order to draft legislation with other American Legislative Exchange Council (ALEC) members, including other legislators and other corporations. While not illegal, it does cause one to question the motives of both the state and the legislature, if the main author behind the bill is actually a privatized prison corporation.

ALEC, which NPR explains is a membership organization, allows members to attend annual conferences where legislative discussions and drafting of “model bills” occur. Laura Sullivan, author of the article “Shaping State Laws With Little Scrutiny” claims that:

The largest prison company in the country, the Corrections Corporation of America, was present when the model immigration legislation was drafted at an ALEC conference last year.

ALEC's Bowman says that is not unusual; more than 200 of the organization's model bills became actual laws over the past year. (“Shaping State Laws”, 2010, p. 1).

Sullivan also adds:

So, for example, last December Arizona state Sen. Russell Pearce sat in a hotel conference room with representatives from the Corrections Corporation of America and several dozen others. The group voted on model legislation that was introduced into the Arizona legislature two months later, almost word for word. (“Shaping State Laws”, 2010, p. 3).

According to Sullivan, when Pearce’s bill was introduced in the Arizona legislature, “there were signs of ALEC influence” (“Prison Economics”, 2010, p. 4). Sullivan confirms that “Thirty-six co-sponsors jumped on, a number almost unheard of in the capitol. According to records obtained by NPR, two-thirds of them either went to that December meeting or are ALEC members.” (“Prison Economics”, 2010, p. 4). Sullivan then asserts, “Thirty of the 36 co-sponsors received donations over the next six months,

from prison lobbyists or prison companies — Corrections Corporation of America, Management and Training Corporation and The Geo Group.” (“Prison Economics”, 2010, p. 4). She explains that more states are now beginning to introduce or consider similar legislation like to that of Arizona’s. Interestingly, some of those legislators involved are ALEC members and/or were at the same conference as Pearce. Sullivan writes:

A review of the two dozen states now considering Arizona's immigration law shows many of those pushing similar legislation across the country are ALEC members.

In fact, five of those legislators were in the hotel conference room with the Corrections Corporation of America the day the model bill was written. The prison company didn't have to file a lobbying report or disclose any gifts to legislators. They don't even have to tell anyone they were there. All they have to do is pay their ALEC dues and show up. (“Shaping State Laws”, 2010, p. 3).

Thus Black’s theory on the behavior of law in relation to organizations is again supported. Those actions that organizations take offense to will be dealt with swiftly and severely by the higher tiered groups through the application of the law. As Black purports, the behaviors considered deviant against an organization are considered the greatest offense. Conversely, an action by an organization against an individual or lower tiered group is considered the least offensive. Black (1989) writes, “A lack of organization is one of the greatest disadvantages-possibly the greatest-anyone can experience in legal life. Nevertheless, in modern societies such as the United States, most people with legal problems are completely along and unorganized, like bastards in a tribe. This is legal individualism.” (p. 45). As seen with the Arizona immigration legislation, the organizations seem to have the upper hand against the lower tiered groups

who lack organization, if having any at all.

Social Control

The last segment of Black's theory discusses social control. Black defines this as the "normative aspect" of life. Social control defines the acceptable behavior, and places limits around what is defined as deviant behavior. As Black (1976, 2008) explains, "Law varies inversely with other social control." (p. 107). As one form of control lessens (e.g., family, school, religion, or workplace) law will increase in order to take the place of the decreasing social control. Social control, according to Black, defines what is deviant behavior and identifies who is respectable within the community. Black (1976, 2008) explains that, "Law varies directly with respectability." (p. 112). The more respectable an individual is, the more successful he/she will be at lodging a complaint and getting a desired result. The reverse also holds true— if an unrespectable person lodges a complaint, then there is high probability that he/she will not be successful in invoking the law or getting a satisfactory result. Black (1976, 2008) adds, "Even if an unrespectable person invokes law against another, he is less likely to succeed. In this sense, a crime by one unrespectable person against another is less serious." (p. 112). Black also contends that the law is greater when the individual is more respectable. Black (1976, 2008) states, "All else constant, then, the less respectable party is more likely to be subject to law, and he is less likely to have its benefits." (p. 114). With the Arizona immigration legislation, one can see similar behavior with the law.

Another concern with the Arizona Immigration legislation is the impact this bill may have upon immigrant women who are in abusive relationships and allowed protection to remain in the United States (although not legally present) under the

Violence Against Women Act (VAWA). This congressional act allows for women who may be illegal but married to a U.S. citizen the ability to approach the federal government for reprieve and safety from the abusive marriage. However, the woman must approach law enforcement for protection, an issue that becomes complicated with the new Arizona immigration legislation because it stipulates that any legal contact requires officers to verify the legal status of the individual. Ashley Arcidiacono (2010), author of the article “Silencing the Voices Of Battered Women: How Arizona's New Anti-Immigration Law "S.B. 1070" Prevents Undocumented Women from Seeking Relief Under the Violence Against Women Act” states that there are,

...three provisions of S.B. 1070 that negatively impact battered undocumented women remain in effect: (1) the provision requiring that S.B. 1070 be enforced to the full extent of federal law, (2) the provision allowing citizens to sue law enforcement if S.B. 1070 is not enforced to the full extent of federal law, and (3) the provision prohibiting the transportation and harboring of undocumented aliens. These provisions exacerbate the climate of fear surrounding undocumented battered women in Arizona by cloaking anti-immigration sentiment with the power of the law. Thus, S.B. 1070 continues to deter these women from utilizing the Violence Against Women Act (VAWA) through both anti-immigration sentiment and active provisions. (p. 175-76).

As Arcidiacono explains, undocumented and battered women can seek protection from the government by applying for a suspension of deportation if qualifying under VAWA. If the woman qualifies under certain conditions, then she may be able to stay in the United States and later apply for citizenship despite being an undocumented resident.

Arcidiacono (2010) outlines the following qualification for VAWA:

...a woman must prove the following: (1) she married her abuser in good faith; (2) her abuser is a U.S. citizen or lawful permanent resident; (3) she resided with him in the United States; (4) during the marriage, either she or her child had been battered or subject to extreme cruelty perpetrated by the spouse; (5) she is of good moral character; and (6) her deportation

would result in extreme hardship to either herself or her children. (181).

Furthermore, a woman who is not married to a U.S. citizen is allowed a “U-visa” which, according to the VAWA rules, gives women who are unmarried the ability to have four years of temporary residency in the United States and the opportunity to apply for permanent residency afterwards if she meets the criteria of:

“(1) ‘substantial physical or mental abuse’; (2) ‘information concerning criminal activity’; (3) certification of her helpfulness to ‘Federal, State, or local authorities investigating or prosecuting’ the crime; and (4) a crime that ‘violated the laws of the United States or occurred in the United States.’” (Arcidiacono, 2010, p. 184).

However, the problem arises that these women will be afraid to come forward with legislation like the S.B. 1070 in place in the state of Arizona and even nationwide. An issue that women in this category might face is that they find themselves in a “legal limbo” due to their circumstances. If they qualify for protection under VAWA, according to Arcidiacono, it can take upwards of a year for the official paperwork to be placed into the hands of the woman. Thus, if a woman is stopped for, say jaywalking, and is asked to show identification proving her residency status in the United States, she faces the risk of being jailed until such proof can be produced. For example, § 13-1509 states, “A. In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 United States Code Section 1304 (e) or 1306 (a).” (House Engrossed Senate Bill 1070, 2010, p.4).

The most important issue that the immigration legislation fails to address is the fact that the abusive relationship that the woman desires to leave could create problems for providing official documentation. States Arcidiacono (2010):

This requirement is particularly harsh as applied to undocumented battered women in Arizona for several reasons. Foremost, these women do not have the necessary identification documents precisely because their abusive husbands control their access to the immigration process. Thus, this provision of S.B. 1070 is in direct conflict with VAWA, which does not mandate that a woman present any form of identification as part of meeting the four criteria for relief mentioned above. In fact, an undocumented battered woman is eligible precisely because she is undocumented and without the necessary identification to otherwise help herself through the immigration process. Nonetheless, because these women cannot rebut the presumption that they are illegally in the United States if they are stopped by law enforcement, this provision of S.B. 1070 further deters them from leaving an abusive home and seeking relief under VAWA. (p. 187-8).

