



Arizona Peace Officer Standards and Training Board

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June 25, 2012

Agency Heads:

Today the U.S. Supreme Court declared that three of the four provisions of SB 1070 that were under its consideration, Sections 3, 5(C), and 6, *are preempted* by federal law.

Section 3, A.R.S. §13-1509 making it a state crime to willfully fail to complete or carry an alien registration document, is preempted. Chapter 6 of the Re-Chaptered DVD covers that section of SB 1070 and should not be used in training.

Section 5(C), A.R.S. §13-2928(C) making it a state crime for an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor, is preempted. Chapter 9 of the Re-Chaptered DVD covers Section 5 and the portion of Chapter 9 dealing with Subsection C should not be used in training. The other portions of that statute were not before the court and have been in effect since July 2010.

Section 6, A.R.S. §13-3883(A)(5) provides that a state officer may arrest a person without a warrant if the officer has probable cause to believe the person has committed any public offense that makes him removable from the United States. Chapter 11 of the Re-Chaptered DVD addresses this provision and should not be used in training.

The Court held that Section 2(B) is not preempted or unconstitutional on its face, but will have to be construed consistently with federal law to survive scrutiny as applied. Section 2(B) requires state officers to make a “reasonable attempt...to determine the immigration status” of any person they stop, detain or arrest on some other legitimate basis if “reasonable suspicion exists that the person is an alien and is unlawfully present in the United States.” The law also provides that “[a]ny person who is arrested shall have the person’s immigration status determined before the person is released.”

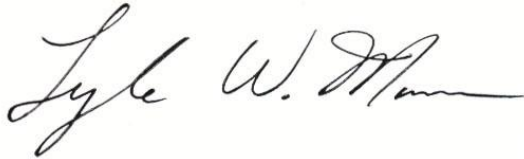
The Court noted some concerns with detaining individuals solely to verify their immigration status and stated that Section 2(B) could be read to avoid these concerns. The Court said, “There is a basic uncertainty about what the law means and how it will be enforced. At this stage, without the benefit of a definitive interpretation from the state courts, it would be inappropriate to assume §2(B) will be construed in a way that creates a conflict with federal law.”

June 25, 2012

Page 2

Section 2(B), A.R.S. §11-1051, is covered in Chapter 3 of the Re-Chaptered DVD. This Chapter and Chapter 2 dealing with Racial Profiling continue to be informative in enforcing SB 1070.

POST will be distributing additional information concerning the court's opinion, if appropriate, in accordance with Executive Order 2012-02, paragraph 5, within 30 days.

A handwritten signature in black ink, reading "Lyle W. Mann". The signature is written in a cursive style with a long, sweeping underline.

Lyle W. Mann
Executive Director

c: Training Coordinators