

Arizona v. United States States and Immigration Law

Overview

This lesson introduces students to the 2012 Supreme Court case *Arizona v. United States*, which addressed whether a controversial Arizona law that set criminal penalties for immigration violations should be preempted by federal law. First, students read and discuss an article that examines the state law, the legal doctrine of preemption, reasonable suspicion, and the politics involved in the case. Then they judge whether several hypothetical cases are valid examples of reasonable suspicion in the context of immigration law enforcement.

Time

One to two class periods.

Standards Addressed

National U.S. History Standard 31: Understands economic, social, and cultural developments in the contemporary United States.... IV (2) Understands how recent immigration and migration patterns, and demographic shifts, impacted social and political issues.

California Grades Six Through Eight Historical and Social Science Analysis Skills: Chronological and Spatial Thinking: (1) Students explain how major events are related to one another in time. **Historical Interpretation:** (3) Students explain the sources of historical continuity and how the combination of ideas and events explains the emergence of new patterns.

California History-Social Science Standard 11.9: Students analyze U.S. foreign policy since World War II. (7) Examine relations between the United States and Mexico in the twentieth century, including key economic, political, immigration, and environmental issues.

California History-Social Science Standard 11.11: Students analyze the major social problems and domestic policy issues in contemporary American society. (1) Discuss the reasons for the nation's changing immigration policy, with emphasis on how the Immigration Act of 1965 and successor acts have transformed American society.

California History-Social Science Standard 12.7: Students analyze and compare the powers and procedures of the national, state, tribal, and local governments. (7) Identify the organization and jurisdiction of federal, state, and local (e.g., California) courts and the interrelationships among them.

Common Core State Standards

RH.11-12.1. Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

RH.11-12.2. Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

SL.11-12.1. Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 11–12 topics, texts, and issues, building on others’ ideas and expressing their own clearly and persuasively.

Materials & Preparation

- A class set of the article “*Arizona v. United States: States and Immigration Law*”
- A class set of Handout A (Activity: Cases of Reasonable Suspicion)

Procedure

A. Reading and Discussion

1. Have the students read “*Arizona v. United States: States and Immigration Law.*” They can read it in class or as homework. Check for understanding.
2. The “For Discussion and Writing” questions may be used as a way to review and enrich the material from the reading through full-class or small-group discussion. You may also want to assign any or all of them as writing assignments.

B. Activity: Cases of Reasonable Suspicion?

1. Organize the class into small groups. Distribute Handout A to each student. Each group will role play a panel of federal judges reviewing appeals from Arizona cases under the SB 1070 law. Give students a minute or two to read the information and instructions on the front of the handout. You may choose to instead read it aloud to them as they follow along.
2. Check for understanding: Based on the reading, what is probable cause to arrest? Where does it come from? What is “reasonable suspicion”? When is it used? How is it different from probable cause?
3. Ask students to discuss the examples on the back of the handout in their groups. They need to agree on whether each example meets the requirements of reasonable suspicion.
4. Once all groups have recorded their answers, have them share-back what they concluded. Keep in mind during discussion and share-back that police cannot use race and ethnicity as factors to determine whether they have reasonable suspicion. Below are guidelines for discussing each case.

Case 1. Do the police have reasonable suspicion in this case? **No.** The only factor that the police have is the woman’s ethnicity. The child is not the abducted child, and the nanny has not shown any behavior that is suspicious, such as evading the police.

Case 2. Do the police have reasonable suspicion in this case? **Yes.** The totality of the circumstances here include: The officer has prior knowledge of immigrant smuggling in the area; the smuggling occurs in vans of this type; the driver appears nervous; and several adults are present in the back of the van. (Compare to the facts of *U.S. v. Arvizu* on Handout A.)

Case 3. Do the police have reasonable suspicion in this case? **No.** As in example #2 above, the police should look at the totality of the circumstances. If the police could point to observable factors that do not involve race or ethnicity, they might have a stronger argument that their suspicion is reasonable.