Thus, a battered woman must first approach law enforcement to seek help. Next, she must wait for official paperwork from the government so that she can have documentation of her residency status. According to Arcidiacono, waiting for such documentation can take over a year—a time period which would leave her vulnerable to the legislation’s newly criminalized act of not carrying alien registration documents.

Arcidiacono (2010) writes:

There are many non-citizens who are present in the United States without formal permission who lack the "registration document" mandated by S.B. 1070, yet would not be removed if placed in federal removal proceedings. For example, an individual may be eligible for some form of immigration relief, such as asylum, adjustment of status, or withholding of removal. Some of these individuals are known to the federal government; others will not be identified until they are actually placed in proceedings by the federal government and their cases are adjudicated. n98

S.B. 1070's mandate that these women have the required documentation, and Arizona's hope to imprison and refer them to federal authorities if they do not, are misplaced. This provision significantly increases the likelihood that women will not contact police or leave their homes while penalizing them for an undocumented status perpetuated by their abusive husbands. Consequently, this provision counteracts the efforts of VAWA and prevents these women from attempting to seek the relief it offers. (p. 189).

Noah Pickus and Peter Skerry, authors of “Good Neighbors and Good Citizens:

Beyond the Legal-Illegal Immigration Debate,” argue that the illegal-legal division line is rather blurry but supported in political speech in order to maintain the image of illegal immigration. Pickus and Skerry explain, “Consider the rhetoric across the political spectrum. A liberal columnist depicts illegals as ‘living in the shadow.’ A conservative commentator refers to them as a ‘huge, subterranean population’ that exists in fear of one day being ‘whisked away by government agents.’” (Swain, 2007, p. 100). The reality is, however, that a good number of these individuals have different statuses within the immigration system that are not technically illegal, but not technically documented either. Pickus and Skerry emphasize:

Then there are the 1 million-1.5 million among those 12 million illegals who University of Virginia law professor David Martin estimates to be in ‘twilight status.’ Of these, more than 300,000 have Temporary Protected Status (TPS), a category Congress devised in 1990 as a way to avoid either repatriating or granting refugee status to individuals from countries (such as El Salvador or Nicaragua) beset by civil war and other unsafe conditions. Some Liberians have been here ‘temporarily’ for 14 years. In any event, those afforded TPS are usually counted among the undocumented. (Swain, 2007, p. 102).

The authors continue explaining that delays and adjustments can cause other documentation problems. While they are not technically illegal, they still do not have the proper documentation needed to satisfy the law. Pickus and Skerry affirm that “In fairness to the bureaucrats, immigration law is a complicated maze of exceptions and deadlines cared out by Congress to accommodate diverse constituencies. These are not only difficult to administer; they are hard to comply with and easy to run afoul of.” (Swain, 2007, p. 102).

While it is not an excuse to illegally immigrate into a country, this paper demonstrates that the issue is quite complex. The face value of the law and the real

implications can often be two distinct images. Black's theory is once again supported. Social control decreases for a group that has moved or is new to the area. Those that are considered "respectable" or more engrained within the community define what is deviant and what is legal. In turn, those who reside in the lesser-tiered groups are subjected to the law without other means for recourse. Therefore, these low-tiered groups will not invoke the law for protection when it is available to them.

Conclusion

Black's theory on the behavior of law is renown for understanding and analyzing how social factors can and should be taken into account in order to determine the result of a legal interaction. With the Arizona immigration legislation, S.B 1070, one can see that Black's theory plays out as predicted. The higher tier relies upon the law to fulfill its wishes while the lowest tier is subjected to the law with little or no recourse (except involvement from other higher-tiered groups). By analyzing the various facets of the theory, it is demonstrated that those with the most wealth are the most successful with legal interactions and in achieving specific ends through the law. With culture, it is ascertained that the lowest-tiered group will suppress its culture in order to blend in and be less vulnerable to the law. Regarding organization, one can see that the corporations have taken federal matters into their own hands for lucrative purposes. And finally, with social control, it is shown yet again the lowest-tiered group will be hesitant to seek assistance and vulnerable to the law.

4.0 Conclusion

Currently, S. B. 1070 still has an injunction in place against the four most highly contentious segments of the legislation. However, the bill's enforceability may change as the case, *United States v. Arizona* (2010), makes its way to the Supreme Court. Furthermore, the winds of immigration legislation seem to be continuously changing direction.

As discussed before, NPR discovered that many legislators and privatized corporations were meeting to formulate new legislation to be taken back to each legislator's home states. According to Sullivan,

“A review of the two dozen states now considering Arizona's immigration law shows many of those pushing similar legislation across the country are ALEC members. In fact, five of those legislators were in the hotel conference room with the Corrections Corporation of America the day the model bill was written.” (“Shaping State Laws”, 2010, p. 3).

This issue will continue on or die according to how the Arizona case plays out. Lacey adds, “The decision will be closely watched in several states that are considering similar laws of their own. The Georgia Senate was set to debate the matter on Monday, and another bill appeared on the move in Alabama.” (“Appeals Court Rules”, 2011, p. 2).

This study is designed to answer one main question: How does law behave in relation to the Arizona immigration legislation in regard to a Blackian analysis? Through this thesis, it has become apparent that wealth, membership to the mainstream culture, high levels of organization, and more social control benefit the individuals that take part in creating this legislation. This thesis has demonstrated when analyzing stratification, that those with the highest amount of wealth control the functioning of the law. Those with the least amount of wealth will be subject to the law the most. With culture, it is

ascertained that as the culture moves toward the peak of intermixing, the law will intensify. When this intensification occurs, those that are not part of the “mainstream” culture will become subjected to the law more than mainstream members. The Arizona legislation has the potential to impose a chilling effect upon Spanish speakers, since they will be considered unconventional because of their speech. This in turn will lead to more law in these individuals’ lives.

The state has shown through its organization and cooperation with other corporations that it will benefit the most from this new immigration legislation. In the meantime, the least organized groups (namely the individuals) will be vulnerable to the law. This law, as NPR has uncovered, was created to make profit for both Arizona and the private prison corporations. The ones that will pay the highest price for this new legislation will be the unorganized individuals. Finally, social control will have its own negative effects upon members of the community. The least “respectable” members of society will be left without the protection of the law and will refuse to rely upon the system that was designed to protect them. Finally, those individuals who are not illegal, yet lack documentation, will be swept up within the wording of the law.

Roger M. Smith, author of “Alien Rights, Citizen Rights, and the Politics of Restriction,” phrases the complex issues surrounding the plethora of various legal debates concerning immigration perfectly. He writes, “The harsh picture is therefore not the whole story. But it is enough of the story to ensure that eternal vigilance remains the price of civil liberties for citizens and noncitizens alike.” (Swain, 2007, p. 126). This thesis only begins to scratch the surface of this evolving and complex problem. Indeed, this topic may even drastically change within the coming years. However this analysis is

the start of the vigilance that Smith speaks of. It is an analysis that warns of the “unintended” consequences that this legislation could inflict upon the least protected groups in the society.

Illegal immigration is a problem within the United States; however, this legislation is not designed to fix this. Rather, its design will inflict tremendous harm upon many individuals: citizens and non-citizens alike. This sweeping force of authority catches individuals who should be protected and will subject those protected individuals to the law in its strictest form. This thesis is not an answer for the illegal immigration issue. Rather, it is a warning flag designed to protect those vulnerable to the law, those that are at the bottom of the totem pole.

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Appendix: S.B. 1070 Immigration Legislation

On April 23, 2010, Senate Bill 1070 (sponsored by Senator Russell Pearce) was signed into law. SB1070 was enacted as Laws 2010, Chapter 113. House Bill 2162 made additional changes to Laws 2010, Chapter 113. Below is an engrossed version of SB1070 with the pertinent changes made by the Conference Engrossed HB2162. BLUE text indicates the original language of SB1070 and GREEN text denotes changes made by HB2162.

House Engrossed Senate Bill

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1070

AN ACT

AMENDING TITLE 11, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING TITLE 13, CHAPTER 15, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1509; AMENDING SECTION 13-2319, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-2928 AND 13-2929; AMENDING SECTIONS 13-3883, 23-212, 23-212.01, 23-214 AND 28-3511, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1724; RELATING TO UNLAWFULLY PRESENT ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Intent

3 The legislature finds that there is a compelling interest in the
4 cooperative enforcement of federal immigration laws throughout all of
5 Arizona. The legislature declares that the intent of this act is to make
6 attrition through enforcement the public policy of all state and local
7 government agencies in Arizona. The provisions of this act are intended
8 to work together to discourage and deter the unlawful entry and presence
9 of aliens and economic activity by persons unlawfully present in the
10 United States.

