

# WebMemo



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## White House Must Stop Playing Politics with Immigration and Arizona Law

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In recent days the President and senior White House officials have—in the presence of foreign dignitaries—castigated a law passed in the state of Arizona. This new Arizona law directs that when law enforcement officers engage in a lawful stop, detention, or arrest, a reasonable attempt shall be made, when practicable, to ask about a person's legal status if reasonable suspicion exists that the person is unlawfully present in the U.S.

At the same time, a number of senior officials, including the Secretary of Homeland Security Janet Napolitano and the U.S. Attorney General Eric Holder, have admitted in media interviews and congressional hearings that they either have not studied—or even *read*—the Arizona law. Nor have Administration officials drawn attention to the amendments to the measure, also signed into law, which specifically prohibit using race, color, or national origin even as a factor in determining whether a reasonable suspicion exists that a person is unlawfully present in the U.S. Rather, the Administration has chosen to inflame the debate over the Arizona law.

**The Role of the States.** The Administration's recent statements are directly at odds with previous actions it has taken that clearly recognize that there is an appropriate role for state and local governments in addressing public safety concerns related to border security and immigration and workplace law enforcement. In 2009, the Obama Administration spent \$60 million on grants to state, local, and tribal law enforcement in 13 states. Secretary

Napolitano declared, "I am proud to announce that the 2009 funding provides additional flexibility to ensure that our first responders are equipped with the resources they need to confront the complex and dynamic challenges that exist along our borders." The Administration also encourages state and local governments to participate in "Secure Communities," a program that promotes identifying and removing criminal aliens. Likewise, Homeland Security funds Border Enforcement Security Teams, which include state and local law enforcement.

Furthermore, state officials have clear authority to act in the interests of the public safety of their own citizens. Embodied in the U.S. Constitution, the imperatives of limited government and federalism give citizens and local communities the greatest role in shaping their lives. Nor should it be forgotten that local law enforcement is the front line of the enforcement of local, state, and federal laws in the United States. Individual states have an important role and independent duty to help in the enforcement of immigration laws, particularly where such enforcement is consistent with federal law.

Despite claims to the contrary, it is difficult to say how this new Arizona law actually preempts federal

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law. Some applications of the law may raise novel issues that have not been definitively resolved by the federal courts one way or the other, but most provisions simply build on existing laws and do not plow much, if any, new ground. For example, the law makes it a misdemeanor for aliens to fail to carry registration documents on their person. As Kris Kobach, an immigration law expert who assisted in drafting the Arizona law points out, these provisions, “have been around since 1940. ... [A] person can only be guilty under the state statute if he is guilty under the federal statute. The principle that protects the Arizona law is the legal principle of concurrent enforcement.” Nor is Arizona the first state to take action on immigration enforcement. States like California as well as cities like Valley Park, Missouri, have enacted laws and ordinances that would do more to enforce existing laws and drive down illegal immigration rates in local communities. Other states are considering enacting similar legislation.

In America’s federal system, states play an integral role in policymaking; they remain America’s “laboratories of democracy.” Arizona has acted because the federal government has failed to secure America’s national borders. The state now has the obligation to act responsibly in the course of implementing the law. A recent press account in the *Arizona Republic* rightly noted, “The Arizona Peace Officer Standards and Training Board is beginning a training program to teach officers how to enforce the law. That program—and how officers put it into action—will likely offer answers about what the law will mean to Arizonans.”

**Right a Wrong.** The Administration has used the public controversy over the Arizona law to push for its own political agenda—granting amnesty to millions unlawfully in the United States. This approach to solving the problem has been tried before and

found completely wanting. In 1986, for example, the U.S. granted amnesty and the unlawful population exploded, as did associated costs. Other countries, such as Spain, have tried similar tactics and the results are the same. Furthermore, when a nation fails to enforce its existing immigration law, it creates a powerful incentive to break the law.

There is a better approach to border and immigration reform that will keep the nation free, safe, prosperous, and sovereign. Incremental in its implementation, this approach includes:

- Responsible border security;
- The enforcement of immigration and workplace laws;
- Workable temporary worker programs that get America’s employers the employees they need to expand the economy and create jobs; and
- Working with Mexico to address that country’s desperate need for security and civil society and economic reforms.

At the same time this nation must continue to welcome legal immigrants and assimilate them into American society.

Congress should reject efforts by the White House to demonize the people of Arizona in a crass effort to further the President’s political agenda. Congress should also insist on incremental, commonsense policies that will address the pressing need for immigration and border security reforms instead of the amnesty-first approach—which both the American people and Congress roundly rejected the last time it was proposed in 2007.

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