



Statement of the National Immigration Law Center  
Hearing on “Racial Profiling and the Use of Suspect  
Classifications in Law Enforcement Policy”  
Before the House Judiciary Committee  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

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June 24, 2010

## **Introduction**

Racial profiling and the use of suspect classifications by law enforcement are historic problems, but recent state laws that in effect mandate racial profiling by law enforcement officers create new and ominous consequences. This dangerous situation is exemplified by the enactment of Arizona Senate Bill 1070 (“SB 1070”), signed into law on April 23, 2010 by Gov. Janice Brewer.<sup>1</sup>

The law creates a state crime for the failure to carry immigration documents and requires law enforcement officials to verify the immigration status of anyone they have “reasonable suspicion” to believe is undocumented.<sup>2</sup> Immigration status, however, is not something that can be visibly observed. Therefore, because the characteristics an officer would rely on in order to form the requisite suspicion are primarily racial, SB 1070 indisputably requires officers to racially profile.

As co-lead counsel in a class action suit challenging Arizona SB 1070, the National Immigration Law Center (“NILC”)<sup>3</sup> brings particular expertise to the issue of racial profiling by law enforcement. Claims include that SB 1070 is preempted by federal immigration law, and unconstitutionally violates the right to freedom of speech, the right to travel, the right to be free from unlawful searches and seizures, and the right to equal protection of the law through its promotion of discrimination based on race and national origin.<sup>4</sup> On June 4, 2010, counsel for plaintiffs lodged a Motion for Preliminary Injunction seeking to enjoin implementation of SB 1070.<sup>5</sup> As exhibits to the Preliminary Injunction Brief, NILC filed the declarations of three current and former police chiefs: Chief of the Yakima, Washington, Police Department, Samuel Granato; Chief of the San Francisco, California, Police Department, George Gascón; and former Director of the United States Marshals Service and former Chief of the City of Tampa, Florida, Police Department, Eduardo Gonzalez.

The voices of police chiefs are especially instructive in analyzing the potential effects of SB 1070 because police chiefs have direct knowledge of what causes racial profiling by law enforcement as well as the pernicious effects of such profiling on the larger community. That SB 1070 encourages racial profiling is central to the declarations of these police chiefs. The chiefs’ views about how enforcement of a law like SB 1070 will result in racial profiling are shared by other members of the law enforcement community.<sup>6</sup> In statements, press briefings, legal declarations, and editorials, law enforcement leadership nationwide has condemned SB 1070<sup>7</sup> because (1) it mandates racial profiling, and (2) law enforcement’s engagement in racial profiling will make communities less safe.

### **I. Racial Profiling Will Occur as a Result of SB 1070**

Chief of the Yakima, Washington, Police Department, Samuel Granato does not believe “that SB 1070 can be enforced in a racially neutral manner.”<sup>8</sup> Other police chiefs agree that SB 1070 is discriminatory because it targets people based on race or national origin.<sup>9</sup> According to the former director of the United States Marshals Service and former chief of the City of Tampa

Police Department, Eduardo Gonzalez, SB 1070 will “lead to unlawful racial and ethnic profiling.”<sup>10</sup> Because as much as 30 percent of Arizona residents are Latino,<sup>11</sup> officers under SB 1070 will inevitably profile citizens and persons with visas. As Chief of the Pima County, Arizona, Police Department, Clarence Dupnik stated:

[N]o one can tell them what an illegal immigrant looks like and when it is ok to begin questioning a person along those lines. This law puts [officers] in a no-win situation: They will be forced to offend and anger someone who is perhaps a citizen or here legally when they ask to see his papers—or be accused of nonfeasance because they do not.<sup>12</sup>

Moreover, SB 1070, creates a private right of action for any person to sue a city, town, or county that fails to enforce the provisions of federal immigration law to less than the full extent permitted under federal law. Thus, because of the constant threat of litigation, SB 1070 will put pressure on officers to engage in racial profiling in order to enforce the provisions of the law.