11 Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended
12 by adding article 8, to read:

13 ARTICLE 8. ENFORCEMENT OF IMMIGRATION LAWS

14 11-1051. Cooperation and assistance in enforcement of
15 immigration laws; indemnification

16 A. NO OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR
17 OTHER POLITICAL SUBDIVISION OF THIS STATE MAY LIMIT OR RESTRICT THE
18 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL EXTENT
19 PERMITTED BY FEDERAL LAW.

20 B. FOR ANY LAWFUL ~~CONTACT STOP, DETENTION OR ARREST~~ MADE BY A LAW
21 ENFORCEMENT OFFICIAL OR A LAW ENFORCEMENT AGENCY OF THIS STATE OR A LAW
22 ENFORCEMENT OFFICIAL OR A LAW ENFORCEMENT AGENCY OF A COUNTY, CITY, TOWN
23 OR OTHER POLITICAL SUBDIVISION OF THIS STATE IN THE ENFORCEMENT OF ANY
24 OTHER LAW OR ORDINANCE OF A COUNTY, CITY OR TOWN OR THIS STATE WHERE
25 REASONABLE SUSPICION EXISTS THAT THE PERSON IS AN ALIEN ~~WHO~~ AND IS
26 UNLAWFULLY PRESENT IN THE UNITED STATES, A REASONABLE ATTEMPT SHALL BE
27 MADE, WHEN PRACTICABLE, TO DETERMINE THE IMMIGRATION STATUS OF THE PERSON,
28 EXCEPT IF THE DETERMINATION MAY HINDER OR OBSTRUCT AN INVESTIGATION. ANY
29 PERSON WHO IS ARRESTED SHALL HAVE THE PERSON'S IMMIGRATION STATUS
30 DETERMINED BEFORE THE PERSON IS RELEASED. THE PERSON'S IMMIGRATION STATUS
31 SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES
32 CODE SECTION 1373(c). A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE
33 OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY
34 NOT ~~SOLELY~~ CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN IMPLEMENTING THE
35 REQUIREMENTS OF THIS SUBSECTION EXCEPT TO THE EXTENT PERMITTED BY THE
36 UNITED STATES OR ARIZONA CONSTITUTION. A PERSON IS PRESUMED TO NOT BE AN
37 ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IF THE PERSON
38 PROVIDES TO THE LAW ENFORCEMENT OFFICER OR AGENCY ANY OF THE FOLLOWING:

- 39 1. A VALID ARIZONA DRIVER LICENSE.
- 40 2. A VALID ARIZONA NONOPERATING IDENTIFICATION LICENSE.
- 41 3. A VALID TRIBAL ENROLLMENT CARD OR OTHER FORM OF TRIBAL
42 IDENTIFICATION.
- 43 4. IF THE ENTITY REQUIRES PROOF OF LEGAL PRESENCE IN THE UNITED
44 STATES BEFORE ISSUANCE, ANY VALID UNITED STATES FEDERAL, STATE OR LOCAL
45 GOVERNMENT ISSUED IDENTIFICATION.

1 C. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IS
2 CONVICTED OF A VIOLATION OF STATE OR LOCAL LAW, ON DISCHARGE FROM
3 IMPRISONMENT OR ON THE ASSESSMENT OF ANY MONETARY OBLIGATION THAT IS
4 IMPOSED, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE
5 UNITED STATES CUSTOMS AND BORDER PROTECTION SHALL BE IMMEDIATELY NOTIFIED.

6 D. NOTWITHSTANDING ANY OTHER LAW, A LAW ENFORCEMENT AGENCY MAY
7 SECURELY TRANSPORT AN ALIEN WHO THE AGENCY HAS RECEIVED VERIFICATION IS
8 UNLAWFULLY PRESENT IN THE UNITED STATES AND WHO IS IN THE AGENCY'S CUSTODY
9 TO A FEDERAL FACILITY IN THIS STATE OR TO ANY OTHER POINT OF TRANSFER INTO
10 FEDERAL CUSTODY THAT IS OUTSIDE THE JURISDICTION OF THE LAW ENFORCEMENT
11 AGENCY. A LAW ENFORCEMENT AGENCY SHALL OBTAIN JUDICIAL AUTHORIZATION
12 BEFORE SECURELY TRANSPORTING AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE
13 UNITED STATES TO A POINT OF TRANSFER THAT IS OUTSIDE OF THIS STATE.

14 E. IN THE IMPLEMENTATION OF THIS SECTION, AN ALIEN'S IMMIGRATION
15 STATUS MAY BE DETERMINED BY:

16 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
17 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

18 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE
19 UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES
20 CODE SECTION 1373(c).

21 ~~E.~~ F. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS OR AGENCIES OF
22 THIS STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF
23 THIS STATE MAY NOT BE PROHIBITED OR IN ANY WAY BE RESTRICTED FROM SENDING,
24 RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION STATUS,
25 LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION WITH
26 ANY OTHER FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING
27 OFFICIAL PURPOSES:

28 1. DETERMINING ELIGIBILITY FOR ANY PUBLIC BENEFIT, SERVICE OR
29 LICENSE PROVIDED BY ANY FEDERAL, STATE, LOCAL OR OTHER POLITICAL
30 SUBDIVISION OF THIS STATE.

31 2. VERIFYING ANY CLAIM OF RESIDENCE OR DOMICILE IF DETERMINATION OF
32 RESIDENCE OR DOMICILE IS REQUIRED UNDER THE LAWS OF THIS STATE OR A
33 JUDICIAL ORDER ISSUED PURSUANT TO A CIVIL OR CRIMINAL PROCEEDING IN THIS
34 STATE.

35 3. IF THE PERSON IS AN ALIEN, DETERMINING WHETHER THE PERSON IS IN
36 COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED BY TITLE II,
37 CHAPTER 7 OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT.

38 4. PURSUANT TO 8 UNITED STATES CODE SECTION 1373 AND 8 UNITED
39 STATES CODE SECTION 1644.

40 ~~F.~~ G. THIS SECTION DOES NOT IMPLEMENT, AUTHORIZE OR ESTABLISH AND
41 SHALL NOT BE CONSTRUED TO IMPLEMENT, AUTHORIZE OR ESTABLISH THE REAL ID
42 ACT OF 2005 (P.L. 109-13, DIVISION B; 119 STAT. 302), INCLUDING THE USE OF
43 A RADIO FREQUENCY IDENTIFICATION CHIP.

44 ~~G.~~ H. A PERSON WHO IS A LEGAL RESIDENT OF THIS STATE MAY BRING AN
45 ACTION IN SUPERIOR COURT TO CHALLENGE ANY OFFICIAL OR AGENCY OF THIS STATE

1 OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT
2 ADOPTS OR IMPLEMENTS A POLICY ~~OR PRACTICE~~ THAT LIMITS OR RESTRICTS THE
3 ENFORCEMENT OF FEDERAL IMMIGRATION LAWS, INCLUDING 8 UNITED STATES CODE
4 SECTIONS 1373 AND 1644, TO LESS THAN THE FULL EXTENT PERMITTED BY FEDERAL
5 LAW. IF THERE IS A JUDICIAL FINDING THAT AN ENTITY HAS VIOLATED THIS
6 SECTION, THE COURT SHALL ORDER THAT THE ENTITY PAY A CIVIL PENALTY OF NOT
7 LESS THAN ~~ONE THOUSAND~~ FIVE HUNDRED DOLLARS AND NOT MORE THAN FIVE
8 THOUSAND DOLLARS FOR EACH DAY THAT THE POLICY HAS REMAINED IN EFFECT AFTER
9 THE FILING OF AN ACTION PURSUANT TO THIS SUBSECTION.

10 ~~H.~~ I. A COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN
11 SUBSECTION ~~G~~ H OF THIS SECTION AND REMIT THE CIVIL PENALTY TO THE STATE
12 TREASURER FOR DEPOSIT IN THE GANG AND IMMIGRATION INTELLIGENCE TEAM
13 ENFORCEMENT MISSION FUND ESTABLISHED BY SECTION 41-1724.

