Moral and Legal Dilemma: A Legal Analysis of the Criticisms Leveled Against Arizona SB 1070

Michael K Marriott, University of California - Davis

Available at: https://works.bepress.com/michael_marriott/1/
Moral and Legal Dilemma: A Legal Analysis of the Criticisms Leveled Against Arizona SB 1070

By: Michael K. Marriott

University of California, Davis
King Hall School of Law
400 Mrak Hall Dr.
Davis, CA 95616

mkmarriott@ucdavis.edu

(619) 274-6152
# Table of Contents

**Introduction** .......................................................................................................................... 2

I. **Background** .......................................................................................................................... 3
   a. **The Problem Legislators Sought to Fix** ............................................................................ 3
      i. **Levels of Unlawful Immigration** .................................................................................. 4
      ii. **Consequences of Unlawful Immigration** .................................................................... 4
   b. **The Bill** ............................................................................................................................ 5
      i. **Stated Intention of SB 1070** ....................................................................................... 5
      iii. **Modifications to SB 1070 under HB 2162** ............................................................... 8

II. **Public Sentiment: How the Public as a Whole Feels about the Bill** ............................. 8

III. **Opposition to the Bill** ....................................................................................................... 9

IV. **Criticisms** ......................................................................................................................... 10
   a. **Criticism on Civil Rights Grounds** ................................................................................ 10
   b. **Criticism on Constitutional Grounds** ............................................................................ 12
      i. **Equal Protection** ......................................................................................................... 13
      ii. **Federal Preemption** .................................................................................................. 13
   c. **Criticism on Human Rights Grounds** .......................................................................... 14

**Conclusion** ............................................................................................................................ 19
Introduction

The Support Our Law Enforcement and Safe Neighborhoods Act, more commonly known as Arizona SB 1070, is a recently passed bill targeting unlawful immigration. Touted to be the strongest piece of immigration legislation passed in America's recent history, the bill has come under fire on state, national, and international levels.

This paper begins by setting the stage for why SB 1070 was passed, and what legislators sought to accomplish. It then provides a basic overview of the bill, with an emphasis towards its more controversial aspects. From there it groups together certain classes of criticisms that have been publicly leveled against the bill, and analyzes said criticisms to determine their legitimacy. The ultimate goal of this paper is to analyze SB 1070 in a legal context, and to determine whether its critics are legally justified in their criticisms.

The purpose of this paper is not to advocate for or against the bill, or to advance any type of moral or philosophical position. Rather, the purpose is to examine the legislation from a purely legalistic point of view. For this purpose, and considering that the terms ‘illegal immigrants’ and ‘undocumented workers’ are both politically charged terms used to imply certain positions in debates regarding the bill, this paper makes use of the term ‘unlawful immigrants’ when referring to those who have entered or remain in the United States in contradiction to U.S. Federal immigration laws. This term is used to differentiate the category of persons from ‘lawful immigrants,’ or those who were not born with American citizenship, but have immigrated in accordance with U.S. Federal immigration law.
I. Background

The Support Our Law Enforcement and Safe Neighborhoods Act, hereinafter referred to simply as SB 1070, is an act passed by the Arizona Legislature. Its stated purpose is “to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.” The bill has received significant criticism and has spurred more than its fair share of controversy, including both protests and counter-protests across the country. The protestors include everyday people and celebrities alike. Note, however, that Arizona is not the first state to pass such a bill, with similar bills already in force not only in Arizona, but in Colorado, Florida, Oklahoma, Missouri, South Carolina, and Utah as well.

a. The Problem Legislators Sought to Fix

SB 1070, controversial as it may be, was not passed in a vacuum. As the following sections illustrate, while unlawful immigration affects the nation as a whole, it is particularly prevalent in Arizona. Such significant levels of unlawful immigration have resulted in a disproportionate cost to the state of Arizona and its citizens as well, when compared to the

1 Arizona SB 1070 generally.
2 Arizona SB 1070, § 1.
3 See Stephanie Williams, The Heat is On in Arizona, World Press.
5 Naima Ramos-Chapman, Roundup of SB 1070 Protest Songs, Color Lines.
6 Arizona Rev. Stat. §13-2319
9 21 Oklahoma Stats. Ann. § 446.
10 Vernon’s Ann. Mo. Stats. § 577-675.
12 Utah Code Ann. 1953 § 76-10-2901.
14 See contra, Dan Nowicki, "Court fight looms on new immigration law" (April 25, 2010), The Arizona Republic. Claiming that Arizona is the only state that has made it illegal for illegal immigrants to be present in a state.

