

Utah: Going Down Arizona's Unconstitutional Path

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On March 4, 2011, Utah's legislature passed two bills that, considered together, would constitute the most aggressive state-based regulation of immigration to date and a direct challenge to the longstanding constitutional principle that the regulation of immigration is an exclusively federal power. These bills are awaiting the governor's signature. Utah's "Illegal Immigration Enforcement Act" (H.B. 497) is a far-reaching enforcement-only bill that copies several provisions virtually outright from Arizona's controversial SB 1070 and includes other provisions that lead to the same result — of driving immigrants from the state.

On the same day, Utah also passed the "Utah Immigration Accountability and Enforcement Act" (H.B.116), which attempts to establish a state immigrant worker permit while also imposing numerous requirements on applicants for the proposed status and heightening employment eligibility verification requirements. What follows is an overview of some of these bills' most dangerous provisions.

HB 497: The "Illegal Immigration Enforcement Act"

HB 497 would establish a comprehensive state immigration enforcement scheme much like Arizona's SB 1070. The bill would promote racial profiling for law enforcement in a wide variety of scenarios. If implemented, the bill would prohibit local law enforcement agencies and localities from maintaining policies that prioritize public safety and welfare over immigration enforcement. This would further discourage immigrant communities from reporting crimes or cooperating with investigations out of fear of racial profiling and potential deportation.

- Creates an elaborate scheme requiring local law enforcement officers to verify the immigration status of individuals they stop in numerous circumstances, similar to Arizona's SB 1070.

Officers are required to verify the immigration status of anyone they stop if the person:

- Is arrested for a class A misdemeanor or felony (includes: possession of marijuana over one ounce; DUI with injury; criminal mischief).
- Is arrested and booked for a class B or C misdemeanor (includes lack of a valid license, public intoxication; many traffic offenses; DUI; reckless driving; public nuisance).
 - In addition, officers may verify the immigration status of anyone alleged to have committed a class B or C misdemeanor.
- Officers would also be required to verify the immigration status of any passengers of a car if they developed "reasonable suspicion" that the passengers were violating new Utah criminal provisions with respect to the smuggling or transporting of "illegal aliens."



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- While the bill enumerates a list of documents that, if produced, would give individuals stopped a presumption of “lawful presence in the United States,” as well as allowing individuals to make an oral affirmation of U.S. citizenship or U.S. national status, it also allows officers to reject these documents if they have “reasonable suspicion” to believe they are false, further inviting racial profiling.
- Creates state criminal offenses for transporting and harboring of “illegal aliens,” or conspiring to do so.
- Allows for the warrantless arrest of individuals if law enforcement agents have “reasonable cause” to believe an individual is “an alien”
 - Subject to a removal order;
 - With a federal immigration hold; or
 - Who has been charged or convicted in another state with one or more aggravated felonies as defined by federal immigration law.
- Prohibits any state or local government policy that would limit law enforcement agencies from assisting the federal government in the enforcement of any immigration law or regulation.
- Eliminates any state or local governmental restriction on information sharing with the federal government regarding immigration status in numerous circumstances, unless prohibited specifically by federal law.

HB 116: The “Utah Immigration Accountability and Enforcement Act”

HB 116 attempts to create a state “guest worker” program that could not be implemented without a dramatic change in federal law. States do not have the authority to devise and grant immigration permits, and Utah’s attempt to do so offers false hope to immigrants. In addition, the bill would subject people to onerous requirements; funnel individuals into deportation by sharing their information with federal immigration authorities; would not provide a path to permanent residency or citizenship for the “guest worker;” and would not provide labor protections to guard workers against exploitation.

- Attempts to create a state “guest worker” program.
 - The Utah Department of Public Safety will issue Utah guest worker permits that can be used as identification and proof of age for any local or state government’s purpose, but not as eligibility for public benefits.
 - An undocumented person must obtain a Utah guest worker permit within thirty days of beginning to work. The permit is valid for two years from the date of issuance.
 - An undocumented person is eligible for a Utah guest worker permit if s/he has worked or lived in Utah before May 10, 2011, has proof of a pending job, undergoes a criminal background check, and meets other requirements.
 - The fingerprints from the criminal background check will be sent to the Utah Bureau of Criminal Identification, the FBI, and the Secure Communities program (a program

where the fingerprints of individuals are checked against the Department of Homeland Security's biometric system to identify people who are removable).

- In order to receive the guest worker permit, an undocumented person must pay a fine of \$1,000 if s/he entered the country legally or a fine of \$2,500 if s/he entered the country unlawfully.
 - An undocumented person can receive an immediate family permit if s/he lives in Utah and is a member of a guest worker's immediate family.
 - If the guest worker permit has been revoked or has expired and the individual continues to live in Utah, the Utah Department of Public Safety will notify the Utah attorney general and U.S. Immigration and Customs Enforcement.
 - The Utah guest worker program will take effect on July 1, 2013, or 120 days after the federal government grants Utah a "waiver" to institute its own guest worker program, whichever is sooner.
- Attempts to create a state worker verification system, whereby Utah will develop a procedure similar to the federal government's E-Verify program to verify the validity of the guest worker permit.
 - Requires employers with more than 15 employees to verify the employment eligibility of new employees through the already existing federal E-Verify program or Utah's newly created verification program.



WHILE THE UTAH LEGISLATURE ATTEMPTED to take an approach different from Arizona's enforcement-only scheme, in reality the practical results are the same. State schemes that threaten our constitutional values and target people of color are not the solution to our broken immigration system. Instead, we should encourage states to take affirmative steps to integrate all immigrants into their communities. Our country needs federal policymakers to step up to the plate and get serious about providing a real path to legalization that recognizes immigrants' contributions and builds strong and inclusive communities.

FOR MORE INFORMATION, CONTACT

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