14 ~~I.~~ J. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES
15 TO ANY PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY,
16 TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN
17 ADJUDICATION ON THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS
18 SECTION.

19 ~~J.~~ K. EXCEPT IN RELATION TO MATTERS IN WHICH THE OFFICER IS
20 ADJUDGED TO HAVE ACTED IN BAD FAITH, A LAW ENFORCEMENT OFFICER IS
21 INDEMNIFIED BY THE LAW ENFORCEMENT OFFICER'S AGENCY AGAINST REASONABLE
22 COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY THE OFFICER IN
23 CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING BROUGHT PURSUANT TO THIS
24 SECTION IN WHICH THE OFFICER MAY BE A DEFENDANT BY REASON OF THE OFFICER
25 BEING OR HAVING BEEN A MEMBER OF THE LAW ENFORCEMENT AGENCY.

26 ~~K.~~ L. THIS SECTION SHALL BE IMPLEMENTED IN A MANNER CONSISTENT
27 WITH FEDERAL LAWS REGULATING IMMIGRATION, PROTECTING THE CIVIL RIGHTS OF
28 ALL PERSONS AND RESPECTING THE PRIVILEGES AND IMMUNITIES OF UNITED STATES
29 CITIZENS.

30 Sec. 3. Title 13, chapter 15, Arizona Revised Statutes, is amended
31 by adding section 13-1509, to read:

32 13-1509. Willful failure to complete or carry an alien
33 registration document; assessment; exception;
34 authenticated records; classification

35 A. IN ADDITION TO ANY VIOLATION OF FEDERAL LAW, A PERSON IS GUILTY
36 OF WILLFUL FAILURE TO COMPLETE OR CARRY AN ALIEN REGISTRATION DOCUMENT IF
37 THE PERSON IS IN VIOLATION OF 8 UNITED STATES CODE SECTION 1304(e) OR
38 1306(a).

39 B. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION
40 STATUS MAY BE DETERMINED BY:

41 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
42 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

43 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE
44 UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES
45 CODE SECTION 1373(c).

1 C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY,
2 CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER
3 RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT
4 TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

5 ~~C.~~ D. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT
6 ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON, COMMUTATION OF
7 SENTENCE, OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS AUTHORIZED BY
8 SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT
9 HAS BEEN SERVED OR THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION
10 41-1604.07.

11 ~~D.~~ E. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE
12 COURT SHALL ORDER THE PERSON TO PAY JAIL COSTS. ~~AND AN ADDITIONAL~~
13 ~~ASSESSMENT IN THE FOLLOWING AMOUNTS:~~

- 14 ~~1. AT LEAST FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION.~~
15 ~~2. TWICE THE AMOUNT SPECIFIED IN PARAGRAPH 1 OF THIS SUBSECTION IF~~
16 ~~THE PERSON WAS PREVIOUSLY SUBJECT TO AN ASSESSMENT PURSUANT TO THIS~~
17 ~~SUBSECTION.~~

18 ~~E.~~ A COURT SHALL COLLECT THE ASSESSMENTS PRESCRIBED IN SUBSECTION D
19 OF THIS SECTION AND REMIT THE ASSESSMENTS TO THE DEPARTMENT OF PUBLIC
20 SAFETY, WHICH SHALL ESTABLISH A SPECIAL SUBACCOUNT FOR THE MONIES IN THE
21 ACCOUNT ESTABLISHED FOR THE GANG AND IMMIGRATION INTELLIGENCE TEAM
22 ENFORCEMENT MISSION APPROPRIATION. MONIES IN THE SPECIAL SUBACCOUNT ARE
23 SUBJECT TO LEGISLATIVE APPROPRIATION FOR DISTRIBUTION FOR GANG AND
24 IMMIGRATION ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING
25 TO ILLEGAL IMMIGRATION.

26 F. THIS SECTION DOES NOT APPLY TO A PERSON WHO MAINTAINS
27 AUTHORIZATION FROM THE FEDERAL GOVERNMENT TO REMAIN IN THE UNITED STATES.

28 G. ANY RECORD THAT RELATES TO THE IMMIGRATION STATUS OF A PERSON IS
29 ADMISSIBLE IN ANY COURT WITHOUT FURTHER FOUNDATION OR TESTIMONY FROM A
30 CUSTODIAN OF RECORDS IF THE RECORD IS CERTIFIED AS AUTHENTIC BY THE
31 GOVERNMENT AGENCY THAT IS RESPONSIBLE FOR MAINTAINING THE RECORD.

32 H. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT
33 THAT THE MAXIMUM FINE IS ONE HUNDRED DOLLARS AND FOR A FIRST VIOLATION OF
34 THIS SECTION ~~IS~~ THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN
35 TWENTY DAYS IN JAIL AND FOR A SECOND OR SUBSEQUENT VIOLATION THE COURT
36 SHALL NOT SENTENCE THE PERSON TO MORE THAN THIRTY DAYS IN JAIL.

37 ~~1. A CLASS 3 FELONY IF THE PERSON VIOLATES THIS SECTION WHILE IN~~
38 ~~POSSESSION OF ANY OF THE FOLLOWING:~~

- 39 ~~(a) A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.~~
40 ~~(b) PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING OF~~
41 ~~METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.~~
42 ~~(c) A DEADLY WEAPON OR A DANGEROUS INSTRUMENT, AS DEFINED IN~~
43 ~~SECTION 13-105.~~
44 ~~(d) PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN ACT OF~~
45 ~~TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.~~

1 ~~2. A CLASS 4 FELONY IF THE PERSON EITHER:~~
2 ~~(a) IS CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF THIS~~
3 ~~SECTION.~~
4 ~~(b) WITHIN SIXTY MONTHS BEFORE THE VIOLATION, HAS BEEN REMOVED FROM~~
5 ~~THE UNITED STATES PURSUANT TO 8 UNITED STATES CODE SECTION 1229a OR HAS~~
6 ~~ACCEPTED A VOLUNTARY REMOVAL FROM THE UNITED STATES PURSUANT TO 8 UNITED~~
7 ~~STATES CODE SECTION 1229c.~~

8 Sec. 4. Section 13-2319, Arizona Revised Statutes, is amended to
9 read:

10 13-2319. Smuggling; classification; definitions

11 A. It is unlawful for a person to intentionally engage in the
12 smuggling of human beings for profit or commercial purpose.

13 B. A violation of this section is a class 4 felony.

14 C. Notwithstanding subsection B of this section, a violation of
15 this section:

16 1. Is a class 2 felony if the human being who is smuggled is under
17 eighteen years of age and is not accompanied by a family member over
18 eighteen years of age or the offense involved the use of a deadly weapon
19 or dangerous instrument.

20 2. Is a class 3 felony if the offense involves the use or
21 threatened use of deadly physical force and the person is not eligible for
22 suspension of sentence, probation, pardon or release from confinement on
23 any other basis except pursuant to section 31-233, subsection A or B until
24 the sentence imposed by the court is served, the person is eligible for
25 release pursuant to section 41-1604.07 or the sentence is commuted.

26 D. Chapter 10 of this title does not apply to a violation of
27 subsection C, paragraph 1 of this section.

28 E. **NOTWITHSTANDING ANY OTHER LAW, IN THE ENFORCEMENT OF THIS**
29 **SECTION A PEACE OFFICER MAY LAWFULLY STOP ANY PERSON WHO IS OPERATING A**
30 **MOTOR VEHICLE IF THE OFFICER HAS REASONABLE SUSPICION TO BELIEVE THE**
31 **PERSON IS IN VIOLATION OF ANY CIVIL TRAFFIC LAW.**

32 ~~E.~~ F. For the purposes of this section:

33 1. "Family member" means the person's parent, grandparent, sibling
34 or any other person who is related to the person by consanguinity or
35 affinity to the second degree.

36 2. "Procurement of transportation" means any participation in or
37 facilitation of transportation and includes:

38 (a) Providing services that facilitate transportation including
39 travel arrangement services or money transmission services.