Besides causing officers to racially profile after making a stop, SB 1070 incentivizes pretextual stops and the use of local ordinances as gateways to status checks on people of color. SB 1070 provides a perverse incentive for officers to engage in racial profiling prior to a stop because officers are aware that they can check immigration status once the stop has been made. As a series of government and nongovernment reports on the 287(g) program have shown, deputizing local officers to act as immigration officers -- even when a stop is necessary to the immigration status check -- results in pretextual arrests and other stops for minor offenses, all based on racial profiling.<sup>13</sup> SB 1070 will result in the use of local ordinances and pretextual stops to legitimize racial profiling by Arizona police. According to Chief of the San Francisco Police Department, George Gascón:

If SB 1070 goes into effect, there will be a greater incidence of pretextual stops of individuals of color in Arizona as officers will use pretextual reasons to stop or question individuals they believe to be here illegally. If an officer is motivated by race or ethnicity he/she can easily find a valid pretext for encountering an individual, whether by following a car until a minor traffic violation occurs or by approaching a pedestrian for “consensual” questioning.<sup>14</sup>

Even in their defense of SB 1070, proponents of the law rely on racial stereotypes to describe the characteristics that might lead an officer to have reasonable suspicion that a person is undocumented. Among these characteristics are “grooming,”<sup>15</sup> “cars on blocks in the yard”, or “too many occupants of a rental accommodation.”<sup>16</sup> Police Chief Gascón disagrees that racial profiling will not occur:

As a practical matter, even the amended language, which prohibits consideration of race, color or national origin, will not prevent the improper use of race or ethnicity. Short of directly observing an

individual actually crossing the border in a surreptitious manner, there are not reliable indicators that would give rise to a reasonable suspicion to believe that a person is unlawfully in the United States.<sup>17</sup>

Proponents of SB 1070 argue that racial profiling will not occur because officers will be given civil rights training. However, Police Chief Gonzalez says that based on his “34 years of law enforcement experience, [he] believe[s] it will be extremely difficult to construct a training program for enforcement of SB 1070 that will successfully prevent officers from resorting to using racial and ethnic appearance to form the requisite suspicion...”<sup>18</sup> Police Chief Granato agrees that “it is not possible to construct a training that would sufficiently prepare officers to enforce SB 1070 in a uniform manner.”<sup>19</sup> Whether the officer notices the appearance of foreignness before or after the stop, the officer has at least an initial incentive, if not a legal mandate, to racially profile during the course of a stop.

## **II. Law Enforcement’s Focus on Racial Profiling Will Make Communities Less Safe by Destroying Community Trust and Diverting Police Resources from Fighting Crime**

First, SB 1070 will make communities less safe by causing a large sector of the community to distrust law enforcement. By mandating racial profiling, SB 1070 discourages people of color, regardless of immigration status, from reporting crime. According to Police Chief Gonzalez “distrust of law enforcement will be created whether or not community members have legal status ... because immigrant families and communities are typically made up of both those with lawful status and those without.”<sup>20</sup> According to Police Chief Gascón, “out of fear of deportation of a family member or neighbor, even many victims of crimes who are in legal immigration status will decide not to contact the police.”<sup>21</sup> Police Chief Granato agrees: “My job as a law enforcement officer is compromised when the individuals I am charged to serve and protect are afraid to have contact with me. This is exactly what will happen as a result of SB 1070’s mandate to investigate immigration status...”<sup>22</sup> According to Tucson Police Chief Roberto Villaseñor, “when you enact legislation that makes any subset of that community feel like they are being targeted specifically [...] that damages our capability to obtain information to solve the crimes that we need to work with.”<sup>23</sup> Racial profiling is not a victimless crime. As Police Chief Granato stated, “[SB 1070] further victimizes some of the most vulnerable victims of crime...”<sup>24</sup> When racial profiling occurs, every contact with the police is fraught with peril.