Marriott, Moral and Legal Dilemma, Page 3
United States as a whole. As such, it should be of little surprise that the strongest piece of anti-unlawful immigration legislation passed in America's recent history came out of this state.

i. Levels of Unlawful Immigration

In a state of only 6.6 million people,\textsuperscript{15} unlawful immigrants in Arizona number approximately 460,000.\textsuperscript{16} It is important to note that the 460,000 refers only to those who have themselves entered and remained illegally, and not to their descendants. This number has increased by an estimated 500% over the past two decades. As border state with significant portions of remote desert terrain, Arizona has become a gateway for immigration from Latin America as a whole,\textsuperscript{17} and is the state with the most unlawful border crossings in the nation.\textsuperscript{18}

ii. Consequences of Unlawful Immigration

Unlawful immigration has become so common in Arizona that it has transformed the face of society. While unlawful immigration comes from many countries around the world, the vast majority in Arizona, and what SB 1070 is believed to target, are immigrants from Hispanic countries. While English remains the most common language of Arizona, the use of Spanish has increased greatly, with over one-fifth of the population speaking Spanish as their primary language.\textsuperscript{19} The use of English as a primary language has decreased steadily in recent years,

\textsuperscript{17} \textit{Id.} at note 16, Cooper, Jonathan J. (April 26, 2010). "Ariz. immigration law target of protest". Associated Press. MSNBC.
\textsuperscript{18} \textit{Ibid.}
\textsuperscript{19} 2005 American Community Survey & Census 2000, MLA Language Map Data Center, available at http://www.mla.org/map_data. This site displays the trend of languages spoken by state, country or region over a period of time. For the purposes here, the changing in use of languages from 2000-2005 is documented.

Marriott, Moral and Legal Dilemma, Page 4
with approximately 73% of residents speaking English as their primary language.\(^{20}\) This number has been declining slowly but steadily.\(^{21}\)

When it comes to crime rate statistics, academics disagree as to whether unlawful immigrants actually commit more crimes than citizens.\(^{22}\) That said, concern exists as to particular types of crime,\(^{23}\) including the possibility of the Mexican drug war coming to U.S. soil.\(^{24}\) Kidnappings, which are a routine practice in the Mexican drug war,\(^{25}\) have reached the highest levels in Arizona, with Phoenix setting the record for the nation with an average of one kidnapping per day.\(^{26}\)

b. The Bill

References to the Bill refer to the text of SB 1070 itself, as well as to the modifications of said Bill made pursuant to Arizona Senate Bill 2162, which is discussed in more detail below.

i. Stated Intention of SB 1070

The first section of SB 1070 introduces the Act by saying generally that “there is a compelling interest in the cooperative enforcement of Federal immigration laws throughout all of Arizona.”\(^ {27}\) It further states that the intention of the act is to make it a public policy of state

\(^{20}\) Ibid.
\(^{21}\) Ibid.
\(^{23}\) Mexico’s drug war takes growing toll on Americans, (March 20, 2010). Fox News.
\(^{25}\) See Jason Beaubien, Mexico’s Drug War Spawns Wave Of Kidnappings, National Public Radio. See also Sylvia Longmire, Mexico’s Drug War, (October 18, 2010). Border Violence Analysis.
\(^{26}\) Elliot Spagat, (May 13, 2010). "Other border states shun Arizona's immigration law". Associated Press. MSNBC.
\(^{27}\) Arizona SB 1070, § 1.
agencies to pursue “attrition through enforcement.” While the concept of attrition through enforcement is not defined in the statute itself, it refers to a theory backed in large part by the think tank Center for Immigration Studies. The theory lies somewhere between the two extremes of solving the unlawful immigration problem through the mass legalization of unlawful immigrants, or in contrast the mass deportation of unlawful immigrants. Attrition through enforcement in its simplest form calls for a shrinking of the unlawful immigrant population through consistent, across-the-board enforcement of Federal immigration law. The idea is that by deterring the immigration of new unlawful immigrants, increasing deportations, and increasing the number of unlawful immigrants already living in the United States who deport themselves, the United States can bring about a decrease in the unlawful immigrant population with minimum expense. As such, the intention of SB 1070 is to utilize and enforce the already existing Federal immigration laws.


