

To: National State Catholic Conference Directors
From: CLINIC
Subject: Arizona Anti-Immigrant Law
Date: April 30, 2010

I hope that this memorandum finds everyone well and that your work with your legislatures has gone well too. This memorandum discusses the immigration law (S.B. 1070) that the Arizona legislature passed on April 19th and Governor Jan Brewer signed into law on April 23rd.

In his recent Sunday blog, Cardinal Roger Mahony described the Arizona law as the “country’s most retrogressive, mean-spirited, and useless anti-immigrant law.” The law essentially makes immigration enforcement the duty and public policy of every state and local official and agency in Arizona. I thought it would be worthwhile to summarize the provisions of the law for you for a number of reasons. First, other states may attempt to pass similarly dreadful anti-immigrant bills either this session or next. I understand from advocates in Arizona that a legislator in Ohio is looking closely at the law and it has been reported on CNN that four other states have expressed interest in the bill. Second, as Cardinal Mahony pointed out, the law demonstrates the overwhelming need for Comprehensive Immigration Reform. He states:

What led the Arizona legislature to pass such a law is so obvious to all of us who have been working for federal comprehensive immigration reform: the present immigration system is completely incapable of balancing our nation’s need for labor and the supply of that labor. We have built a huge wall along our southern border, and have posted in effect two signs next to each other. One reads, ‘No Trespassing,’ and the other reads ‘Help Wanted.’

Arizona Anti-Immigrant Law: SB 1070

Below is a summary of the major sections of the law. All of these sections work together to make Arizona inhospitable for immigrants living and working in Arizona. They also place significant burdens on residents, state agencies and departments, and law enforcement entities in the state of Arizona.

Enforcement of Immigration Laws:

- State officials and agencies, including counties, cities, towns or other political subdivisions, within the state are prohibited from adopting a policy that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by law.
- Law enforcement officials and law enforcement agencies must make a reasonable attempt to determine the immigration status of a person they come in lawful contact with if they have *reasonable suspicion* that the person lacks lawful status, except if the determination may hinder or obstruct an investigation.
- All arrested individuals must have their immigration status determined before they are released from custody. The immigration status of the person must be verified with the federal government pursuant to 8 U.S.C. Section 1373(c). Note: This section of the U.S. Code states: “[t]he Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”
- A person is presumed to be lawfully present if the person provides to the law enforcement officer or agency any of the following:

- A valid Arizona driver's license;
 - A valid Arizona nonoperating identification license;
 - A valid tribal enrollment card or other form of tribal identification;
 - A valid federal, state or local government issued identification, if the issuing authority requires proof of legal presence before issuance.
- If a person without lawful status is convicted of any state or local law, Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) must be immediately notified upon their discharge from imprisonment or upon the assessment of any monetary obligation imposed.
 - Arizona law enforcement agencies are authorized to securely transport a person who does not have lawful status to a federal facility. Agencies need judicial authorization before transporting an unlawfully present individual outside of Arizona.
 - State officials or state agencies and counties, cities, towns and other political subdivisions of Arizona cannot be prohibited or restricted from sending, receiving or maintaining information relating to the immigration status of any individual or exchanging that information with any other federal, state or local governmental entity for the following purposes:
 - Determination of eligibility for any public benefit, service or license;
 - Verification of any claim of residence or legal domicile if residence or domicile is required by law or judicial order;
 - If the person is an alien, determination of the person's compliance with federal registration laws;
 - Pursuant to federal laws regarding communication between government agencies and federal immigration agencies.
 - A legal resident of Arizona can bring an action in superior court to challenge officials and agencies of the state, counties, cities, towns or other political subdivisions that adopt or implement a policy or practice that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by law. The law sets forth penalties in the event that a judge finds that an entity violated this section.
 - The court can collect this money and remit the civil penalty to the state treasurer for deposit in the Gang and Immigration Intelligence Team Enforcement Mission Fund (GIITEM). According to the law, the Arizona Department of Safety is responsible for administering the fund. Additionally, the court can award court costs and reasonable attorney fees to any person or any official or agency that prevails in a case brought under these provisions.

Willful Failure to Complete or Carry and Alien Registration Document

- 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 U.S.C. Section 1304(e) or 1306(a). Note: Section 1304(e) of the U.S. Code requires every alien, 18 years of age or older, to carry with him/her at all times his/her certificate of alien registration or alien registration receipt card issued to him/her by the federal government. Section 1306(a) of the U.S. Code discusses the penalties for any alien who fails to register and be fingerprinted pursuant to federal law.

