

Arizona to countersue feds over immigration issues

By Alia Beard Rau and Ginger Rough

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Arizona took the unusual step Thursday of suing the federal government over its immigration policies, claiming it has failed to secure the border and protect the state from an "invasion" of illegal immigrants.

About half a dozen other states have pursued similar, and unsuccessful, legal efforts over the past two decades.

Gov. Jan Brewer said the intent of the lawsuit, and the state's priority, is to force the federal government to protect Arizonans.

"The first and foremost issue we're facing right now is the security, safety and welfare of our citizens," Brewer said. "The federal government needs to step up and do their job."

The lawsuit asks the court to require the federal government to finish building 700 miles of fence along the border, provide enough federal immigration officers in Arizona to respond to local law-enforcement needs, change the way the federal government reimburses states for incarcerating criminal illegal immigrants and allow Arizona to enforce federal immigration laws.

The White House and the U.S. Department of Justice declined to comment.

Matt Chandler, a spokesman for the Department of Homeland Security, said in a statement that "a meritless court claim such as this does nothing to secure the border."

What suit says

The state filed the lawsuit in U.S. District Court in Phoenix as a countersuit to the lawsuit the Department of Justice filed against Arizona challenging the constitutionality of its immigration law, Senate Bill 1070.

Judge Susan Bolton halted part of SB 1070 from going into effect this summer. Brewer appealed the injunction and has been waiting for a ruling from the 9th U.S. Circuit Court of Appeals. The full case is still before Bolton, who has not scheduled hearings.

Brewer filed the countersuit as part of the full case. The suit names as defendants the U.S.; the Department of Homeland Security and its secretary, Janet Napolitano; the Justice Department; and Attorney General Eric Holder.

"Arizona did not want this fight. We did not start this fight," Brewer said. "But now that we are in it, Arizona will not rest until our border is secured and federal immigration laws are enforced."

The lawsuit alleges the federal government has failed in five areas:

- To achieve and maintain "operational control" of the border.
- To protect Arizona against "invasion."

- To enforce immigration laws.
- To reimburse Arizona adequately for incarcerating criminal illegal immigrants.
- To uphold the 10th Amendment, which states that "powers not delegated to the United States by the Constitution . . . are reserved to the states respectively, or to the people."

State Attorney General Tom Horne said "invasion" does not just mean invasion of one country by another but also can be applied to large numbers of illegal immigrants coming into Arizona.

Legal precedent

This is not the first time a state has sued the federal government over immigration issues. But such suits are rare and typically unsuccessful.

In spring 1994, Arizona was one of seven states that sought reimbursement for the costs of incarcerating and providing other services to illegal immigrants. Later that year, President Bill Clinton signed a bill that ordered the U.S. attorney general to either reimburse states for prison costs or transfer inmates to federal prisons.

In 1996, California Gov. Pete Wilson filed suit, arguing that Clinton and the federal government had failed to live up to the provisions of the law. The suit was dismissed.

More recently, in 2006, voters in Colorado passed Referendum K, which ordered that state's attorney general to file a broader claim against the federal government, saying it failed to enforce immigration laws. That suit was thrown out by a federal judge in 2007.

Horne acknowledged that previous efforts have failed.

"We hope this one will be successful," he said.

Paul Bender, an Arizona State University law professor, said that is unlikely. He said the courts are typically reluctant to require a government agency to enforce a law a certain way just because someone wants it enforced that way.

"If you think (President Barack) Obama is not prosecuting the war in Afghanistan properly, you can't go to court and say, 'Hey, you need to send over more tanks,' " Bender said. "If you don't like the federal government, vote for people who will represent you and do the things you want."

Unknown costs

It's not clear how much the suit will cost the state, which is grappling with a budget deficit pegged at \$763.6 million this fiscal year and \$1.15 billion in fiscal 2012.

Brewer acknowledged that the legal expenses related to SB 1070 are adding up.

"This fight will not be easy, and it will not be cheap," she said.

The governor also was quick to point out that private donations from a legal-defense fund have paid for all legal costs thus far.

The governor's staff said Thursday that the fund had received more than \$3.6 million in donations as of Feb. 3. The state has paid just over \$1.5 million in legal fees.

Horne downplayed any potential fiscal impact, noting that he and senior counsel Michael Tryon would join the private attorneys in representing Arizona.

"I have to be there anyway," he said. "(The taxpayers) would be paying my salary anyway."

Political reaction

Sen. Kyrsten Sinema, D-Phoenix, called the move a distraction from other issues.

"Governor Brewer should be focused on solving the problems in our own house," Sinema said.

Sinema, an attorney, said the invasion allegation in particular will likely fail in court.

"While we all agree the immigration crisis is a massive crisis, I don't think it qualifies as an invasion," she said.

Senate President Russell Pearce, R-Mesa, who wrote SB 1070, dismissed criticism that the Legislature is focusing on immigration issues instead of jobs or the budget.

"This is about our budget," Pearce said, noting the costs of education, health care and incarceration for illegal immigrants. "This is way overdue."

Other efforts

The Legislature has made challenging the federal government a priority this session.

Lawmakers have introduced a slew of bills seeking to assert the state's sovereignty against the Obama administration. Brewer made federalism a cornerstone of her four-year agenda, saying that "federal interference" in Arizona's affairs has reached unprecedented levels.

Sen. Al Melvin, R-Tucson, said he is tired of waiting for the federal government to address the border issue.

"We've waited for 30 years," Melvin said. "So, we're going to get this fence built ourselves."