The text and full provisions of SB 1070 and Arizona House Bill 2162, hereinafter “HB 2162,” are both extensive and widely available. As such, this section is designed only to cover the most fundamental provisions and does not set out the Bills in full.

---

28 SB 1070, § 1.
29 Organization’s website and more information available at cis.org.
31 Mark Krikorian, Downsizing Illegal Immigration: A Strategy of Attrition Through Enforcement, Center for Immigration Studies.
32 Ibid.
Based on the stated goal of “attrition through enforcement,” the combined Bills reinforce a number of already existing requirements of Federal immigration law. Firstly, the Bills prohibit state government officials or agencies from limiting or restricting the enforcement of Federal immigration laws. Particular attention is paid to the already existing Federal immigration law requirement that non-U.S. citizens over the age of 14 who remain in the United States for a period of more than 30 days register with the U.S. government, and also that such persons maintain possession of registration documents. When police effect an otherwise lawful stop, detention or arrest, they are required, where practicable, to determine a person’s immigration status where there is reasonable suspicion that the person may be an unlawful immigrant. In the event of a lawful stop where there is suspicion that the person is an unlawful immigrant, the suspect may rebut any such presumption by producing official U.S. government identification, including a passport, driver’s license, or other form of government-issued identification.

Another significant general provision of the Bills is the targeting of those persons, regardless of citizenship status, who hire unlawful immigrants. The Bill specifically targets the practice of driving to areas where unlawful immigrants congregate, hiring them, and driving them to a work location. As such, the Bills not only target unlawful immigrants for their presence in the U.S., but also target U.S. citizens that utilize the labor of unlawful immigrants.

33 Arizona SB 1070, § 1.
34 Arizona SB 1070 § 2, Article 8.
35 8 U.S.C. § 1302(a)(1) & (a)(3);
36 Arizona SB 1070 § 3.
37 Arizona HB 2162, §3.
38 Arizona SB 1070, §2.
39 Arizona SB 1070, §2.
40 See SB 1070 § 5 generally.
iii. Modifications to SB 1070 under HB 2162

While the previous section regards SB 1070 in conjunction with the subsequent modifications pursuant to HB 2162, it is important to note that they are in fact two different Bills. Approximately a week after the passing of SB 1070, HB 2162 was signed into law. While Section 1 of SB 1070 regarding the intent of the legislation remains unchanged,\(^{41}\) the general effect of HB 2162 is to weaken some of the more controversial provisions of SB 1070. For example, the original SB 1070 permitted law enforcement officials to stop any person they reasonably suspected of being an unlawful immigrant and request the production of identification.\(^{42}\) HB 2162 modified this language such as to limit law enforcement to requesting identification only when the contact is made pursuant to a lawful stop, detention or arrest.\(^{43}\) Also, in a variety of areas, the minimum punishments for violations of SB 1070 are significantly reduced under HB 2162.\(^{44}\)

II. Public Sentiment: How the Public as a Whole Feels about the Bill

As could be expected, public opinion differs significantly depending on how questions are asked and which groups are polled. Rasmussen Reports and Gallup, both of which conduct large-scale public-opinion polling in America, have produced a number of these reports.\(^{45}\) It appears from the reports that Americans generally favor the operative provisions included in SB 1070 when they stand alone, but become more skeptical when they are codified in the law itself.

---

\(^{41}\) See Arizona HB 2162, § 1.
\(^{42}\) See original text of Arizona SB 1070, § 2.
\(^{43}\) See modifications pursuant to Arizona HB 2162, § 2.
\(^{44}\) See Arizona HB 2162, §§ 3, 4.
Polls have shown that of the American populace that knows of SB 1070, 51% favor the law and 39% oppose it. This means that 12% more people support the law than oppose it. However, Rasmussen Reports found that 60% of the American public as a whole support, and only 31% oppose, the idea of law enforcement officials being permitted to stop those they suspect of being unlawful immigrants and determine their immigration status. This is a difference of a full 29%. Note that such a question is similar to the more stringent provisions of the original SB 1070, which would have allowed law enforcement to make stops pursuant to mere suspicion of unlawful immigration status. The current law under HB 2162 does not allow stops for this reason alone. Nonetheless, 29% more people support than oppose this provision, even where it is more stringent than that codified by SB 1070 and HB 2162. Even more striking, another poll showed that when asked whether they would support placing a requirement on their own law enforcement to determine the immigration status of those they merely suspect of being unlawful immigrants, with nothing more, a whopping 71% of Americans said they would support the law.

