



## HUMAN RIGHTS INITIATIVE OF NORTH TEXAS

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### Why Texas Should Not Implement Local Immigration Reform

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Texas Republicans recently voted to place immigration reform resembling that of Arizona's controversial S.B. 1070 on their party's platform.<sup>1</sup> The proposed legislation would make it a state offense for an undocumented immigrant to "intentionally or knowingly" be within the State of Texas, and "require local law enforcement to verify [an immigrant's] residency status upon [his or her] arrest for another crime."<sup>2</sup> Although Human Rights Initiative of North Texas (HRI) understands the frustration that the States feel at the federal government's failure to enact comprehensive immigration reform, we are opposed to any such local legislation because it is unconstitutional, costly, can lead to racial profiling, and will likely deter crime victims from reporting criminal activity.

Federal immigration law preempts any attempt by the Texas Legislature to implement a law that gives state police the power to enforce immigration laws, because the Supremacy Clause entails that the "Constitution, and the Laws of the United States . . . made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."<sup>3</sup> Hence, any substantive disparities between state immigration laws and the federal immigration laws make the state laws unconstitutional, as Congress has "set

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<sup>1</sup> Gromer Jeffers Jr., *Texas Republicans add Arizona-like Residency Checks to Platform*, DALLAS MORNING NEWS, Jun. 12, 2010. *See also* REPUBLICAN PARTY OF TEXAS, 2010 STATE REPUBLICAN PARTY PLATFORM at 24 (2010) found at [https://www.1888932-2946.ws/TexasGOP/E-ContentStrategy/userfiles/2010\\_RPT\\_PLATFORM.pdf](https://www.1888932-2946.ws/TexasGOP/E-ContentStrategy/userfiles/2010_RPT_PLATFORM.pdf).

<sup>2</sup> REPUBLICAN PARTY OF TEXAS, 2010 STATE REPUBLICAN PARTY PLATFORM at 24 (2010) "Crime" is not defined and it is not clear if any law based on this proposal would include misdemeanors or minor traffic violations..

<sup>3</sup> U.S. Const., art. IV, cl. 2.



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forth the framework by which the federal government determines which aliens may be eligible to enter and reside in the United States” through various provisions of the Immigration and Nationality Act.<sup>4</sup> Thus, efforts to intensify state enforcement of immigration laws in Texas will waste the time and effort of policymakers and likely lead to a costly lawsuit from the U.S. Justice Department. This has been the case in Arizona, where the Justice Department has filed suit against the state over its passing of S.B. 1070 and asked for federal courts to issue a preliminary injunction to stop the bill’s enforcement before it takes effect on July 27, 2010.<sup>5</sup>

Indeed, several federal courts, including courts in the Dallas, have already declared the enactment of a municipal immigration laws unconstitutional. Farmers Branch, Texas, has repeatedly passed legislation that effectively required tenants to provide proof of their legal residency in order to obtain rental housing, only to have several versions of the law struck down on preemption and due process grounds.<sup>6</sup> These cases have cost Farmers Branch and its taxpayers between \$3.2 and 3.5 million in legal fees.<sup>7</sup> The most recent version of the law, redrafted and enacted to ostensibly correct the problems that made prior editions unconstitutional, was enjoined because the court held that although the law was “grounded in federal immigration classifications, [it was] an invalid regulation of immigration because it

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<sup>4</sup> Complaint at 5, *United States v. Arizona*, Case 2:10-cv-01413-NVW (D. Ariz. Jul. 6, 2010).

<sup>5</sup> Terry Frieden et al., *Feds Seek to Overturn Arizona Immigration Law*, WASH. POST, Jul. 7, 2010.

<sup>6</sup> See, e.g., *Villas at Parkside Partners v. City of Farmers Branch*, 2010 U.S. Dist. LEXIS 30346, 2010 WL 1141398, (N.D. Tex. March 24, 2010) (and cases cited therein); see also *Villas at Parkside Partners v. City of Farmers Branch*, 577 F. Supp. 2d 858 (N.D. Tex. 2008).

<sup>7</sup> Lou Dubose, *Arizona’s Alien Exclusion Act*, THE WASHINGTON SPECTATOR (May 15, 2010), <http://www.washingtonspectator.org/articles/20100515arizonaalien.cfm>; see also Diane Solis, *Farmers Branch legal costs rise in immigration fight*, DALLAS MORNING NEWS, (April 10, 2010).



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use[d] those classifications for purposes not authorized or contemplated by federal law.”<sup>8</sup>

Similarly, any expansion of the immigration policy laid out by Congress, as has been proposed, is unconstitutional because “the authority to control immigration is vested solely in the federal government.”<sup>9</sup>

Even if such a law were constitutional and not preempted by federal legislation, it could increase racial profiling by local law enforcement officers. Studies have suggested that racial profiling is more likely when municipalities attempt to enforce federal immigration laws (as they have through agreements with the federal government under programs like the Criminal Alien Program (CAP) or Section 287(g) agreements from the Immigration and Nationality Act (INA)).<sup>10</sup> For instance, in Irving, Texas, the number of Hispanics arrested for Class-C misdemeanors, which include petty crimes such as minor traffic violations, increased nearly 150 percent between April 2007 and September 2007 after Irving intensified its CAP participation.<sup>11</sup> Similarly, 96 percent of Irving’s Immigration and Customs Enforcement (ICE) detainees (instruments used to flag inmates as deportable non-citizens) recorded in the city’s “on view”

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<sup>8</sup> *Villas at Parkside Partners v. City of Farmers Branch*, 2010 U.S. Dist. LEXIS 30346 at \* \_\_\_, 2010 WL 1141398, (N.D. Tex. March 24, 2010).