Case 4. Do the police have reasonable suspicion in this case? **No.** The bumper sticker clearly displays some affinity for Mexico, whether the driver is from Mexico or not. Simply looking at the bumper sticker would not be enough for the police to claim their suspicion was reasonable.

Case 5. Do the police have reasonable suspicion in this case? **Maybe.** On the one hand, there are no facts to show the woman is not cooperating with the sheriff's deputy. On the other hand, her broken English does not display any specific ethnic identity but may show that she is simply not from the United States.

5. Debrief the activity using the following questions:
- Did any group find none of the examples to be valid cases of reasonable suspicion?
 - Did any group find all of the examples to be valid examples of reasonable suspicion?
 - Which of the examples was the weakest case for reasonable suspicion? The strongest case? Why?
 - Do you think the reasonable suspicion standard is too vague to be applied? Why or why not?

NOTE: Students will have different opinions about what should be done to address the issue of unauthorized immigration. The issue may spark strong emotions from students. For help in addressing controversy in the classroom, please see [Handling Controversy in the Classroom](#), available on this web site from CRF.

Related Lessons

[Local Police and Immigration Law: The Case of Special Order 40](#). This lesson addresses a policy in Los Angeles that is at odds with the policy of SB1070.

[Issues of Unauthorized Immigration](#). This lesson introduces students to the conflicting public-policy choices regarding unauthorized immigration.

[Driver's Licenses and Unauthorized Immigrants](#). This lesson addresses whether unauthorized immigrants should have driver's licenses.

[Criminal Justice in America](#). This book is the most comprehensive secondary text available on the subjects of criminal law, procedure, and criminology. Chapter 8 ("Police and the Law") and Chapter 9 ("The Limits of Police Authority") are especially helpful in understanding reasonable suspicion and racial profiling.

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On April 23, 2010, Arizona Governor Jan Brewer signed into law a controversial state immigration bill. The new law was senate bill 1070 (“SB 1070”). It set up criminal penalties for unauthorized immigrants who do certain actions, such as seeking a job. It also gave police officers authority to investigate violations of immigration law.

At a press event, Governor Brewer stated that SB 1070 was necessary because the federal government had not been controlling unlawful immigration. In March 2010, for example, rancher Robert Krentz was found shot to death in his vehicle in an area known to be used by smugglers of unauthorized immigrants. Investigators believe he was killed by smugglers.

Based on this and other incidents, many in the state called on federal authorities to take more action. They wanted the federal government to seal the border. They even wanted the president to send in the National Guard.

In the meantime, the Arizona legislature passed SB 1070. Its stated purpose was to have state and local law enforcement “deter the unlawful entry and presence” of unauthorized immigrants.

How far can states like Arizona go, however, to enforce federal immigration laws? Because of widespread concerns that SB 1070 did go too far, the U.S. government eventually challenged the law in court.

What SB 1070 Said

The law bears the name Support Our Law Enforcement and Safe Neighborhoods Act. Most of it revised Arizona's criminal code. It contained some controversial provisions, among them:

Section 2(B) directs police to question those they reasonably suspect of unauthorized status. This section states: "For any lawful stop, detention or arrest made by a law enforcement official...where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of that person."

Section 3 makes it a crime for a non-citizen not to have proof of legal status. The law states that a non-citizen can be guilty of a misdemeanor for "willful failure to complete or carry an alien registration document...in violation of " federal immigration law.

Section 5(C) makes it a misdemeanor for an unauthorized immigrant to seek work in Arizona. This section states that it is a 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...."

Section 6 allows police officers to arrest any immigrant for committing a crime that would make the immigrant "removable" (or deportable). This section states that an officer "without a warrant, may arrest a person if the officer has probable cause to believe...[the person] has committed any public offense that makes [him] removable from the United States."

Legal Challenges to SB 1070

The American Civil Liberties Union (ACLU) and other civil rights organizations argued that Section 2(B) allows officers to violate the equal protection clause in the 14th Amendment of the U.S. Constitution. Of Arizona's 6.5 million residents, an estimated half million are unauthorized immigrants. Most of them come from neighboring Mexico.