- To enforce this section of the law, immigration status may be determined by: (1) a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status; (2) ICE or CBP pursuant to 8 U.S.C. Section 1373 (c).
- The law provides that a person who is sentenced under this section cannot have their sentence suspended and the person is not eligible for probation, pardon, commutation of sentence or release from confinement on any basis except for as authorized by the Director of Arizona Department of Correction until the sentence imposed has been served or the person is eligible for release due to early release credits.
- Along with any other penalty, the court must order the person to pay jail costs as well as additional assessments. The collected monies go to the GIITEM fund.
- This section also sets forth provisions on immigration records and the criminal penalties (ranges from misdemeanor to felony) for violating this section.

Smuggling

Current Arizona law prohibits smuggling of a person for profit or commercial purpose. The law amends the smuggling statute to include a provision that authorizes peace officers, in the enforcement of human smuggling laws, to lawfully stop a person who is operating a motor vehicle if they have reasonable suspicion to believe the person is in violation of *any civil traffic laws*.

Unlawfully Stopping to Hire and Pick up Passengers for Work

- The law provides that it is a class 1 misdemeanor 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.
- Similarly, it is a class 1 misdemeanor 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.
- It is a class 1 misdemeanor for a person that is not lawfully present and an unauthorized alien to knowingly apply for work, solicit work in a public place, or perform work as an independent contractor in the state.
- This section defines the terms solicit and unauthorized alien.

Unlawfully Transporting or Harboring Unlawful Aliens

- It is unlawful for a person who is in violation of a criminal offense to:
 - Transport or move an alien in a means of transportation, or attempt to do so, if the person knows or recklessly disregards the fact that the alien is here unlawfully.
 - Conceal, harbor or shield an alien, or attempt to, if the person knows or recklessly disregards the fact that the alien is here unlawfully.
 - Encourage or induce an alien to come to this state if the person knows or recklessly disregards the fact that doing so would be a violation of the law.
- The vehicle used in the commission of a violation of this section is subject to mandatory immobilization or impoundment.
- Exempts the application of this section to a Child Protective Services workers acting in the worker's official capacity or a person who is acting in the capacity of a first responder, an

ambulance attendant or an emergency medical technician and is transporting or moving an alien for emergency medical services.

- This section sets forth penalties for violating the law.

Arrest by Officer without a Warrant

The law amends Arizona's current law to provide that a peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any public offense that makes the person removable from the US.

Knowingly Employing Unauthorized Aliens/Employer Sanctions

Arizona has existing laws that regulate the employment of unauthorized workers. This law adds two additional provisions – entrapment defense and record keeping requirement with respect to E-Verify.

- This law provides employers with the affirmative defense of entrapment. However, employers must admit the substantial elements of the violation and they have the burden of proving by a preponderance of the evidence the three elements of the entrapment defense.
- The law stipulates that an employer is not entrapped if the employer was predisposed to violate the law and the officers merely provided the employer with the opportunity. Also, the law makes clear that it is not entrapment for law enforcement to use or to conceal their identity.
- Arizona has a mandatory E-Verify law for every employer that went into effect since December 31, 2007.
- The law requires employers to keep a record of the employment verification from E-Verify for the duration of an employee's employment, or three years, whichever is longer.

Date the Law Goes into Effect

In Arizona, this law will become effective 90 days after the legislative session ends for the year. The current legislative session is still on-going. Arizona advocates believe that the legislative session will not end until sometime in June and that the law will not go into effect until sometime in September.

Major Concerns with the Law

Along with being "retrogressive" and "mean-spirited" as aptly described by Cardinal Mahony, the law also raises significant legal and public policy issues. I will mention four general areas.

Public Safety: S.B. 1070 essentially turns every law enforcement officer into an immigration officer. This transformation almost certainly will affect community policing and the safety of the public. The use of police officers to enforce immigration laws can seriously undermine the relationship between local police and the communities in which they serve. As an example, immigrant victims of crime will be less likely to seek assistance from police if they think their immigration status will be verified. Additionally, witnesses to crimes will be reluctant to come forward to help with an investigation or assist in a prosecution if their involvement will lead to their deportation.