40 (b) Providing property that facilitates transportation, including a
41 weapon, a vehicle or other means of transportation or false
42 identification, or selling, leasing, renting or otherwise making available
43 a drop house as defined in section 13-2322.

44 3. "Smuggling of human beings" means the transportation,
45 procurement of transportation or use of property or real property by a

1 person or an entity that knows or has reason to know that the person or
2 persons transported or to be transported are not United States citizens,
3 permanent resident aliens or persons otherwise lawfully in this state or
4 have attempted to enter, entered or remained in the United States in
5 violation of law.

6 Sec. 5. Title 13, chapter 29, Arizona Revised Statutes, is amended
7 by adding sections 13-2928 and 13-2929, to read:

8 13-2928. Unlawful stopping to hire and pick up passengers for
9 work; unlawful application, solicitation or
10 employment; classification; definitions

11 A. IT IS UNLAWFUL FOR AN OCCUPANT OF A MOTOR VEHICLE THAT IS
12 STOPPED ON A STREET, ROADWAY OR HIGHWAY TO ATTEMPT TO HIRE OR HIRE AND
13 PICK UP PASSENGERS FOR WORK AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE
14 BLOCKS OR IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

15 B. IT IS UNLAWFUL FOR A PERSON TO ENTER A MOTOR VEHICLE THAT IS
16 STOPPED ON A STREET, ROADWAY OR HIGHWAY IN ORDER TO BE HIRED BY AN
17 OCCUPANT OF THE MOTOR VEHICLE AND TO BE TRANSPORTED TO WORK AT A DIFFERENT
18 LOCATION IF THE MOTOR VEHICLE BLOCKS OR IMPEDES THE NORMAL MOVEMENT OF
19 TRAFFIC.

20 C. IT IS UNLAWFUL FOR A PERSON WHO IS UNLAWFULLY PRESENT IN THE
21 UNITED STATES AND WHO IS AN UNAUTHORIZED ALIEN TO KNOWINGLY APPLY FOR
22 WORK, SOLICIT WORK IN A PUBLIC PLACE OR PERFORM WORK AS AN EMPLOYEE OR
23 INDEPENDENT CONTRACTOR IN THIS STATE.

24 D. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY,
25 CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER
26 RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT
27 TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

28 E. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION
29 STATUS MAY BE DETERMINED BY:

30 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
31 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

32 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE
33 UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES
34 CODE SECTION 1373(c).

35 ~~D.~~ F. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

36 ~~E.~~ G. FOR THE PURPOSES OF THIS SECTION:

37 1. "SOLICIT" MEANS VERBAL OR NONVERBAL COMMUNICATION BY A GESTURE
38 OR A NOD THAT WOULD INDICATE TO A REASONABLE PERSON THAT A PERSON IS
39 WILLING TO BE EMPLOYED.

40 2. "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL
41 RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS
42 DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a(h)(3).

43 13-2929. Unlawful transporting, moving, concealing, harboring
44 or shielding of unlawful aliens; vehicle
45 impoundment; exception; classification

1 A. IT IS UNLAWFUL FOR A PERSON WHO IS IN VIOLATION OF A CRIMINAL
2 OFFENSE TO:

3 1. TRANSPORT OR MOVE OR ATTEMPT TO TRANSPORT OR MOVE AN ALIEN IN
4 THIS STATE, IN FURTHERANCE OF THE ILLEGAL PRESENCE OF THE ALIEN IN THE
5 UNITED STATES, IN A MEANS OF TRANSPORTATION IF THE PERSON KNOWS OR
6 RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR
7 REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

8 2. CONCEAL, HARBOR OR SHIELD OR ATTEMPT TO CONCEAL, HARBOR OR
9 SHIELD AN ALIEN FROM DETECTION IN ANY PLACE IN THIS STATE, INCLUDING ANY
10 BUILDING OR ANY MEANS OF TRANSPORTATION, IF THE PERSON KNOWS OR RECKLESSLY
11 DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN
12 THE UNITED STATES IN VIOLATION OF LAW.

13 3. ENCOURAGE OR INDUCE AN ALIEN TO COME TO OR RESIDE IN THIS STATE
14 IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT SUCH COMING TO,
15 ENTERING OR RESIDING IN THIS STATE IS OR WILL BE IN VIOLATION OF LAW.

16 B. A MEANS OF TRANSPORTATION THAT IS USED IN THE COMMISSION OF A
17 VIOLATION OF THIS SECTION IS SUBJECT TO MANDATORY VEHICLE IMMOBILIZATION
18 OR IMPOUNDMENT PURSUANT TO SECTION 28-3511.

19 C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY,
20 CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER
21 RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT
22 TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

23 D. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION
24 STATUS MAY BE DETERMINED BY:

25 1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL
26 GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

27 2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE
28 UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES
29 CODE SECTION 1373(c).

30 ~~E.~~ E. THIS SECTION DOES NOT APPLY TO A CHILD PROTECTIVE SERVICES
31 WORKER ACTING IN THE WORKER'S OFFICIAL CAPACITY OR A PERSON WHO IS ACTING
32 IN THE CAPACITY OF A FIRST RESPONDER, AN AMBULANCE ATTENDANT OR AN
33 EMERGENCY MEDICAL TECHNICIAN AND WHO IS TRANSPORTING OR MOVING AN ALIEN IN
34 THIS STATE PURSUANT TO TITLE 36, CHAPTER 21.1.

35 ~~D.~~ F. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1
36 MISDEMEANOR AND IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND DOLLARS,
37 EXCEPT THAT A VIOLATION OF THIS SECTION THAT INVOLVES TEN OR MORE ILLEGAL
38 ALIENS IS A CLASS 6 FELONY AND THE PERSON IS SUBJECT TO A FINE OF AT LEAST
39 ONE THOUSAND DOLLARS FOR EACH ALIEN WHO IS INVOLVED.

40 Sec. 6. Section 13-3883, Arizona Revised Statutes, is amended to
41 read:

42 13-3883. Arrest by officer without warrant

43 A. A peace officer ~~may~~, without a warrant, MAY arrest a person if
44 ~~he~~ THE OFFICER has probable cause to believe:

1 1. A felony has been committed and probable cause to believe the
2 person to be arrested has committed the felony.

3 2. A misdemeanor has been committed in ~~his~~ THE OFFICER'S presence
4 and probable cause to believe the person to be arrested has committed the
5 offense.

6 3. The person to be arrested has been involved in a traffic
7 accident and violated any criminal section of title 28, and that such
8 violation occurred prior to or immediately following such traffic
9 accident.

10 4. A misdemeanor or a petty offense has been committed and probable
11 cause to believe the person to be arrested has committed the offense. A
12 person arrested under this paragraph is eligible for release under section
13 13-3903.

14 5. THE PERSON TO BE ARRESTED HAS COMMITTED ANY PUBLIC OFFENSE THAT
15 MAKES THE PERSON REMOVABLE FROM THE UNITED STATES.

16 B. A peace officer may stop and detain a person as is reasonably
17 necessary to investigate an actual or suspected violation of any traffic
18 law committed in the officer's presence and may serve a copy of the
19 traffic complaint for any alleged civil or criminal traffic violation. A
20 peace officer who serves a copy of the traffic complaint shall do so
21 within a reasonable time of the alleged criminal or civil traffic
22 violation.

23 Sec. 7. Section 23-212, Arizona Revised Statutes, is amended to
24 read:

25 23-212. Knowingly employing unauthorized aliens; prohibition;
26 false and frivolous complaints; violation;
27 classification; license suspension and revocation;
28 affirmative defense

29 A. An employer shall not knowingly employ an unauthorized alien.
30 If, in the case when an employer uses a contract, subcontract or other
31 independent contractor agreement to obtain the labor of an alien in this
32 state, the employer knowingly contracts with an unauthorized alien or with
33 a person who employs or contracts with an unauthorized alien to perform
34 the labor, the employer violates this subsection.

