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Blocking Parts of Arizona Law, Justices Allow Its Centerpiece

By [ADAM LIPTAK](#)

WASHINGTON — The [Supreme Court](#) on Monday [delivered a split decision](#) on Arizona’s tough [2010 immigration law](#), upholding its most hotly debated provision but blocking others on the grounds that they interfered with the federal government’s role in setting immigration policy.

The court unanimously sustained the law’s centerpiece, the one critics have called its “show me your papers” provision, though they left the door open to further challenges. The provision requires state law enforcement officials to determine the immigration status of anyone they stop or arrest if they have reason to suspect that the individual might be in the country illegally.

The justices parted ways on three other provisions, with the majority rejecting measures that would have subjected illegal immigrants to criminal penalties for activities like seeking work.

The ruling is likely to set the ground rules for the immigration debate, with supporters of the Arizona law pushing for “show me your papers” provisions in more states and opponents trying to overturn criminal sanctions for illegal immigrants.

Writing for the majority, Justice Anthony M. Kennedy said, “Arizona may have understandable frustrations with the problems caused by illegal immigration while that process continues, but the state may not pursue policies that undermine federal law.”

Justice Antonin Scalia summarized his dissent from the bench, a rare move that indicated his deep disagreement. Rarer still, he criticized a policy that was not before the court: President Obama’s recent announcement that his administration would not deport many illegal immigrants who came to the United States as children.

Justice Scalia’s point was a narrow one — that the states should have the right to make immigration policy if the federal government is not enforcing its own policies — but it continued a charged back and forth between the conservative justices and Mr. Obama. In his 2010 [State of the Union address](#), Mr. Obama criticized the court’s [Citizens United campaign finance ruling](#), which the court [reiterated in a separate ruling](#) on Monday.

The court also announced that it was extending its term until Thursday, signaling that it would issue its much-anticipated ruling on Mr. Obama’s [health care law](#) then.

Both Mr. Obama and Mitt Romney, the presumptive Republican presidential nominee, quickly responded to the immigration ruling. Mr. Romney — traveling, by coincidence, in Arizona — said in a brief statement that states had the right and the duty to secure their borders.

Mr. Obama emphasized his concern that the remaining provision could lead to racial profiling, an issue that the court may yet consider in a future case. “No American should ever live under a cloud of suspicion just because of what they look like,” Mr. Obama said in a statement, adding that he was “pleased” about the parts that were struck down.

In her own statement, Gov. Jan Brewer of Arizona, a Republican, said she welcomed the decision to uphold what she called the heart of the law. The decision, she said, was a “victory for the rule of law” and for “the inherent right and responsibility of states to defend their citizens.”

Still, the ruling was a partial rebuke to state officials who had argued that they were entitled to supplement federal efforts to address illegal immigration.

The Obama administration argued that federal immigration law trumped — or pre-empted, in legal jargon — the state’s efforts. Last year, the United States Court of Appeals for the Ninth Circuit, in San Francisco, [blocked the four provisions](#) on those grounds, including the one the Supreme Court upheld.

In its challenge, the administration did not argue that it violated equal-protection principles. [At the Supreme Court argument in April](#), Solicitor General Donald B. Verrilli Jr. acknowledged that the federal case was not based on racial or ethnic profiling.

In the majority opinion, Justice Kennedy wrote that the ruling did not foreclose other “constitutional challenges to the law as interpreted and applied after it goes into effect.”

Meanwhile, Attorney General Eric H. Holder Jr. said on Monday that the federal government would “continue to vigorously enforce federal prohibitions against racial and ethnic discrimination.”

Five other states have enacted tough measures to stem illegal immigration, more or less patterned after the Arizona law: Alabama, Georgia, Indiana, South Carolina and Utah. But most states avoided creating new crimes for immigration violations, as Arizona did in two provisions that were struck down.

Lower courts have stayed the carrying out of parts of those laws, and they will now revisit those decisions.

In upholding the requirement that the police ask to see people’s papers, the court emphasized that state law enforcement officials already possessed the discretion to ask about immigration status. The Arizona law merely makes that inquiry mandatory if the police have reason to suspect a person is an illegal immigrant.

In a concurring opinion, Justice Samuel A. Alito Jr. called the administration's attack on the provision "quite remarkable."

"The United States suggests," he wrote, "that a state law may be pre-empted, not because it conflicts with a federal statute or regulation, but because it is inconsistent with a federal agency's current enforcement priorities."

Justice Kennedy added that the state law contained safeguards, including ones instructing officials not to consider race or national origin unless already permitted by law.

Further restricting the sweep of the majority opinion, Justice Kennedy wrote that "detaining individuals solely to verify their immigration status would raise constitutional concerns." The decision left open, he said, "whether reasonable suspicion of illegal entry or other immigration crime would be a legitimate basis for prolonging a detention, or whether this too would be pre-empted by federal law."

Chief Justice John G. Roberts Jr. and Justices Ruth Bader Ginsburg, Stephen G. Breyer and Sonia Sotomayor joined Justice Kennedy's majority opinion. Justice Elena Kagan disqualified herself from the case, *Arizona v. United States*, No. 11-182, presumably because she had worked on it as the solicitor general.

Had the case ended in a 4-to-4 tie, the appeals court's ruling blocking all four aspects of the Arizona law would have stood.

Three justices dissented in part, each writing separately and only for himself. Justices Scalia and Clarence Thomas said they would have sustained all three of the blocked provisions. Justice Alito would have sustained two of them while overturning one that makes it a crime under state law for immigrants to fail to register with the federal government.

The two other provisions blocked by the majority were one making it a crime for illegal immigrants to work or to try find work and another allowing the police to arrest people without warrants if they have probable cause to believe they have done things that would make them deportable under federal law.

Scholars who have followed the work of the court for decades said they could not recall an instance similar to Justice Scalia's commentary on a political dispute outside the record of the case under consideration.

"After this case was argued and while it was under consideration," Justice Scalia said in his written dissent, "the secretary of homeland security announced a program exempting from immigration enforcement some 1.4 million illegal immigrants." This month, the Obama administration [said it would let younger immigrants](#) — the administration estimates the number at 800,000 — who came to the United States as children avoid deportation and receive working papers as long as they are not over the age of 30 and have clean criminal records, among other conditions.

“The president said at a news conference that the new program is ‘the right thing to do’ in light of Congress’s failure to pass the administration’s proposed revision of the Immigration Act,” Justice Scalia went on. “Perhaps it is, though Arizona may not think so. But to say, as the court does, that Arizona contradicts federal law by enforcing applications of the Immigration Act that the president declines to enforce boggles the mind.”

He added that Arizona and other states should not be left helpless before the “evil effects of illegal immigration.”

Justice Kennedy responded that “federal law makes a single sovereign responsible for maintaining a comprehensive and unified system to keep track of aliens within the nation’s borders.”

“The national government has significant power to regulate immigration,” he wrote. “The sound exercise of national power over immigration depends on the nation’s meeting its responsibility to base its laws on a political will informed by searching, thoughtful, rational civic discourse.”

John H. Cushman Jr. contributed reporting.

<http://www.nytimes.com/2012/06/26/us/supreme-court-rejects-part-of-arizona-immigration-law.html>