Critics questioned how an officer can have "reasonable suspicion" that someone is an unauthorized immigrant without using the immigrant's race or ethnicity as the main factor. Singling out racial or ethnic groups for investigation is called "racial profiling."

Supporters of SB 1070 argued that the law can be neutrally applied. It does not depend on racial profiling. After signing the bill, Governor Brewer said her signature represents "steadfast support for enforcing the law — both against illegal immigration and against racial profiling." She also issued an order for training officers in protecting the civil rights of Arizona residents.

The U.S. Department of Justice also challenged the law in court on the grounds that all the above sections of the law were *preempted*. Preemption simply means that federal law (made by Congress) is higher than state law (made by Arizona or any other state). Federal law therefore trumps state law when the two conflict.

Preemption comes from the U.S. Constitution. The supremacy clause in Article VI states: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land.”

There are two kinds of preemption. If a state law makes it impossible for someone to comply with both state law and federal law, it is called *conflict preemption*. If, however, a state law merely says the same thing as a federal law, but Congress has thoroughly dominated that field of law, it is called *field preemption*. In either case, the state law is invalid.

SB 1070’s Day in Court

In July 2010, federal judge Susan Bolton issued an injunction in *U.S. v. Arizona*, stopping key sections of SB 1070 from going into effect until legal issues are resolved. (An injunction is a court order.) The injunction stopped the four sections listed above, which were the most controversial parts of the law. The state of Arizona appealed the case to the U.S. Supreme Court.

The issue in *Arizona v. United States* was whether each of the four challenged sections was preempted by federal law. (Because Arizona appealed, it appears first in the case name.) In a 5–3 decision, Justice Anthony Kennedy wrote the majority opinion that struck down three of the four provisions in question.

Section 3 made it a misdemeanor not to carry proof of legal immigration status. Writing for the majority, however, Justice Anthony Kennedy stated that the federal government’s laws had “occupied the field of alien registration.” Congress had made a “careful framework” of laws about registration. States, therefore, cannot impose penalties on persons guilty of violating those laws.

Section 5(C) — the part that made seeking work a crime — was preempted because federal law already imposed penalties on employers of unauthorized immigrants. Federal law is silent, however, about punishing employees. “Under Section 5(C),” wrote Justice Kennedy, “Arizona law would interfere with the careful balance struck by Congress with respect to unauthorized employment of aliens.”

The court found that Section 6 “would allow the State to achieve its own immigration policy.” This section allowed state officers to arrest a removable immigrant without a warrant. Under federal law, state officers may arrest a person who is removable only when the federal government requests that they do so. Section 6, therefore, “creates an obstacle to the full purposes and objectives of Congress.”

In contrast to the above sections, the court held that section 2(B) was not preempted. Because this section requires officers make a “reasonable attempt” to check if a person in a lawful stop or arrest is a legal resident, there is no way yet for the court to know if Arizona officers are using racial profiling. “The Federal Government,” wrote Justice Kennedy, “has brought suit against a sovereign State to challenge the provision even before the law has gone into effect.”



U.S. Supreme Court Justice Anthony Kennedy

Soon after the decision, the U.S. Department of Justice requested that federal judge Bolton once again stop Section 2(B). Judge Bolton, however, allowed it to take effect. “This court will not ignore the clear direction” of the Supreme Court, she wrote. It will likely be challenged again. In the meantime, similar laws in many other states remain in effect.

For Discussion and Writing

1. The Supreme Court decided that three sections were preempted by federal law: Sections 3, 5(C), and 6. For each one, decide if it was a *conflict* preemption or a *field* preemption and explain your answers.
2. Justices Scalia, Thomas, and Alito dissented in part and concurred (agreed) in part with the majority in *Arizona v. United States*. Justice Scalia argued that states like Arizona are “sovereigns.” Therefore, they can control who enters their borders and who may stay. Do you agree? Why or why not?
3. Reasonable suspicion is not sufficient to make an arrest. But it is evidence that a person is about to commit a crime or has committed a crime. It must be more than a mere “hunch,” and gives police authority to investigate. Do you think that an officer can have reasonable suspicion that someone is an unauthorized immigrant without using race or ethnicity? Why or why not?