35 B. The attorney general shall prescribe a complaint form for a
36 person to allege a violation of subsection A of this section. The
37 complainant shall not be required to list the complainant's social
38 security number on the complaint form or to have the complaint form
39 notarized. On receipt of a complaint on a prescribed complaint form that
40 an employer allegedly knowingly employs an unauthorized alien, the
41 attorney general or county attorney shall investigate whether the employer
42 has violated subsection A of this section. If a complaint is received but
43 is not submitted on a prescribed complaint form, the attorney general or
44 county attorney may investigate whether the employer has violated
45 subsection A of this section. This subsection shall not be construed to

1 prohibit the filing of anonymous complaints that are not submitted on a
2 prescribed complaint form. The attorney general or county attorney shall
3 not investigate complaints that are based solely on race, color or
4 national origin. A complaint that is submitted to a county attorney shall
5 be submitted to the county attorney in the county in which the alleged
6 unauthorized alien is or was employed by the employer. The county sheriff
7 or any other local law enforcement agency may assist in investigating a
8 complaint. When investigating a complaint, the attorney general or county
9 attorney shall verify the work authorization of the alleged unauthorized
10 alien with the federal government pursuant to 8 United States Code section
11 1373(c). A state, county or local official shall not attempt to
12 independently make a final determination on whether an alien is authorized
13 to work in the United States. An alien's immigration status or work
14 authorization status shall be verified with the federal government
15 pursuant to 8 United States Code section 1373(c). A person who knowingly
16 files a false and frivolous complaint under this subsection is guilty of a
17 class 3 misdemeanor.

18 C. If, after an investigation, the attorney general or county
19 attorney determines that the complaint is not false and frivolous:

20 1. The attorney general or county attorney shall notify the United
21 States immigration and customs enforcement of the unauthorized alien.

22 2. The attorney general or county attorney shall notify the local
23 law enforcement agency of the unauthorized alien.

24 3. The attorney general shall notify the appropriate county
25 attorney to bring an action pursuant to subsection D of this section if
26 the complaint was originally filed with the attorney general.

27 D. An action for a violation of subsection A of this section shall
28 be brought against the employer by the county attorney in the county where
29 the unauthorized alien employee is or was employed by the employer. The
30 county attorney shall not bring an action against any employer for any
31 violation of subsection A of this section that occurs before January 1,
32 2008. A second violation of this section shall be based only on an
33 unauthorized alien who is or was employed by the employer after an action
34 has been brought for a violation of subsection A of this section or
35 section 23-212.01, subsection A.

36 E. For any action in superior court under this section, the court
37 shall expedite the action, including assigning the hearing at the earliest
38 practicable date.

39 F. On a finding of a violation of subsection A of this section:

40 1. For a first violation, as described in paragraph 3 of this
41 subsection, the court:

42 (a) Shall order the employer to terminate the employment of all
43 unauthorized aliens.

44 (b) Shall order the employer to be subject to a three year
45 probationary period for the business location where the unauthorized alien

1 performed work. During the probationary period the employer shall file
2 quarterly reports in the form provided in section 23-722.01 with the
3 county attorney of each new employee who is hired by the employer at the
4 business location where the unauthorized alien performed work.

5 (c) Shall order the employer to file a signed sworn affidavit with
6 the county attorney within three business days after the order is
7 issued. The affidavit shall state that the employer has terminated the
8 employment of all unauthorized aliens in this state and that the employer
9 will not intentionally or knowingly employ an unauthorized alien in this
10 state. The court shall order the appropriate agencies to suspend all
11 licenses subject to this subdivision that are held by the employer if the
12 employer fails to file a signed sworn affidavit with the county attorney
13 within three business days after the order is issued. All licenses that
14 are suspended under this subdivision shall remain suspended until the
15 employer files a signed sworn affidavit with the county attorney.
16 Notwithstanding any other law, on filing of the affidavit the suspended
17 licenses shall be reinstated immediately by the appropriate agencies. For
18 the purposes of this subdivision, the licenses that are subject to
19 suspension under this subdivision are all licenses that are held by the
20 employer specific to the business location where the unauthorized alien
21 performed work. If the employer does not hold a license specific to the
22 business location where the unauthorized alien performed work, but a
23 license is necessary to operate the employer's business in general, the
24 licenses that are subject to suspension under this subdivision are all
25 licenses that are held by the employer at the employer's primary place of
26 business. On receipt of the court's order and notwithstanding any other
27 law, the appropriate agencies shall suspend the licenses according to the
28 court's order. The court shall send a copy of the court's order to the
29 attorney general and the attorney general shall maintain the copy pursuant
30 to subsection G of this section.

31 (d) May order the appropriate agencies to suspend all licenses
32 described in subdivision (c) of this paragraph that are held by the
33 employer for not to exceed ten business days. The court shall base its
34 decision to suspend under this subdivision on any evidence or information
35 submitted to it during the action for a violation of this subsection and
36 shall consider the following factors, if relevant:

- 37 (i) The number of unauthorized aliens employed by the employer.
38 (ii) Any prior misconduct by the employer.
39 (iii) The degree of harm resulting from the violation.
40 (iv) Whether the employer made good faith efforts to comply with
41 any applicable requirements.
42 (v) The duration of the violation.
43 (vi) The role of the directors, officers or principals of the
44 employer in the violation.
45 (vii) Any other factors the court deems appropriate.

1 2. For a second violation, as described in paragraph 3 of this
2 subsection, the court shall order the appropriate agencies to permanently
3 revoke all licenses that are held by the employer specific to the business
4 location where the unauthorized alien performed work. If the employer
5 does not hold a license specific to the business location where the
6 unauthorized alien performed work, but a license is necessary to operate
7 the employer's business in general, the court shall order the appropriate
8 agencies to permanently revoke all licenses that are held by the employer
9 at the employer's primary place of business. On receipt of the order and
10 notwithstanding any other law, the appropriate agencies shall immediately
11 revoke the licenses.

12 3. The violation shall be considered:

13 (a) A first violation by an employer at a business location if the
14 violation did not occur during a probationary period ordered by the court
15 under this subsection or section 23-212.01, subsection F for that
16 employer's business location.

17 (b) A second violation by an employer at a business location if the
18 violation occurred during a probationary period ordered by the court under
19 this subsection or section 23-212.01, subsection F for that employer's
20 business location.

21 G. The attorney general shall maintain copies of court orders that
22 are received pursuant to subsection F of this section and shall maintain a
23 database of the employers and business locations that have a first
24 violation of subsection A of this section and make the court orders
25 available on the attorney general's website.

26 H. On determining whether an employee is an unauthorized alien, the
27 court shall consider only the federal government's determination pursuant
28 to 8 United States Code section 1373(c). The federal government's
29 determination creates a rebuttable presumption of the employee's lawful
30 status. The court may take judicial notice of the federal government's
31 determination and may request the federal government to provide automated
32 or testimonial verification pursuant to 8 United States Code section
33 1373(c).

34 I. For the purposes of this section, proof of verifying the
35 employment authorization of an employee through the e-verify program
36 creates a rebuttable presumption that an employer did not knowingly employ
37 an unauthorized alien.

38 J. For the purposes of this section, an employer that establishes
39 that it has complied in good faith with the requirements of 8 United
40 States Code section 1324a(b) establishes an affirmative defense that the
41 employer did not knowingly employ an unauthorized alien. An employer is
42 considered to have complied with the requirements of 8 United States Code
43 section 1324a(b), notwithstanding an isolated, sporadic or accidental
44 technical or procedural failure to meet the requirements, if there is a
45 good faith attempt to comply with the requirements.

1 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF
2 THIS SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE
3 EMPLOYER MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE
4 SUBSTANTIAL ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN
5 ENTRAPMENT DEFENSE HAS THE BURDEN OF PROVING THE FOLLOWING BY A
6 PREPONDERANCE OF THE EVIDENCE:

7 1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW
8 ENFORCEMENT OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

9 2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED
10 THE EMPLOYER TO COMMIT THE VIOLATION.

11 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE
12 THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
13 EMPLOYER TO COMMIT THE VIOLATION.

14 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
15 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW
16 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN
17 OPPORTUNITY TO COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW
18 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL
19 THEIR IDENTITY. THE CONDUCT OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS
20 MAY BE CONSIDERED IN DETERMINING IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

21 Sec. 8. Section 23-212.01, Arizona Revised Statutes, is amended to
22 read:

23 23-212.01. Intentionally employing unauthorized aliens;
24 prohibition; false and frivolous complaints;
25 violation; classification; license suspension
26 and revocation; affirmative defense

27 A. An employer shall not intentionally employ an unauthorized
28 alien. If, in the case when an employer uses a contract, subcontract or
29 other independent contractor agreement to obtain the labor of an alien in
30 this state, the employer intentionally contracts with an unauthorized
31 alien or with a person who employs or contracts with an unauthorized alien
32 to perform the labor, the employer violates this subsection.