<sup>9</sup> *Traux v. Raich*, 239 U.S. 33, 421 (1915).

<sup>10</sup> It should be noted that there are considerable similarities between the law proposed by the Texas Republicans, CAP programs, and the jail enforcement model of 287(g) agreements. CAP operates by granting federal immigration officials access to county jails to identify deportable non-citizens, whereas under the jail enforcement model of 287(g), local enforcement officials are trained by Immigration and Customs Enforcement (ICE) to carry out the same task.

<sup>11</sup> TREVOR GARNER II & AARTI KOHLI, THE CHIEF JUSTICE EARL WARREN INST., THE C.A.P. EFFECT: RACIAL PROFILING IN THE ICE CRIMINAL ALIEN PROGRAM 6 (2007).



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arrest data were issued to Hispanics,<sup>12</sup> while only about 71 percent of undocumented immigrants in Texas are Hispanic.<sup>13</sup> This disproportionate effect of increased local enforcement of federal immigration laws on Hispanics suggests the presence of racial profiling.

To the extent that the *intent* of officials to target Hispanics or any other race can be proven (along with a showing of actual discrimination or racial profiling against that race) in law enforcement's implementation of immigration policies, the state might also face lawsuits that allege the violation of the Equal Protection Clause of the 14<sup>th</sup> Amendment.<sup>14</sup> Maricopa County, Arizona, is already experiencing how increasing local enforcement of federal immigration policies can increase the legal costs charged to its taxpayers. Maricopa County taxpayers funded over \$30 million in legal battles between 2004 and 2008 caused by the county's 287(g) program, with much of the payouts going to families of prisoners who died in custody without being convicted of a crime at the time of their deaths.<sup>15</sup> Constitutional challenges based on other grounds are also possible.

Finally, due to its familiarity with the struggles faced by undocumented victims of violent crimes, HRI understands that the proposed law would make communities less safe and reduce cooperation between immigrant crime victims and law enforcement. The planned legislation is

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<sup>12</sup> *Id.*

<sup>13</sup> Carole Keeton Strayhorn, Texas Comptroller, *Undocumented Immigrants in Texas: A Financial Analysis of the Impact to the State Budget and Economy*, Section II, December 2006, found at <http://www.window.state.tx.us/specialrpt/undocumented/2backgrnd.html>.

<sup>14</sup> *Washington v. Davis*, 426 U.S. 229, 441 (1976).

<sup>15</sup> David Carr, *A Star Turn for a Sheriff on Fox TV*, N.Y. TIMES, Jan. 4, 2009.



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contradictory in both spirit and effect to the U Visa program, which encourages immigrant victims of violent crime to assist police in finding and punishing criminals by rewarding qualified immigrants with legal status.<sup>16</sup> Indeed, this law would primarily affect those who commit minor infractions while discouraging undocumented immigrants from cooperating with local authorities to catch serious criminals.

For example, an October 2009 Department of Homeland Security report shows that 57 percent of immigrants identified through CAP in Tarrant County had no criminal convictions.<sup>17</sup> At the same time, the *Proyecto Defensa Laboral* (“PDL,” Worker’s Defense Project), a non-profit center that helps low-wage workers in Travis County improve their working conditions, has reported that numerous members have been afraid to contact police since Travis County increased its involvement with ICE.<sup>18</sup> One example of such a case is when an undocumented member failed to seek the help of local law enforcement when her 13-year-old daughter was sexually assaulted.<sup>19</sup> Scared of deportation, only after speaking with PDL did the member seek help.<sup>20</sup> Such an instance indicates the ominous effect that the proposed Texas law might have on the safety of communities, and supports HRI’s recommendation that local law enforcement

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<sup>16</sup> INA § 101(a)(15)(U)(I)-(IV) (2009); see also *The U Visa: Obtaining Status for Immigrant Victims of Crime*; 8.

<sup>17</sup> ANDREA GUTTIN, IMMIGRATION POLICY CENTER, *THE CRIMINAL ALIEN PROGRAM: IMMIGRATION ENFORCEMENT IN TRAVIS COUNTY, TEXAS* 3 (2010).

<sup>18</sup> *Id.* at 14.

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

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



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should work with immigrants to catch serious criminals rather than fostering an environment of fear in the Hispanic community.

Thus, the fact that Arizona lawmakers have passed unprecedented and unconstitutional immigration laws should not encourage other states to follow suit. If a law similar to Arizona's S.B. 1070 is passed by the Texas Legislature, then citizens and taxpayers in Texas will face more dangerous communities, an increase in racial profiling by local law enforcement, and higher taxes to fund costly legal battles. Due to each of these considerations, the Texas Republicans should remove this policy from their platform.