



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC

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**PREPARED REMARKS ON H.B. 70, “ILLEGAL IMMIGRATION
ENFORCEMENT ACT”
PRESENTED BY MARINA LOWE
AMERICAN CIVIL LIBERTIES UNION OF UTAH
TO UTAH HOUSE LAW ENFORCEMENT AND CRIMINAL JUSTICE
COMMITTEE
FEBRUARY 11, 2011
SALT LAKE CITY**

Mr. Chairman, members of the committee, for the record my name is Marina Lowe and I am the Legislative & Policy Counsel for the American Civil Liberties Union of Utah, a statewide, non-partisan organization of nearly 2200 members and supporters dedicated to protecting the principles set forth in the Bill of Rights. I will limit my remarks today to what we believe to be unconstitutional about H.B. 70, Illegal Immigration Enforcement Act.

At the outset, this bill is modeled on S.B. 1070, a bill passed in Arizona that was immediately the subject of multiple lawsuits, on grounds that it violates the Constitution. While that litigation is ongoing, the District Court judge in Arizona, Judge Bolton, enjoined two provisions that significantly, also appear in H.B. 70. These sections of the law are unconstitutional because the U.S. Constitution gives the federal government exclusive power to regulate our borders, and with very few exceptions, states are not free to create their own laws regulating immigration. Recent amendments to H.B. 70 to attempt to alleviate constitutional and fiscal concerns do nothing to save the bill from a likely similar fate to that of S.B. 1070 in Arizona.

In particular, section 76-9-1003(1)(a) requires, or now permits in certain instances, that a law enforcement agent verify the immigration status of that person, when in the course of a lawful stop, he or she develops a reasonable suspicion that the person is an unlawful alien. The court in Arizona held that this provision is likely to pose an unconstitutional burden on citizens and legal permanent residents, who have never previously been required to carry documents on their person to establish their right to be in the U.S. This provision, even as modified to be more permissive in certain instances, will invite racial profiling, despite the changes to the law seeking to give greater guidance as to the meaning of “reasonable suspicion,” as law enforcement agents may still rely on appearance and accent in deciding whether to request documents that might establish lawful presence.

In addition, the use of the permissive “may” will do little to guard against pretextual stops by law enforcement, who may be more likely to detain individuals who look or sound “foreign.”

Finally, it would seem that by requiring verification of status based on “reasonable suspicion” as defined now by failure to carry identification, Utah citizens will essentially now be REQUIRED to carry identification with them at ALL times, while on walks, when visiting friends, when enjoying the outdoors, etc.

Additionally, section 77-7-2(5) is unconstitutional, and was ruled as such by Judge Bolton in Arizona, in that it allows law enforcement agents to arrest without warrant those individuals the agent reasonably believes to be “removable” or the subject of an ICE detainer warrant. This provision was enjoined in Arizona because it unconstitutionally poses a burden on citizens by requiring that they carry papers with them.

Furthermore, immigration law is so complicated that only immigration judges can determine whether an alien is “removable.” It would put law enforcement agents in an untenable position to have to guess as to the question of removability, a status that immigration judges are able to determine only due to their years of study and experience in the area of immigration law. As a result, law enforcement agents would be putting themselves at risk for being sued for wrongfully stopping and detaining someone as “removable,” simply because this standard is too complicated for a reasonable law enforcement agent to enforce fairly.

This testimony focuses solely on the constitutional deficiencies of this legislation; without question H.B. 70 also poses serious harm to the strength of our communities, the health of our economy and the good name of the state of Utah. For all of these reasons, and particularly because of its constitutional failings, we urge you to vote against H.B. 70.

Thank you for your time,

Marina Lowe
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