Additionally, this law will marginalize an already vulnerable population by making immigrants feel more isolated and excluded. Therefore, they are more susceptible to exploitation to becoming victims of crime. The safety of our communities is severely compromised when criminals believe they can prey on individuals who may not seek assistance from law enforcement agencies.

Racial Profiling: S.B. 1070 allows law enforcement officers to stop citizens and noncitizens to check their immigration status based simply on "reasonable suspicion" that individuals are in the country without

proper documentation. This law opens the door to the indiscriminate use of racial profiling against individuals that look or sound foreign.

Economic Impact: This law affects not only unauthorized immigrants, but all immigrants and Latinos in general. Given the crucial role that immigrants and Latinos play in Arizona's economy, the Immigration Policy Center (an immigration research and policy organization) believes that S.B 1070 will have a devastating economic impact on the state. Among other things, the Immigration Policy Center makes three cogent points. First, Arizona will likely face a vast number of costly lawsuits on behalf of legal immigrants and native-born Latinos who feel they have been unjustly targeted by police. Second, there is the likelihood that a significant number of immigrants and Latinos will leave the state because of this new law. When they leave, they will take their tax dollars, businesses, and purchasing power with them. Third, estimates by the Perryman Group (an economic and financial analysis firm) show that if all unauthorized immigrants were removed from Arizona, the state would lose \$26.4 billion in economic activity, \$11.7 billion in gross state product, and approximately 140,324 jobs.

Harm to Families and Communities: The U.S. has traditionally been a nation of immigrants grounded in the firm belief that newcomers offer new energy, hope, and cultural diversity. Our communities are informed, enriched and strengthened when immigrants and native-born residents respect one another and work together toward a common good. As Pope John Paul II stated, our "mutual openness will bring enrichment to all."

For individuals, families and communities to remain strong, it is essential that they be hospitable and open-minded, not hostile and close-minded. The "us" versus "them" mentality and practices divide rather than build and sustain communities. Thus, we need all members of and institutions in our communities, including law enforcement agencies, to be part of programs that celebrate, integrate and support families and communities for the good and well-being of all. Laws like S.B. 1070 that contribute to an inhospitable environment by isolating and marginalizing immigrants from the greater community reinforce the negative and unproductive "us" versus "them" dichotomy and tear down communities rather than build and strengthen them.

Advocacy around the Law

Advocates in Arizona and around the country are working on a number of strategies to stop the implementation of the law.

Litigation: Some city councils, like the Phoenix City Council, are calling special meetings to establish standing to sue the state on the grounds that S.B. 1070 unconstitutionally co-ops the Phoenix police force to enforce immigration laws that are the rightful jurisdiction of the federal government. Additionally, civil rights lawyers are developing a litigation strategy. They likely will bring an action in court asking for a temporary restraining order, then a preliminary injunction, and ultimately a permanent injunction to ensure that the law will not go into effect. Also, Eric Holder, the U.S. Attorney General, publicly stated that the federal government may go to court to challenge Arizona's new law.

Education: Advocates have identified the tremendous need for mounting an educational campaign to inform and educate both the immigrant and non-immigrant communities about the law and how to respond. There are plans underway to use multiple media outlets to educate communities – ethnic newspapers, radio, television, and community forums. Advocates also plan to offer Know Your Rights trainings so that individuals know about their constitutional rights and how to respond if they are stopped and questioned by the police.

Pressure on the Federal Government: Advocates are looking at ways to pressure the federal government to respond to the law. Some of the avenues that advocates will likely pursue include: (1) urge the current Administration to recall a legal opinion by former Attorney General John Ashcroft that the police have inherent authority to enforce immigration law; (2) urge the Department of Homeland Security (DHS) to terminate the 287(g) program and halt any further agreements with state and local law enforcement agencies; (3) urge the Administration to publicly rebuke the law and flatly state that no federal government resources (personnel, databases, facilities, etc.) will be used to help Arizona enforce its own state immigration law; and, (4) urge the Office of Civil Rights at the Department of Justice to review the law for possible civil rights violations.

Economic Boycott: Advocates will look for ways to encourage groups to economically boycott the state. For instance, on the day that the Arizona Governor signed the S.B. 1070 into law, the Board of Governors of the American Immigration Lawyers Association (AILA) instructed its Executive Committee to move the Association's fall 2010 conference, previously scheduled for Arizona, to another state. Additionally, the Mayor of San Francisco, Gavin Newsom, has banned city officials from traveling to Arizona for work purposes with the exception of law enforcement personnel to pursue investigations.