33 B. The attorney general shall prescribe a complaint form for a
34 person to allege a violation of subsection A of this section. The
35 complainant shall not be required to list the complainant's social
36 security number on the complaint form or to have the complaint form
37 notarized. On receipt of a complaint on a prescribed complaint form that
38 an employer allegedly intentionally employs an unauthorized alien, the
39 attorney general or county attorney shall investigate whether the employer
40 has violated subsection A of this section. If a complaint is received but
41 is not submitted on a prescribed complaint form, the attorney general or
42 county attorney may investigate whether the employer has violated
43 subsection A of this section. This subsection shall not be construed to
44 prohibit the filing of anonymous complaints that are not submitted on a
45 prescribed complaint form. The attorney general or county attorney shall

1 not investigate complaints that are based solely on race, color or
2 national origin. A complaint that is submitted to a county attorney shall
3 be submitted to the county attorney in the county in which the alleged
4 unauthorized alien is or was employed by the employer. The county sheriff
5 or any other local law enforcement agency may assist in investigating a
6 complaint. When investigating a complaint, the attorney general or county
7 attorney shall verify the work authorization of the alleged unauthorized
8 alien with the federal government pursuant to 8 United States Code section
9 1373(c). A state, county or local official shall not attempt to
10 independently make a final determination on whether an alien is authorized
11 to work in the United States. An alien's immigration status or work
12 authorization status shall be verified with the federal government
13 pursuant to 8 United States Code section 1373(c). A person who knowingly
14 files a false and frivolous complaint under this subsection is guilty of a
15 class 3 misdemeanor.

16 C. If, after an investigation, the attorney general or county
17 attorney determines that the complaint is not false and frivolous:

18 1. The attorney general or county attorney shall notify the United
19 States immigration and customs enforcement of the unauthorized alien.

20 2. The attorney general or county attorney shall notify the local
21 law enforcement agency of the unauthorized alien.

22 3. The attorney general shall notify the appropriate county
23 attorney to bring an action pursuant to subsection D of this section if
24 the complaint was originally filed with the attorney general.

25 D. An action for a violation of subsection A of this section shall
26 be brought against the employer by the county attorney in the county where
27 the unauthorized alien employee is or was employed by the employer. The
28 county attorney shall not bring an action against any employer for any
29 violation of subsection A of this section that occurs before January 1,
30 2008. A second violation of this section shall be based only on an
31 unauthorized alien who is or was employed by the employer after an action
32 has been brought for a violation of subsection A of this section or
33 section 23-212, subsection A.

34 E. For any action in superior court under this section, the court
35 shall expedite the action, including assigning the hearing at the earliest
36 practicable date.

37 F. On a finding of a violation of subsection A of this section:

38 1. For a first violation, as described in paragraph 3 of this
39 subsection, the court shall:

40 (a) Order the employer to terminate the employment of all
41 unauthorized aliens.

42 (b) Order the employer to be subject to a five year probationary
43 period for the business location where the unauthorized alien performed
44 work. During the probationary period the employer shall file quarterly
45 reports in the form provided in section 23-722.01 with the county attorney

1 of each new employee who is hired by the employer at the business location
2 where the unauthorized alien performed work.

3 (c) Order the appropriate agencies to suspend all licenses
4 described in subdivision (d) of this paragraph that are held by the
5 employer for a minimum of ten days. The court shall base its decision on
6 the length of the suspension under this subdivision on any evidence or
7 information submitted to it during the action for a violation of this
8 subsection and shall consider the following factors, if relevant:

9 (i) The number of unauthorized aliens employed by the employer.

10 (ii) Any prior misconduct by the employer.

11 (iii) The degree of harm resulting from the violation.

12 (iv) Whether the employer made good faith efforts to comply with
13 any applicable requirements.

14 (v) The duration of the violation.

15 (vi) The role of the directors, officers or principals of the
16 employer in the violation.

17 (vii) Any other factors the court deems appropriate.

18 (d) Order the employer to file a signed sworn affidavit with the
19 county attorney. The affidavit shall state that the employer has
20 terminated the employment of all unauthorized aliens in this state and
21 that the employer will not intentionally or knowingly employ an
22 unauthorized alien in this state. The court shall order the appropriate
23 agencies to suspend all licenses subject to this subdivision that are held
24 by the employer if the employer fails to file a signed sworn affidavit
25 with the county attorney within three business days after the order is
26 issued. All licenses that are suspended under this subdivision for
27 failing to file a signed sworn affidavit shall remain suspended until the
28 employer files a signed sworn affidavit with the county attorney. For the
29 purposes of this subdivision, the licenses that are subject to suspension
30 under this subdivision are all licenses that are held by the employer
31 specific to the business location where the unauthorized alien performed
32 work. If the employer does not hold a license specific to the business
33 location where the unauthorized alien performed work, but a license is
34 necessary to operate the employer's business in general, the licenses that
35 are subject to suspension under this subdivision are all licenses that are
36 held by the employer at the employer's primary place of business. On
37 receipt of the court's order and notwithstanding any other law, the
38 appropriate agencies shall suspend the licenses according to the court's
39 order. The court shall send a copy of the court's order to the attorney
40 general and the attorney general shall maintain the copy pursuant to
41 subsection G of this section.

42 2. For a second violation, as described in paragraph 3 of this
43 subsection, the court shall order the appropriate agencies to permanently
44 revoke all licenses that are held by the employer specific to the business
45 location where the unauthorized alien performed work. If the employer

1 does not hold a license specific to the business location where the
2 unauthorized alien performed work, but a license is necessary to operate
3 the employer's business in general, the court shall order the appropriate
4 agencies to permanently revoke all licenses that are held by the employer
5 at the employer's primary place of business. On receipt of the order and
6 notwithstanding any other law, the appropriate agencies shall immediately
7 revoke the licenses.

8 3. The violation shall be considered:

9 (a) A first violation by an employer at a business location if the
10 violation did not occur during a probationary period ordered by the court
11 under this subsection or section 23-212, subsection F for that employer's
12 business location.

13 (b) A second violation by an employer at a business location if the
14 violation occurred during a probationary period ordered by the court under
15 this subsection or section 23-212, subsection F for that employer's
16 business location.

17 G. The attorney general shall maintain copies of court orders that
18 are received pursuant to subsection F of this section and shall maintain a
19 database of the employers and business locations that have a first
20 violation of subsection A of this section and make the court orders
21 available on the attorney general's website.

22 H. On determining whether an employee is an unauthorized alien, the
23 court shall consider only the federal government's determination pursuant
24 to 8 United States Code section 1373(c). The federal government's
25 determination creates a rebuttable presumption of the employee's lawful
26 status. The court may take judicial notice of the federal government's
27 determination and may request the federal government to provide automated
28 or testimonial verification pursuant to 8 United States Code section
29 1373(c).

30 I. For the purposes of this section, proof of verifying the
31 employment authorization of an employee through the e-verify program
32 creates a rebuttable presumption that an employer did not intentionally
33 employ an unauthorized alien.

34 J. For the purposes of this section, an employer that establishes
35 that it has complied in good faith with the requirements of 8 United
36 States Code section 1324a(b) establishes an affirmative defense that the
37 employer did not intentionally employ an unauthorized alien. An employer
38 is considered to have complied with the requirements of 8 United States
39 Code section 1324a(b), notwithstanding an isolated, sporadic or accidental
40 technical or procedural failure to meet the requirements, if there is a
41 good faith attempt to comply with the requirements.

42 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF
43 THIS SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE
44 EMPLOYER MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE
45 SUBSTANTIAL ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN

1 ENTRAPMENT DEFENSE HAS THE BURDEN OF PROVING THE FOLLOWING BY A
2 PREPONDERANCE OF THE EVIDENCE:

3 1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW
4 ENFORCEMENT OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

5 2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED
6 THE EMPLOYER TO COMMIT THE VIOLATION.

7 3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE
8 THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE
9 EMPLOYER TO COMMIT THE VIOLATION.