III. Opposition to the Bill

Opposition to SB 1070 in particular has been widespread. While it is generally supported by the Republican Party and criticized by the Democratic Party, it has drawn both praise and criticism from both sides of the party line. Focusing on the opposition to the Bill, notable

---

48 Arizona HB 2162, § 2.
opponents from the left include President Obama\textsuperscript{50} and former Arizona Governor Janet Napolitano,\textsuperscript{51} among countless others. The right has also brought significant criticism, not the least from Florida Governor Jeb Bush\textsuperscript{52} and ultra-conservative political strategist Karl Rove.\textsuperscript{53} Significant criticism has also come from Mexico itself. Of particular significant is that coming from the Mexican President Felipe Calderón, who has referred to the law as “a criminalization of migration”\textsuperscript{54} and a “violation of human rights.”\textsuperscript{55}

IV. Criticisms

While critics of SB 1070 have attacked it on many grounds, for the purpose of legal analysis the criticisms are broken up into the three categories of civil rights criticisms, constitutional criticisms, and human rights criticisms. There have also been significant criticisms of the Bill based on religious grounds. However, as these are normative, unspecific, and immeasurable, they defy formal legalistic analysis and consequently are not covered in any detail.

a. Criticism on Civil Rights Grounds

While many critics have proclaimed that SB 1070 is a violation of civil rights, few of the critics using the term ‘civil rights’ have provided enough specificity to constitute a legally

---

\textsuperscript{50} Sheldon, Albert S. (April 24, 2010). "Obama criticizes controversial immigration law." \textit{The Vancouver Sun}. CanWest News Service.

\textsuperscript{51} Gorman, Anna; Riccardi, Nicholas (April 28, 2010). "Calls to boycott Arizona grow over new immigration law." \textit{Los Angeles Times}.

\textsuperscript{52} Martin, Jonathan (April 27, 2010). "Jeb Bush speaks out against Ariz. Law." \textit{Politico}.


\textsuperscript{54} Cooper, Jonathan J. (April 26, 2010). "Ariz. immigration law target of protest". Associated Press. MSNBC.

cognizable claim. For example, the National Association of Latino Elected and Appointed Officials (NALEO) Educational Fund claims that the law “is an unconstitutional and costly measure which will jeopardize the public safety of ALL Arizonans.”\textsuperscript{56} The group further states that “SB 1070 is a terribly flawed law that violates the civil rights of ALL Arizonans and individuals visiting Arizona . . . . It presumes everyone is guilty, contradicting the fundamental American belief of innocence until proven otherwise.”\textsuperscript{57}

Besides being factually and legally inaccurate, such claims provide little basis for legal analysis as they fail to specify which civil right or rights are violated by SB 1070. That said, the most likely purpose of criticisms based on ‘civil rights’ is to implicate the American Civil Rights Act of 1964. While there have been numerous other American Civil Rights Acts, nothing in SB 1070 is related to the protections of the other Acts.

The Civil Rights Act of 1964 served largely to create and support the rights of women and African Americans. As many of its protections are designed to protect people from segregation and unequal treatment on the basis of race, color or national origin, such protections likely extend to protections against unequal treatment for those targeted by SB 1070. Notwithstanding, a reading of the Act reveals that not a single provision is implicated by SB 1070. The closest is Title VI, which prohibits discrimination by government agencies that receive Federal funding. However, the application of SB 1070 does not constitute any type of impermissible discrimination by a government agency whereby its primary effect is to place a duty on law enforcement officials to enforce that which is already Federal law.

Of significance in such considerations is the fact that pursuant to the modifications made to SB 1070 by HB 2162, the use of race is significantly limited. The Bill states that "A law

\textsuperscript{56} National Association of Latino Elected and Appointed Officials Educational Fund. SB 1070: Speak Out to Ensure the Fight Against SB 1070 Goes On!, available at <http://www.naleo.org/SB1070.html>.

\textsuperscript{57} Ibid.
enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution."  

