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POLICE CHIEFS CONCERNED ABOUT KEY ELEMENT
OF ARIZONA IMMIGRATION LAW UPHeld BY SUPREME COURT

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(June 25, 2012, Washington, DC)—Police chiefs from Arizona and other states are concerned that the one major provision of the SB 1070 immigration law upheld by the U.S. Supreme Court today will seriously undermine local law enforcement.

Section 2(B) of the law, which the Court upheld, at least for now, requires police to attempt to determine the immigration status of any person during traffic stops and other routine encounters if there is “reasonable suspicion” to believe that the person is unlawfully present in the United States.

“There is a body of case law defining what constitutes reasonable suspicion in other contexts, but no such guidance exists regarding illegal immigrants, and SB 1070 does not define the term,” said Tucson Police Chief Roberto Villasenor. “Under the Supreme Court decision, police departments in Arizona must enforce Section 2(B), and no one respects the authority of the courts more than police chiefs, so we will do our best to enforce the law. But we are in uncharted territory on this issue.”

The difficulty in enforcing Section 2(B) is compounded by its provisions allowing anyone to sue the police for failing to enforce the law. So police and sheriffs’ departments in Arizona may be sued by people who believe they are not aggressive enough in enforcing the law—or by others who believe that police are being too aggressive or are engaging in racial profiling.

“We absolutely expect lawsuits on both sides of this issue,” Chief Villasenor said. “This will result in our officers being tied up in court rather than working on the streets to reduce crime.”

“Allowing people to sue over issues that are not defined clearly is a recipe for trouble,” said San Diego Police Chief William Lansdowne. “This kind of provision could jam up the courts and cost police departments and cities a fortune. Police departments have been cutting their budgets since the economic crisis began in 2008, and even before that for some of us. We’ve got limited resources and are not equipped to spend time and money on this.”

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Police chiefs also fear that Section 2(B)—and similar laws that may be passed in other states—will undermine decades of work by police departments to create closer relationships with all communities. If immigrant communities believe that local police officers are serving as immigration agents, many will be afraid to have any contact with the police, even when they are victims of or witnesses to crime.

Police Commissioner Charles Ramsey of Philadelphia and Commissioner Ed Davis of Boston said they hope that the legislatures in their states do not pass similar legislation, because they share the concerns of colleagues like Chiefs Villasenor and Lansdowne. “Police agencies are stretched thin these days and we’ve got our hands full fighting violent crime,” Commissioner Ramsey said. “I don’t have the resources to deal with the immigration enforcement issues created by laws like Section 2(B).”

“This is a high-risk gamble that Arizona has taken,” said Charlie Deane, Chief of Police in Prince William County, Va., which considered but rejected a law similar to SB 1070. “It damages our efforts at community policing and sets you up for lawsuits from advocates on both sides of the issue. There is no way around that. Prince William County chose a more moderate approach that requires immigration screening of all *arrestees* for violations of state or local laws. This initiative has resulted in general acceptance in the community.”

The Police Executive Research Forum (PERF) has made immigration a top-priority issue since 2007, and police chiefs across the country have consistently expressed concern at PERF meetings about laws that require local police in effect to serve as immigration agents.

“The role of police in their communities is fundamentally built on a relationship of trust, and police recognize the importance of providing service to all members of a community,” said PERF Executive Director Chuck Wexler. “The real-world impact of the decision is that it may send a chilling message to immigrant communities—not only in Arizona but across the country. Immigrants will be fearful about being approached by the police for any reason. Without a relationship of trust, it is much more difficult for police to get victims and witnesses to come forward—and this will have a significant impact on crime in these communities. There are better ways for local police to cooperate with federal authorities on immigration, in a focused way that concentrates on serious criminals.”

More details about police chiefs’ concerns about SB 1070 are found in a legal brief that was signed by more than a dozen chiefs and submitted to the Supreme Court in March, as the Court considered the challenge to SB 1070. The brief can be found here: <http://policeforum.org/library/immigration/AmicusBriefreArizonaSB1070.pdf>. PERF and other law enforcement organizations also joined that brief.

Positive Elements of the Supreme Court Opinion

PERF was encouraged to see that several elements of the Supreme Court opinion signal a cautious approach to any state legislation that requires local police to take on immigration enforcement roles. The majority rejected any authority of the states to set up their own

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immigration rules or penalties, even if they are allegedly comparable or parallel to federal law. By striking the Section 6 language on warrantless arrests, for example, the Court emphasized the primacy of the federal government to make the decisions about arrests for immigration violations and to exercise prosecutorial discretion. And even on the Section 2(B) provision that the Court upheld, the Court suggested that Arizona law enforcement agencies will need to construe those powers narrowly, both to avoid long detentions and to make sure that the general checking power is exercised reasonably.

Salt Lake City Police Chief Chris Burbank noted that in the decision handed down today, the Supreme Court was only deciding the limited, specific legal question of whether SB 1070 violates the Supremacy Clause of the U.S. Constitution. “The Court was not deciding whether Arizona’s law is a good model for other states to follow, or whether SB 1070 will result in racially biased policing,” Burbank noted. “There is no reason that other states should consider the Supreme Court ruling an endorsement of SB 1070.” In fact, new legal challenges to SB 1070 over racial profiling issues are likely to be filed in coming months, after a factual record can be established of the real-world results in the enforcement of the law.

Indeed, Justice Anthony Kennedy, writing for the Court majority, noted that the Court was ruling only on whether the Arizona law was preempted by the Supremacy Clause of the U.S. Constitution even before the law takes effect. “This opinion does not foreclose other preemption and constitutional challenges to the law as interpreted and applied after it goes into effect,” Justice Kennedy wrote.

The Police Executive Research Forum is a Washington, D.C.-based national membership organization of police executives from the largest city, county and state law enforcement agencies. PERF is dedicated to improving policing and advancing professionalism through research and involvement in public policy debate. For additional information, go to www.policeforum.org.

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