10 L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS
11 PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW
12 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN
13 OPPORTUNITY TO COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW
14 ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL
15 THEIR IDENTITY. THE CONDUCT OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS
16 MAY BE CONSIDERED IN DETERMINING IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

17 Sec. 9. Section 23-214, Arizona Revised Statutes, is amended to
18 read:

19 23-214. Verification of employment eligibility; e-verify
20 program; economic development incentives; list of
21 registered employers

22 A. After December 31, 2007, every employer, after hiring an
23 employee, shall verify the employment eligibility of the employee through
24 the e-verify program AND SHALL KEEP A RECORD OF THE VERIFICATION FOR THE
25 DURATION OF THE EMPLOYEE'S EMPLOYMENT OR AT LEAST THREE YEARS, WHICHEVER
26 IS LONGER.

27 B. In addition to any other requirement for an employer to receive
28 an economic development incentive from a government entity, the employer
29 shall register with and participate in the e-verify program. Before
30 receiving the economic development incentive, the employer shall provide
31 proof to the government entity that the employer is registered with and is
32 participating in the e-verify program. If the government entity
33 determines that the employer is not complying with this subsection, the
34 government entity shall notify the employer by certified mail of the
35 government entity's determination of noncompliance and the employer's
36 right to appeal the determination. On a final determination of
37 noncompliance, the employer shall repay all monies received as an economic
38 development incentive to the government entity within thirty days of the
39 final determination. For the purposes of this subsection:

40 1. "Economic development incentive" means any grant, loan or
41 performance-based incentive from any government entity that is awarded
42 after September 30, 2008. Economic development incentive does not include
43 any tax provision under title 42 or 43.

44 2. "Government entity" means this state and any political
45 subdivision of this state that receives and uses tax revenues.

1 C. Every three months the attorney general shall request from the
2 United States department of homeland security a list of employers from
3 this state that are registered with the e-verify program. On receipt of
4 the list of employers, the attorney general shall make the list available
5 on the attorney general's website.

6 Sec. 10. Section 28-3511, Arizona Revised Statutes, is amended to
7 read:

8 28-3511. Removal and immobilization or impoundment of vehicle

9 A. A peace officer shall cause the removal and either
10 immobilization or impoundment of a vehicle if the peace officer determines
11 that a person is driving the vehicle while any of the following applies:

12 1. The person's driving privilege is suspended or revoked for any
13 reason.

14 2. The person has not ever been issued a valid driver license or
15 permit by this state and the person does not produce evidence of ever
16 having a valid driver license or permit issued by another
17 jurisdiction. This paragraph does not apply to the operation of an
18 implement of husbandry.

19 3. The person is subject to an ignition interlock device
20 requirement pursuant to chapter 4 of this title and the person is
21 operating a vehicle without a functioning certified ignition interlock
22 device. This paragraph does not apply to a person operating an employer's
23 vehicle or the operation of a vehicle due to a substantial emergency as
24 defined in section 28-1464.

25 4. IN FURTHERANCE OF THE ILLEGAL PRESENCE OF AN ALIEN IN THE UNITED
26 STATES AND IN VIOLATION OF A CRIMINAL OFFENSE, THE PERSON IS TRANSPORTING
27 OR MOVING OR ATTEMPTING TO TRANSPORT OR MOVE AN ALIEN IN THIS STATE IN A
28 VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE
29 ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES IN
30 VIOLATION OF LAW.

31 5. THE PERSON IS CONCEALING, HARBORING OR SHIELDING OR ATTEMPTING
32 TO CONCEAL, HARBOR OR SHIELD FROM DETECTION AN ALIEN IN THIS STATE IN A
33 VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE
34 ALIEN HAS COME TO, ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF
35 LAW.

36 B. A peace officer shall cause the removal and impoundment of a
37 vehicle if the peace officer determines that a person is driving the
38 vehicle and if all of the following apply:

39 1. The person's driving privilege is canceled, suspended or revoked
40 for any reason or the person has not ever been issued a driver license or
41 permit by this state and the person does not produce evidence of ever
42 having a driver license or permit issued by another jurisdiction.

43 2. The person is not in compliance with the financial
44 responsibility requirements of chapter 9, article 4 of this title.

1 3. The person is driving a vehicle that is involved in an accident
2 that results in either property damage or injury to or death of another
3 person.

4 C. Except as provided in subsection D of this section, while a
5 peace officer has control of the vehicle the peace officer shall cause the
6 removal and either immobilization or impoundment of the vehicle if the
7 peace officer has probable cause to arrest the driver of the vehicle for a
8 violation of section 4-244, paragraph 34 or section 28-1382 or 28-1383.

9 D. A peace officer shall not cause the removal and either the
10 immobilization or impoundment of a vehicle pursuant to subsection C of
11 this section if all of the following apply:

12 1. The peace officer determines that the vehicle is currently
13 registered and that the driver or the vehicle is in compliance with the
14 financial responsibility requirements of chapter 9, article 4 of this
15 title.

16 2. The spouse of the driver is with the driver at the time of the
17 arrest.

18 3. The peace officer has reasonable grounds to believe that the
19 spouse of the driver:

20 (a) Has a valid driver license.

21 (b) Is not impaired by intoxicating liquor, any drug, a vapor
22 releasing substance containing a toxic substance or any combination of
23 liquor, drugs or vapor releasing substances.

24 (c) Does not have any spirituous liquor in the spouse's body if the
25 spouse is under twenty-one years of age.

26 4. The spouse notifies the peace officer that the spouse will drive
27 the vehicle from the place of arrest to the driver's home or other place
28 of safety.

29 5. The spouse drives the vehicle as prescribed by paragraph 4 of
30 this subsection.

31 E. Except as otherwise provided in this article, a vehicle that is
32 removed and either immobilized or impounded pursuant to subsection A, B or
33 C of this section shall be immobilized or impounded for thirty days. An
34 insurance company does not have a duty to pay any benefits for charges or
35 fees for immobilization or impoundment.

36 F. The owner of a vehicle that is removed and either immobilized or
37 impounded pursuant to subsection A, B or C of this section, the spouse of
38 the owner and each person identified on the department's record with an
39 interest in the vehicle shall be provided with an opportunity for an
40 immobilization or poststorage hearing pursuant to section 28-3514.

41 Sec. 11. Title 41, chapter 12, article 2, Arizona Revised Statutes,
42 is amended by adding section 41-1724, to read:

43 41-1724. Gang and immigration intelligence team enforcement
44 mission fund

1 THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION FUND
2 IS ESTABLISHED CONSISTING OF MONIES DEPOSITED PURSUANT TO SECTION 11-1051
3 AND MONIES APPROPRIATED BY THE LEGISLATURE. THE DEPARTMENT SHALL
4 ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE
5 APPROPRIATION AND SHALL BE USED FOR GANG AND IMMIGRATION ENFORCEMENT AND
6 FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL IMMIGRATION.

7 Sec. 12. Severability, implementation and construction

8 A. If a provision of this act or its application to any person or
9 circumstance is held invalid, the invalidity does not affect other
10 provisions or applications of the act that can be given effect without the
11 invalid provision or application, and to this end the provisions of this
12 act are severable.

13 B. The terms of this act regarding immigration shall be construed
14 to have the meanings given to them under federal immigration law.

15 C. This act shall be implemented in a manner consistent with
16 federal laws regulating immigration, protecting the civil rights of all
17 persons and respecting the privileges and immunities of United States
18 citizens.

19 D. Nothing in this act shall implement or shall be construed or
20 interpreted to implement or establish the REAL ID act of 2005 (P.L. 109-
21 13, division B; 119 Stat. 302) including the use of a radio frequency
22 identification chip.

23 Sec. 13. Short title

24 This act may be cited as the "Support Our Law Enforcement and Safe
25 Neighborhoods Act".

26 Sec. 14. Immigration legislation challenges

27 A. Notwithstanding title 41, chapter 1, Arizona Revised Statutes,
28 and any other law, through December 31, 2010, the attorney general shall
29 act at the direction of the governor in any challenge in a state or
30 federal court to Laws 2010, chapter 113 and any amendments to that law.

31 B. Notwithstanding title 41, chapter 1, Arizona Revised Statutes,
32 and any other law, through December 31, 2010, the governor may direct
33 counsel other than the attorney general to appear on behalf of this state
34 to defend any challenge to Laws 2010, chapter 113 and any amendments to
35 that law.

36
37