

The Supreme Court's Ruling is No Victory for Anti-Immigrant Warriors in Arizona

Shikha Dalmia | June 25, 2012

Judging just by the headlines on the Supreme Court's ruling on Arizona's SB 1070, the *Wall Street Journal* ("Supreme Court Upholds Key Part of Arizona Law") is spinning it as something of a victory and the liberal *Los Angeles Times* ("Supreme Court Issues Split Decision on Arizona Immigration Law") as something of a defeat for the anti-immigrant camp.

My own quick and dirty take based on skimming the ruling is that it is really more of a defeat than a victory.

The court upheld, 5-3, the so-called "your papers please" provision that authorizes state police officers to inquire into the immigration status of people stopped for some other crime if a reasonable suspicion exists that they may be here illegally. But it struck down provisions that made it a crime for immigrants -- legal and illegal -- to fail to carry their registration papers and for illegals to seek work. It also barred state authorities from arresting any immigrant they believed had committed a deportable offense.

This means that state authorities can stop, question and briefly detain immigrants they believe are here illegally. But unless the feds - who the court affirmed have the ultimate authority to write immigration law -- authorize the continued detention of these folks, they would have to be released. State authorities, in other words, can continue to harass immigrants, but not to do really serious damage to them -- unless, of course, they are Joe Arpaio and don't care about what no stinkin justices in black robes have to say.

All of this makes constitutional sense. Given that the constitution gives the feds - not states -- the ultimate authority to write immigration law, state laws that are consistent with federal law can stand. When they are in conflict, they are "pre-empted." Federal law requires immigrants to carry their papers (something that I was not even aware of in the decade or so that I lived in this country on a green card because it was never enforced). Hence, Arizona asking for immigrants to produce their papers is not unconstitutional. However,

federal law does not make it a crime for immigrants to not carry their papers- and in making it one, Arizona overreached.

But just because “your papers please” provision is not pre-empted by federal law doesn’t mean that it is constitutional in every respect. The court’s liberal justices joined by Justice Kennedy left open the door to future legal challenges to that provision, presumably on equal protection grounds. That’s because the only people who are likely to raise “reasonable suspicion” of being in the country illegally are not white-skinned folks speaking “American” - but brown-skinned folks with an accent. (Full disclosure: I am a naturalized citizen in the latter camp, although I, mercifully, don’t live in Arizona and unless this law is scrapped in toto would never consider moving there.) Hence, racial profiling is built into the law and once its opponents have amassed enough evidence of its discriminatory nature, the court virtually invited them to come back and have the law thrown out.

This means that unless Congress fixes our broken immigration system, the immigration wars will continue in the courts for a while.

Here is Ilya Shaprio of Cato’s [legal analysis](#) of the ruling.

Here is the [full ruling](#), complete with separate dissents by Justices Scalia, Thomas and Alito.