Chapter 2  
Arizona’s Immigration Policies and SB 1070  

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Enforcement directives are politically popular in Arizona, galvanizing support for elected and public officials. Some of the rhetoric regarding immigration has been largely symbolic and unfairly scapegoats immigrants. Starting in the mid-1990s, there have been a variety of policies passed in Arizona that target unauthorized immigrants. In 2010, one of the most controversial immigration policies in the United States, SB 1070, was passed in the state setting off debates nationally and internationally. As the unauthorized immigrant population increased, so did the number of laws targeting their presence. Immigration policy reform or more enforcement directives becomes politically popular in Arizona, galvanizing support for those elected officials that oppose illegal immigration. This chapter is a review of some of the laws, policies, and bills that led to the passage of SB 1070.

Arizona as an Immigrant Destination

When Operation Gatekeeper 1994 and Operation Hold-the Line 1993 were implemented, they redirected unauthorized immigration from California and Texas into Arizona. By enhancing the number of border patrol agents in California and Texas, unauthorized immigrants were subsequently entering regions in less-monitored Arizona. It is during the 1990s, when Arizona becomes a major destination point for unauthorized immigrants.

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In 1996, Congress passed the illegal immigration reform and responsibility act (IIRA). This Act established restrictions on legal immigrants from receiving social services, denying some from using food stamps and social security. Since unauthorized immigrants were already barred from most forms of welfare, the IIRA broadened restrictions for unauthorized immigrants from federal, state, and local benefits. Congress also increased criminal penalties for immigration-related offenses as well as hired more enforcement personnel. Another provision of the IIRA was a little-known policy called 287(g). The Act authorizes local law enforcement agencies after they are formally trained to implement immigration policies. This policy will set the stage for a major immigration debate in 2010 (Magaña 2011).

In 1997, the city of Chandler, a growing suburb just outside of Phoenix, implemented a policy known as Operation Restoration. For almost five days, the Chandler Police detained individuals that appeared to be Hispanic and asked them for proof of U.S. citizenship. If proper documentation was not provided, individuals were apprehended and subject to deportation. Over 400 individuals were detained as part of this process. U.S. citizens that appeared to be Hispanic were detained and denied certain civil and procedural rights until proof of citizenship could be provided. The city was sued, eventually paying more than $500,000 in out-of-court settlements (Johnson 2007).

On September 11, 2001 attacks on the World Trade Center and the Pentagon resulted in new immigration policy mandates. Immediately after the attacks, the Border Patrol was charged with sealing off the nation’s southern borders and deploying agents to airports. Because several of the terrorists had entered the U.S. “legally” with visas, public sentiment shifted its focus to visa over-stayers. A new system for reporting the status of foreign and exchange students was eventually implemented.

Congress also disbanded the immigration and naturalization service (I.N.S.). The agency’s two functions, enforcement and service, were separated and placed under the supervision of the department of homeland security department (DHS). The Border Patrol was placed in the Bureau of Customs and Border Protection while the previous service functions of the I.N.S. are now in the Bureau of Citizenship and Immigration Services.

In Arizona, growing fear and concern over terrorism and immigration was heightened when it turned out that several of the 9/11 terrorists lived in metropolitan Phoenix. Some scholars even felt that metropolitan Phoenix had been home to a “sleeper cell” of Osama bin Laden (Wagner and Zoellner 2010). Lotfi Raissi lived in North Phoenix and provided flight training to four of the terrorists in Arizona. Hani Hanjoor was one of the terrorists that crashed into the Pentagon and lived in Phoenix and took flight-training courses in Scottsdale. Nawaf Al-Hazmi, also on the Pentagon flight, took training courses in Phoenix. Furthermore, reports that terrorists were going to infiltrate through the southern border continued to fuel fear in Arizonians (Wagner and Zoellner 2010).

Around 2002, the prominence of immigrant vigilante groups grows, most notably the Civil Homeland Defense and the Minute Man Project. Volunteers from all over the country come to the state in order to participate in patrolling the borders, using
surveillance technology and reporting the presence of unauthorized immigrants to the Border Patrol. Minute Man members officially cannot have any physical contact with immigrants (Doty 2009).