Handout A

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What Is Reasonable Suspicion?

The Supreme Court left open the issue of Section 2(B) of the SB 1070 law. The court said that that section could be challenged in the future. The section states that when police make a lawful stop or detention of an individual, police shall make a “reasonable attempt” to check the person’s immigration status if they have *reasonable suspicion* that the person is an unauthorized immigrant.

Arrests must be based on *probable cause*. This requirement comes from the Fourth Amendment to the U.S. Constitution. Courts have defined probable cause as evidence strong enough to give a careful law enforcement officer reason to believe that the suspect is committing or has committed a crime.

Reasonable suspicion is different. It is not sufficient to make an arrest. It is, however, evidence that would give police a reasonable suspicion that a person either is about to commit a crime or has committed a crime. It must be more than a mere “hunch” and based on explainable, valid reasons. Also, the officer may not use a person’s race or ethnicity as the main factor in deciding to check the person’s status.

The U.S. Supreme Court case of *Terry v. Ohio* (1968) outlined that police may “stop and frisk” a person for weapons if the police reasonably suspect that the person may have committed or is about to commit a crime. If a weapon is found, then the officers would have probable cause to make an arrest.

The Supreme Court has since clarified reasonable suspicion in specific situations. In one case, a U.S. Border Patrol agent in Arizona had seen a minivan on a deserted, unpaved road. The driver did not look at the agent, and the driver’s posture was rigid. Children in the minivan all waved at the agent in unison, as if instructed to do so. Smugglers were known to drive minivans, and smugglers often passed through the area. Based upon the “totality of the circumstances,” the court in *U.S. v. Arvizu* (2002) held that the agent had reasonable suspicion to stop the minivan, which was found to have 100 pounds of marijuana in it.

Cases of Reasonable Suspicion?

Imagine you are a federal judge on a panel reviewing appeals from Arizona cases under the SB 1070 law. For each of the five cases below, look at the totality of the circumstances to decide if the police had reasonable suspicion to ask the person about his or her immigration status. Assume that the initial police stop in each was lawful.

The totality of the circumstances can include:

- The behavior of the person.
- The knowledge and experience of the officer about illegal activity in the area.
- Other circumstances that are explainable reasons for suspicion more than a mere “hunch.”

Do the police have reasonable suspicion to check immigration status?

1. A baby has been abducted in the neighborhood, and police stop a woman pushing a stroller with a baby in it. The woman appears to be a different ethnicity than the baby, who is white. It is known that many unauthorized immigrant women are nannies and babysitters for the children of lawful residents and citizens. The baby, it turns out, is not the abducted baby. Police detain the woman to check her immigration status.
2. On a commercial road in a suburban community, a police officer sees a van driving down the street. One of its taillights does not work. The officer stops the van to give the driver a “fix-it ticket” and notices five adult passengers in the back of the van. The driver’s hands are shaking. The driver has a valid driver’s license, but the area is known for smuggling unauthorized immigrants from Mexico. Vans of this type are often used in the smuggling. The officer detains the passengers to check their immigration statuses.
3. Police are making random vehicle inspection stops. A pickup truck is stopped and the driver is wearing work clothes and boots. The driver tells officers that he is late for work as a gardener in an affluent residential neighborhood. Police know that many gardeners in this neighborhood are unauthorized immigrants. They detain the man to check his immigration status.
4. Police stop another car at the random vehicle inspection. Police notice that the car that has a sticker of the flag of Mexico on the rear window. They detain the driver to check his immigration status.
5. A woman walks down the street holding her arm and appears to be in pain. A sheriff’s deputy stops her and asks if she needs help. She looks at him and says in broken English that she is all right. The officer detains her to check her immigration status.