If people of color know that an immigration status check will result from contact with the police, they are less likely to call the police when they witness or are the victims of crimes. When racial profiling is used by law enforcement, each member of the community becomes a target based solely upon the way he looks or sounds and will therefore be less likely to come forward on his own behalf or on behalf of others. The racial profiling mandated under SB 1070 will create a “fracture” between law enforcement and a segment of the community.<sup>25</sup> According the San Francisco Police Chief George Gascón:

[SB 1070] will create a vacuum in law enforcement, and criminals will be emboldened because they will have less reason to be concerned about being reported by victims or witnesses in immigrant communities, and less reason to fear any consequences for their criminal conduct... I cannot overstate the critical importance of victim and witness cooperation in solving crimes and anything that diminishes that cooperation should be rejected.<sup>26</sup>

Community policing is heavily reliant on trust within communities. Fearing the police even as a means to safety, immigrants will stop reporting crimes because of the possibility of being detained themselves.<sup>27</sup> Police chiefs from around the country believe that the racial profiling mandated under SB 1070 will “break down the trust that police have built in communities and will divert law enforcement resources away from fighting crime.”<sup>28</sup> Police chiefs believe the result of SB 1070’s mandate of racial profiling will be an increase in crime – not a decrease in crime.<sup>29</sup>

Second, law enforcement’s focus on racial profiling and the resulting immigration enforcement duties will make communities less safe by diverting resources from priorities like fighting crime committed by dangerous criminals. The Arizona Association of Chiefs of Police opposes SB 1070 because “[t]he provisions of the bill... will negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner.”<sup>30</sup> According to Police Chief Gonzalez:

The law puts police officers in an untenable situation because it requires that they enforce immigration laws to the fullest extent permitted by federal law or risk being sued. SB 1070 divests local officers of the discretion to determine how best to ensure the safety of the community and retain the trust of the immigrant population by mandating that they enforce immigration laws...<sup>31</sup>

By diverting “critical and already strained police resources away from the task of pursuing serious and violent crimes into the complicated and vague task of enforcing immigration laws,” SB 1070’s mandate of racial profiling will negatively impact public safety.<sup>32</sup> Police Chief Gascón agrees that SB 1070 creates a resource allocation problem for already underfunded police departments because “police officers cannot take on immigration enforcement without taking substantial time away from priorities that are more central to a local law enforcement agency, such as investigating and preventing violent crimes and property crimes...”<sup>33</sup> The private right of action provision makes this scenario more than hypothetical. This provision requires state and local law enforcement agencies to prioritize immigration over many competing law enforcement activities and thus strips agencies of their discretion to exercise considered judgment about how best to ensure public safety.

## **Conclusion**

The issue of racial profiling by law enforcement is not confined to SB 1070. Numerous states are considering passing similar laws.<sup>34</sup> Because it relies on racial profiling, SB 1070’s

implementation will result in a less safe Arizona and a less safe country for us all. We recommend that the Subcommittee on the Constitution, Civil Rights, and Civil Liberties consider what police chiefs know to be true: racial profiling is not an effective tool in law enforcement – it violates civil rights, and it makes communities less safe.

<sup>1</sup> Arizona Senate Bill 1070, 49th Leg., 2nd Reg. Sess., Ch. 113 (Az. 2010); *see also* Arizona House Bill 2162, 49th Leg., 2nd Reg. Sess., Ch. 211 (Az. 2010) (amending SB 1070).

<sup>2</sup> According to SB 1070 this requirement is triggered by any “lawful stop, detention or arrest...in the enforcement of any other law or ordinance of a county, city or town”. *Id.* § 2; A.R.S. § 11-1051(B). However, this limitation does little to obviate the risk that officers will engage in racial profiling because, as discussed in more detail below, it is easy for an officer to find a pretextual reason for a lawful stop.

<sup>3</sup> NILC is a 501(c)(3) organization dedicated to defending and advancing the rights of low-income immigrants and their family members. For over 30 years, NILC has built a reputation as a leading expert on laws affecting immigrants.

<sup>4</sup> Complaint for Declaratory and Injunctive Relief, *Friendly House et al. v. Whiting et al.*, No. CV 10-1061 (D. Ariz. May 17, 2010), available at [http://www.nilc.org/immlawpolicy/LocalLaw/complaint\\_final-2010-05-17.pdf](http://www.nilc.org/immlawpolicy/LocalLaw/complaint_final-2010-05-17.pdf).