In 2004, a citizen’s group called protect arizona now (PAN), placed an initiative on the ballot that would require: (1) proof of citizenship when registering to vote; (2) an identification card at polling places; (3) proof of immigration status when applying for state public welfare benefits; and (4) government workers were to report suspected unauthorized immigrants seeking benefits (Avalos et al. 2010). PAN received substantial financial support from the federation for American immigration reform (FAIR). The goals of FAIR are strengthened militarized borders, significant decreases in the rate of illegal immigration, greater deportations of unauthorized immigrants, and opposition to any amnesty proposals. Fifty-six percent of Arizona’s voters supported the proposition (Avalos et al. 2010).

In 2006, more state initiatives were passed illustrating the growing anti-immigrant sentiment in Arizona. First, voters passed an English-only proposition that requires all governmental materials be provided in English. Teachers can be penalized for teaching in Spanish. Citizens also approved Proposition 100 that denies bail for immigrants unlawfully in the country. Proposition 102 denies an unauthorized immigrant from bringing a lawsuit or winning any damages. For instance, if an immigrant is hurt at a worksite because of employer negligence, he or she cannot claim damages. Proposition 300 makes anyone without legal status ineligible for in-state tuition, grants, scholarships, and financial aid. For instance, students born in Mexico but have lived in Arizona their whole life would be charged out-of-state tuition. And HB 2592 prohibits cities in Arizona from funding any day labor sites or places where immigrants and citizen laborers congregate for work.

In 2006, the Secure Fence Act was enacted. The DHS was charged with securing approximately 700 miles of the border between U.S. and Mexico. With an allocated 1.2 billion dollars, DHS was responsible for building a wall that was to be impenetrable by unauthorized entries. Monies were also provided for more cameras for surveillance, motion sensors, and strengthening of existing barriers. Since 2006, only sections of the barrier have been completed. In Arizona, there are a variety of spatial and environmental issues that hinder completion. There are areas that are mountainous, making a continuous wall difficult if not impossible to complete. Furthermore, Native Americans on the Tohono O’odham Indian Reservation complain that the barrier desecrates ancient burial sites. Environmentalists also find that the structure is damaging to the migration of endangered species (Wood 2008).

In 2007, Governor Janet Napolitano signed House Bill 2779. The law requires employers to verify that their employees are in the country legally. If an employer knowingly hires an unauthorized worker, he or she is subject to a 10-day suspension of a state business license. A second offense can result in permanent revocation of a state license. Verification of a worker’s status is made at an Employment Eligibility Verification System, commonly known as E-Verify. If an employee is in the country illegally or his or her status cannot be verified, the employer receives a “Notice of Suspect Documents”. Employers are then considered informed and must terminate employment as well as not rehire the employee in the future.
Arizona Gets Hotter

Maricopa County is the most populated region in Arizona and has the highest proportion of unauthorized immigrants. Joe Arpaio, the head of the Maricopa County Sheriff’s Office (MCSO), calls himself the Toughest Sheriff in America. He has been reelected six times, starting his career in 1993. Much of his popularity stems from his stance on unauthorized immigration. The MCSO has been sued over 2,300 times for various reasons, including cruel treatment to inmates, racial profiling, and illegally carrying out immigration policy. There have also been several lawsuits won by families whose loved ones have died while in MCSO jails (Finnegan 2009).

Federal policy players, not police or local enforcement agents, traditionally carry out immigration policies and the constitution stipulates states and local entities cannot carry supersede federal laws under the supremacy clause. When the IIRA passed in 1996, a small provision called 287(g) allowed local police officers to work with U.S. Immigration and Customs Enforcement (ICE) if they are formally trained. Officers must receive specialized guidance from ICE instructors. This coordination is to provide officers necessary resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling, and money laundering (ICE 2009). The provision stipulates that you cannot stop a person simply based on appearance or if the individual is perceived to be an unauthorized immigrant.

Police agencies that participate in the training receive funding in order to subsidize immigration enforcement activities. In order to carry out 287(g) you must be a U.S. citizen, pass a background investigation, have a minimum of 2 years’ experience, and no disciplinary actions pending. ICE provides 4 weeks of training at the Federal Law Enforcement Training Center in Charleston, South Carolina. (ICE 2009).