One may notice that the language specifically leaves open the use of race in applying the Bill “to the extent permitted by the United States . . . Constitution." An examination of U.S. Supreme Court precedent reveals that while race alone is an insufficient basis to affect a stop or arrest, “[t]he likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor.” While the original text of SB 1070 would have permitted law enforcement officials to inquire into a person’s immigration status during “any lawful contact,” the application of the Bill with subsequent modification pursuant to HB 2162 restricts law enforcement officials to determining immigration status only during an otherwise “lawful stop, detention or arrest.” As such, while the original SB 1070 might have violated Civil Rights and United States Supreme Court precedent, its current form pursuant to HB 2162 does not.

b. Criticism on Constitutional Grounds

In regards to criticisms based on constitutional grounds, the most common claims include violations of Equal Protection and Federal preemption.

---

58 Arizona HB 2163, § 3.
59 Ibid.
61 Arizona SB 1070 § 2.
62 Arizona HB 2162 § 2.
i. Equal Protection

As to Equal Protection, the U.S. Supreme Court in the case of Plyer v. Doe explicitly held that unlawful immigrants were not a suspect class for purposes of equal protection analysis as unlawfully entering the United States is a choice, and thus the persons in this class chose to put themselves in it.\footnote{Plyer v. Doe, 457 U.S. 202 (1982).} In the case of equal protection questions, where a law is based on a non-suspect classification, in order to be constitutionally valid it must pass rational basis review. Rational basis review requires only that the law at issue be rationally related to a legitimate state interest.\footnote{Ibid.} As such, the ultimate question is whether SB 1070 as modified by HB 2162 is rationally related to a state interest, and if the state interest is legitimate. While a definitive answer to this question would require the case to actually be heard by the U.S. Supreme Court, judicial review in regards to rational basis review has historically been highly deferential to states. As such, criticisms based on claims of equal protection violations are likely to fail.

ii. Federal Preemption

Federal preemption criticisms have been favored by the more influential and knowledgeable critics including the American Civil Liberties Union and the Department of Justice. The biggest present threat to the survival of SB 1070 and HB 2162 is the lawsuit brought by the Department of Justice in United States of America v. Arizona.\footnote{See United States of America v. Arizona, case number 76749-cv-94841-NVW. Full text of the Complaint filed by U.S. Department of Justice available at <http://www.justice.gov/opa/documents/az-complaint.pdf>}

\footnote{See also Martinez v. Bynum, 461 U.S. 321 (1983).} The core argument made by the Department of Justice is that the law impermissibly regulates immigration
issues, which is an area of law falling under the exclusive authority of the Federal government. As such, states are preempted from making any laws regulating immigration.

Proponents of the Bill have acknowledged said Federal preemption, but counter by saying that Arizona’s law does not create any new regulations. Rather, subsequent to HB 2162’s modifications, the Bill serves only to piggyback on already existing Federal immigration laws, creating no more than a requirement that state officials enforce legitimate Federal law.

*United States of America v. Arizona* was heard first in the U.S. District Court for Arizona, which ultimately resulted in an injunction against Arizona, preventing a number of the provisions of the Bill from going into effect. The case has subsequently been appealed to the Ninth Circuit, which heard arguments relating to the case at the beginning of November. In all likelihood, a final decision in regards to Federal preemption will be made at the U.S. Supreme Court.

c. Criticism on Human Rights Grounds

Criticisms based on violations of human rights have been extremely general, typified by the accusation made by the Mexican President Felipe Calderón, who has referred to Arizona’s legislation as “a criminalization of migration” and a “violation of human rights.”

As to as President Calderón’s claim that the legislation is “a criminalization of migration,” this is both factually and legally inaccurate. As mentioned above, the combined

---

66 See Ibid.
product of SB 1070 and HB 2162 does not create any new substantive law. The real effect of these bills is to place a duty on state officials to enforce already existing Federal immigration law, and also to provide a civil cause of action to reinforce this duty. As a rational person, even one not versed in law should be capable of deducing, one cannot criminalize that which is already illegal. To say as much is not even to reach the fact that many millions of people have and continue to immigrate to the United States legally, meaning pursuant to existing Federal immigration law. President Calderón’s statement that the legislation is “a criminalization of migration”72 implies that Arizona’s legislation criminalizes the act of migration. Again, this is a blatant factual inaccuracy. Arizona’s legislation reinforces that entering and remaining in the United States in contradiction to Federal immigration law is illegal. This is far short of saying that immigration is, standing alone, a criminal act. Again, one cannot criminalize that which is already illegal.

In regards to President Calderón’s criticism that Arizona’s legislation is a “violation of human rights,”73 he has encroached into one of the most amorphous and unquantifiable areas of law, and has neglected to provide any specificity as to which human right he refers.