<sup>5</sup> Plaintiffs’ Motion for a Preliminary Injunction at 2, *Friendly House et al. v. Whiting et al.*, No. CV-10-01061-MEA (D. Ariz. June 4, 2010), available at <https://salsa.democracynaction.org/o/371/images/6-4-10-PI-MotionBrief.pdf>. This motion was ordered filed on June 21, 2010.

<sup>6</sup> *See Arizona Association of Chiefs of Police Statement on Senate Bill 1070*, available at [http://www.leei.us/main/media/AACOP\\_STATEMENT\\_ON\\_SENATE\\_BILL\\_1070.pdf](http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf); *See also* Phillip Atiba Goff, Liana Maris Epstein, Chief Chris Burbank, Division Chief Tracie L. Keese, The Consortium for Police Leadership in Equity, *Deputizing Discrimination? Causes & Effects of Cross-Deputization in Salt Lake City, Utah*, soon to be available at <http://www.policingequity.org>.

<sup>7</sup> *See Police chiefs voice concerns about Ariz. immigration law*, (Arizonacentral.com May 26, 2010), available at <http://www.azcentral.com/news/articles/2010/05/26/20100526arizona-immigration-law-police-chiefs-concern.html#ixzz0r3N9N8CC>; *see also* Plaintiffs’ Motion for a Preliminary Injunction at 2, *Friendly House et al. v. Whiting et al.*, *supra* note 1.

<sup>8</sup> Declarations submitted to the court on June 14, 2010 in *Friendly House, et al. v. Whiting, et al.*, No. CV-10-01061-PHX-JWS (D.Ariz.) [hereinafter *Declarations*].

<sup>9</sup> Lisa Halverstadt, *3 police leaders oppose Arizona immigration law* (The Arizona Republic, May 17, 2010) available at <http://www.azcentral.com/news/articles/2010/05/17/20100517arizona-immigration-law-police-leaders-oppose.html>.

<sup>10</sup> *Declarations*, *supra* note 4; *See also* Jonathan J. Cooper, *Ariz. Immigration Law Divides Police Across US*, ASSOCIATED PRESS (May 17, 2010) (Phoenix, Arizona Police Chief Jack Harris stating that SB 1070 will make it “very difficult not to profile”).

<sup>11</sup> *Pima County Sheriff Calls Arizona Law “Stupid,” Will Not Enforce It*, (huffingtonpost.com, April 28, 2010), available at [http://www.huffingtonpost.com/2010/04/28/pima-county-sheriff-calls\\_n\\_555895.html](http://www.huffingtonpost.com/2010/04/28/pima-county-sheriff-calls_n_555895.html).

<sup>12</sup> Clarence W. Dupnik, *Arizona’s Immigration Mistake: Those who look suspiciously like illegal immigrants will find their liberty in severe jeopardy* (Wall Street Journal, May 5, 2010) available at <http://online.wsj.com/article/SB10001424052748704342604575222420517514084.html>.

<sup>13</sup> *Terror and Isolation in Cobb: How Unchecked Police Power under 287(g) Has Torn Families Apart and Threatened Public Safety* (American Civil Liberties Union of Georgia, Oct. 2009), <http://www.acluga.org/287gReport.pdf> (last visited April 26, 2010); *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws* (Government Accountability Office, GAO-09-109, Jan. 2009), [www.gao.gov/new.items/d09109.pdf](http://www.gao.gov/new.items/d09109.pdf) (last visited April 26, 2010); Aarti Shahani and Judith Greene, *Local Democracy on Ice: Why State and Local Governments Have No Business in Federal Immigration Law Enforcement* (Justice Strategies, Feb. 2009); *The Policies and Politics of Local Immigration Enforcement Laws* (American Civil Liberties Union of North Carolina Foundation and Immigration & Human Rights Policy Clinic, University of North Carolina, Feb. 2009) <http://www.law.unc.edu/documents/clinicalprograms/287gpolicyreview.pdf> (last visited April 26, 2010); *The Persistence of Racial Profiling in Gwinnett: Time for Transparency, Accountability, and an End to 287(g)* (American Civil Liberties Union of Georgia, March 2010), [www.acluga.org/GwinnettRacialReportFinal.pdf](http://www.acluga.org/GwinnettRacialReportFinal.pdf) (last visited April 26, 2010); Mai Thi Nguyen and Hannah Gill, *The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities* (The University of North Carolina at Chapel Hill, Feb. 2010) [http://isa.unc.edu/migration/287g\\_report\\_final.pdf](http://isa.unc.edu/migration/287g_report_final.pdf) (last visited April 26, 2010).