The MCSO has the most deputies in the nation trained through 287(g), approximately 170. In Phoenix, the MCSO implements controversial programs under the 287(g) called “crime suppression sweeps” The MCSO sets up coordinated checkpoints around various parts of the county where immigrants are known to live. Latino immigrants have been arrested for minor traffic violations and then subsequently deported. As stipulated in 287(g), individuals are not to be targeted for minor offenses. The policy is intended to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexual-related offenses, narcotics smuggling, and money laundering—not immigration enforcement. The MCSO is under investigation for the practice of crime suppression sweeps. There is growing concern that police officers enforcing immigration policies have compromised positive relations between police and immigrants. Individuals that may have called the police for help may not for fear they may be deported. As Arpaio described it, “We are quickly becoming a full-fledged anti-illegal immigration agency” (Magaña 2011).

In 2009, the government accountability office (GAO) released a report on the impact of 287(g). They found that immigration officials failed to develop key internal controls over the controversial program that trains local police to identify
illegal immigrants involved in crime. They found that some departments were focusing on minor violations rather than ones that are serious, ignoring the policy objectives. For instance, some officers were arresting and processing unauthorized immigrants for deportation for minor violations like speeding (Aizenman 2009). The authors warned that confusion over the purpose of 287(g) could result in referrals of an unmanageable number of low-priority illegal immigrants to ICE as well as misuse of authority by local officials. One sheriff said that his understanding of his authority was that 287(g)-trained officers could go to people’s homes and question individuals regarding their immigration status even if the individual is not suspected of criminal activity. The report also showed that the program has expanded rapidly in recent years, “receiving $60 million between 2006 and 2008, training 951 state and local law enforcement officers in 67 agencies and resulting in the arrests of at least 43,000 immigrants, almost 28,000 of whom ultimately were ordered out of the country” (Aizenman 2009).

In another study conducted by the Goldwater Institute, researchers found that the policy is highly ineffective and deters officers from pursuing more law enforcement activities. They find that before 287(g), MCSO targeted more smugglers or coyotes—those individuals who illegally bring people into the country. In 2006 and 2007, the MCSO arrested only low-level operatives, such as drivers and drop-house guards. The researchers noted that out of the eight patrol sweeps that have taken place in six communities in Phoenix not one smuggler boss has been arrested (Goldwater 2008).

The researchers also found that the policy has diverted substantial resources away from other law enforcement activities. In 2005, MCSO had a response of 5 minutes, in 2007 its median response time was over 7 minutes, and in 2008 the average response time was nearly 11 min. They illustrate that the Phoenix Police Department that does not have 287(g) directives has an average response time of 4 minutes (Goldwater 2008).

Federal officials came under increasing pressure to end 287(g) because of racial profiling. In October of 2009, I.C.E. renewed their contract with MSCO. This time, however, funding was to be used only for processing immigrants after arrest. Disappointed in the loss of 287 (g) money Joe Arpaio quips to reporters, “This just includes the jail, and deep down, I feel that I ought to take it and rip it all up. On the other hand, I feel it’s very critical to have the jail... it looks like they’re taking away my authority on the streets for political reasons. They don’t have the guts and the courtesy to even come back and say in writing, we are not going to continue” (Hensley 2009).

Enter SB 1070

In 2010, State Senator Russell Pearce maintained that the government had been hampering the immigration enforcement actions of police agencies in Arizona. That is why he was introducing the Support Our Law Enforcement and Safe Neighborhoods Act later to be known as SB 1070. FAIR, the organization that
helped fund Proposition 200 was again involved in the backing of the proposal. Under the state’s trespassing statute, immigrants can be criminalized for their mere presence in Arizona. Additionally, the proposal would bar cities from enacting policies that prevent them from enforcing federal immigration laws. SB 1070 also makes it a crime to stop a vehicle on the road to hire a day laborer if it impedes traffic. Arizonians are no longer able to transport, harbor, conceal or shield an unauthorized immigrant. Finally the legislation would strengthen the states employer sanctions laws, giving prosecutors more latitude in investigations.

On April 28, 2010, Governor Jan Brewer signed SB 1070, setting off national and international controversy. Polls showed that support for the bill as well as her anti-immigrant stance boosted her popularity with many Arizonians. Not surprising, when Governor Brewer ran for reelection she maintained that immigration was out of control in Arizona and that law enforcement agencies have found bodies in the desert that have been beheaded. She has also maintained that the majority of immigrants are bringing drugs into the state. When Senator McCain ran for reelection his platform was also largely based on immigration enforcement as well as support for SB 1070.