In order to perform a legal analysis of President Calderón’s criticism, this paper must first cover briefly what human rights instruments apply to the United States, and precisely what human rights are encompassed in said instruments. Note that in discussion of international law, the word ‘state’ is used to refer to that which Americans have come to know as a ‘country.’ That which Americans commonly refer to as a ‘state,’ such as the State of Arizona, in the field of international law is more commonly known as a ‘territory.’

71 Id. at note 69.
72 Ibid.
73 Id. at note 70.
International human rights instruments can be classified into two general categories, those being declarations and conventions, also known as covenants. Declarations, such as those adopted by bodies such as the United Nations General Assembly, are generally not legally binding, but may be politically persuasive. Conventions are legally binding instruments concluded under international law and must be signed and ratified by states in order to be binding. Both international treaties and declarations can, over time, obtain the status of customary international law (CIL). Under CIL, both declarations and conventions can gradually become applicable to all states worldwide, regardless of whether or not they have signed and ratified the document itself. For the purpose of performing a legal analysis of President Calderón’s criticism, the most useful international human rights instruments are three known collectively as the International Bill of Rights, which includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The UDHR is a declaration. As such, it is not binding in the same way as a convention. Notwithstanding, the UDHR is a prime example of a declaration that has gained such credence as to become a part of CIL. On top of this, the UDHR was adopted to define certain operative terms of the United Nations Charter, including “human rights.”74 The United Nations Charter itself, signed and ratified by the United States, is binding.75 As such, the UDHR is relevant to the present inquiry.

In regards to the UDHR, the article most applicable to determining whether Arizona’s legislation is a “violation of human rights” is Article 13. Article 13 provides in full:

---


1. Everyone has the right to freedom of movement and residence within the borders of each state.

2. Everyone has the right to leave any country, including their own, and to return to their country.\(^76\)

Both the ICCPR as well as the ICESCR are actual covenants, which as stated above are binding upon ratification. The United States has signed and ratified the ICCPR,\(^77\) and has signed but not ratified the ICESCR.\(^78\) As even signature without ratification signifies a country’s commitment to the principles outlined in the covenant, this paper assumes applicability to the United States of both the ICCPR and the ICESCR. However, as the name suggests, the ICESCR primarily concerns the economic, cultural and civil aspects of human rights. Wherein the rights with which this paper is concerned are human rights rather than economic rights, the provisions of the ICESRC do not apply. The ICCPR however does prove useful for the present inquiry.

Article 12 of the ICCPR incorporates into treaty law the fundamental right outlined in Article 13 of the UDHR, stating in full:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

---


3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.\(^\text{79}\)

The ICCPR at Article 12 demonstrate that the right to enter and maintain residence within any territory, locality, or any other type of subdivision of a state is a human right belonging to the lawful nationals of that country.\(^\text{80}\) Similarly, the UDHR Article 13(1) provides that “everyone has the right to freedom of movement and resident within the borders of each state.”\(^\text{81}\) [Emphasis mine.] The human right outlined in the UDHR refers to the human right of all persons to move within the borders of a state, a contradistinction from moving between the borders of different states, such as moving between Mexico and the United States. No such human right exists. As such, it would violate human rights were either the Federal government or Arizona to create a law making it illegal for those lawfully with in the United States to visit or reside in Arizona, or any other territory for that matter. However, the right to enter and maintain residence in any state [meaning country] of one’s choosing is not a human right, nor does a single country permit the nationals of all other countries to freely enter and reside within its borders. This, of course, includes Mexico itself.


\(^{80}\) International Covenant on Civil and Political Rights, Article 12(1).

\(^{81}\) Universal Declaration of Human Rights, Article 13(1).
Conclusion

The fate of SB 1070 remains unclear, and in all likelihood will ultimately rest with the U.S. Supreme Court. What is clear is that much of the criticism launched against the Bill is largely unfounded. Critics abound, not only throughout the United States but also abroad. From peasant to president, everyone seems to be looking to contribute to the fervor that has erupted in the wake of SB 1070. Out of the masses of ardent yet legally unversed critics emerges the last real hope for those opposed to the Bill, which ironically enough rests with a Federal court case brought by a department of the Federal government, upon whose immigration laws the proponents of SB 1070 hope to align their own in order to dodge the pitfalls of Federal preemption.