<sup>14</sup> *Declarations*, *supra* note 8.

<sup>15</sup> Eric Zimmermann, *GOP congressman: Spot illegal immigrants by their 'grooming'* (The Hill June 15, 2010), available at <http://thehill.com/blogs/blog-briefing-room/news/103259-gop-congressman-spot-illegal-immigrants-by-their-grooming>.

<sup>16</sup> *Email from Kris Kobach to Russell Pearce* (April 28, 2010), available at <http://wonkroom.thinkprogress.org/wp-content/uploads/2010/04/kobachemail.jpg>.

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<sup>17</sup>George Gascón, *Top Cop: Arizona Immigration Law Puts Police in “Precarious Position”*, (The Crime Report, May 24, 2010) available at <http://thecrimereport.org/2010/05/24/top-cop-arizona-immigration-law-puts-police-in-%E2%80%9Cprecarious-position%E2%80%9D/>.

<sup>18</sup> *Declarations*, *supra* note 8.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*; see also *Declaration of Police Chief Granato*, stating that, “when, as a result of their involvement in immigration enforcement, local police officers come to be viewed as arms of the federal immigration enforcement system, immigrant communities will grow to distrust the police and will likely avoid contact with law enforcement out of fear that it could lead to their deportation or the deportation of a family member, friend, or neighbor...”

<sup>22</sup> *Id.*

<sup>23</sup> See Plaintiffs’ Motion for a Preliminary Injunction at 2, *Friendly House et al. v. Whiting et al.*, *supra* note 1, referencing Boyd Decl., Ex. 32, Huma Khan, *Police Chiefs Slam Arizona Immigration Law*, ABC NEWS (May 26, 2010).

<sup>24</sup> *Id.*

<sup>25</sup> Maria Pena, *Police Chiefs Criticize Arizona Immigration Law* (Latin American Herald Tribune), available at <http://www.laht.com/article.asp?ArticleId=357524&CategoryId=12395>.

<sup>26</sup> See *Top Cop: Arizona Immigration Law Puts Police in “Precarious Position”*, *supra* note 17.

<sup>27</sup> Crime-stopper faces deportation (MSNBC.com, May 26, 2010) available at [http://www.msnbc.msn.com/id/37263917/ns/us\\_news-immigration\\_a\\_nation\\_divided/from/ET](http://www.msnbc.msn.com/id/37263917/ns/us_news-immigration_a_nation_divided/from/ET).

<sup>28</sup> Police chiefs voice concerns to AG about Ariz. law (Associated Press, May 26, 2010) available at <http://www.google.com/hostednews/ap/article/ALeqM5jKVfYxH4wbJdoiU3S9P1SqlCQ8QD9FUPM485>.

<sup>29</sup> See Police chiefs voice concerns to AG about Ariz. law, (The Associated Press, May 26, 2010), available at <http://www.google.com/hostednews/ap/article/ALeqM5jKVfYxH4wbJdoiU3S9P1SqlCQ8QD9FUPM485>.

<sup>30</sup> AACOP Statement on Senate Bill 1070, available at [http://www.leei.us/main/media/AACOP\\_STATEMENT\\_ON\\_SENATE\\_BILL\\_1070.pdf](http://www.leei.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf).

<sup>31</sup> *Declarations*, *supra* note 8.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Resolutions/Copycats, (Reform Immigration for America, updated weekly) available at [http://org2.democracyinaction.org/o/5681/t/5800/petition.jsp?petition\\_KEY=463](http://org2.democracyinaction.org/o/5681/t/5800/petition.jsp?petition_KEY=463) (last visited June 23, 2010).