Recent data show the proportion of unauthorized immigrants in Arizona as well their impact on crime. The overall population of Arizona is a bit higher than 6 million. The Pew Foundation found that during 2008 the unauthorized population in Arizona was around 5.5 % or 375,000 people. The authors maintain that these numbers have undoubtedly declined. Furthermore, they note that unauthorized immigrants were leaving the state before SB 1070. Out-migration was largely based on an ailing economy and not enforcement policies. Next, the FBI released crime statistics data illustrating that violent crime in Arizona fell nearly 14 % in 2009, the largest drop of any state except South Dakota. Murder and non-negligent manslaughter dropped by 22 %. Forcible rape fell by 3.8 % (Montini 2010).

SB 1070 was immediately challenged by a broad coalition of groups, including the American Civil Liberties Union, Mexican–American Legal Defense Education Fund, National Immigration Law Center the National Association for the Advancement of Colored People, ACLU of Arizona, National Day Laborer Organizing Network and the Asian Pacific American Legal Center. The lawsuits charged that the Arizona law interferes with federal power and authority over immigration, violates the supremacy clause of the U.S. Constitution, invites racial profiling and infringes on the free speech of immigrants in Arizona. Several prominent law enforcement groups, including the Arizona Association of Chiefs of Police, opposed the law because it diverts limited resources from law enforcement’s responsibility and destroys police-citizen relationships that are integral when policing diverse communities. The U.S. Department of Justice also brought suit, stating that the state law superseded federal immigration law.

On July 28, 2010, Judge Susan Bolton’s ruled for a temporarily injunction on four of the law’s provisions. Temporarily stopped by the Judge’s orders include: Officers do not have to make a reasonable attempt to determine the immigration
status of a person stopped, detained or arrested if there’s reasonable suspicion they are in the country illegally; it will not be a crime if you are not carrying an alien-registration papers; officers cannot make warrant less arrests of persons; and it is not a crime for illegal immigrants to solicit, apply, or perform work.

What has gone into effect and not temporarily stopped: It is a crime to pick up a day laborer in a roadway if it impedes traffic; law enforcement still must enforce federal immigration laws to the fullest extent of the law; Individuals will still be able to sue an agency if it is perceived that they are not enforcing the law. Governor Brewer remarked that the Judge’s ruling “as a little bump in the road”, and Maricopa County Sheriff Joe Arpaio maintained that he was not surprised by Bolton’s ruling, but it will have little impact on his planned crime-suppression operations. The injunction was later upheld by the Ninth Circuit Court in April 2011. Arizona later appealed the decision to the U.S. Supreme Court, which heard arguments by the state and the Obama Administration on April 25, 2012.

June 2012, the U.S. Supreme Court overturned most parts of the bill except for the provision that requires police officers to make a reasonable attempt when determining the immigration status of a person stopped, detained or arrested. The Supreme Court also maintained that there must be reasonable suspicion that the person is in the country illegally. Most important, the stated that they would reconsider its decision if civil rights violations took place.

September 2012, the American Civil Liberties Union, the National Immigration Law Center and the Mexican–American Legal Defense and Educational Fund requested that a new injunction be placed on the law after the Supreme Court’s ruling. The plaintiffs maintained that the law encourages the lengthy detention of people with a Latino phenotype and that the law violated the Equal Protection Clause of the 14th Amendment. Judge Susan Bolton declined to issue a new injunction.

**Conclusion**

Arizona has been implementing policies that target unauthorized immigrants for the last 15 years. Enforcement directives are politically popular in Arizona, galvanizing support for elected and public officials. Some of the rhetoric regarding immigration has been largely symbolic and unfairly scapegoats immigrants. It is important to note that even though the most controversial parts of SB 1070 have been stopped, the impact of the policy is apparent in Arizona. In many ways, the discourse around immigration has been almost as powerful as the law itself.

According to the Arizona Tourism Alliance, the controversy over SB 1070 has cost the state over 2 billion dollars and roughly 30,000 jobs. Convention business that has been canceled in protest of SB 1070 has cost the state $15 million. Although the most controversial parts of SB 1070 have been stopped, the state still is being boycotted.
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