Frequently Asked Questions About the Georgia Racial Profiling Law

June 2, 2011

What is wrong with Georgia HB 87?

HB 87 effectively turns Georgia into a police state. Like the Arizona "show me your papers" law that inspired it, this law compels all people in the state of Georgia, citizens and non-citizens alike, to carry identification documents on them at all times, because anyone may be stopped by a police officer and asked to prove citizenship or immigration status. The law authorizes police to demand the identification documents of anyone subject to an "investigation." These tactics are more commonly associated with a police state, not a free country.

Moreover, the law will result in systematic racial profiling. It gives police officers discretion in choosing who should be subjected to an investigation of immigration status and in determining what undefined information (other than a narrow list of enumerated identification documents) is "sufficient" to prove one's identity. This will inevitably lead to the profiling of anyone who looks or sounds "foreign." These provisions put even well-intentioned police officers in the position of relying on stereotypes and characteristics such as race, ethnicity, or accent in deciding whom to stop and investigate, and what information is deemed "sufficient" to establish identity.

Law enforcement leaders, including police chiefs around the country, have cautioned against putting local police in the position of enforcing federal immigration laws for fear that this will alienate the communities they serve and endanger everyone's public safety. The Georgia law undermines public safety and makes everyone less safe by diminishing the trust of immigrants, Latinos, and others who will be presumed to be "foreign" by local law enforcement agencies. Many immigrants will not come forward with vital information about crimes for fear that they or their family members will be subject to detention and investigation. Everyone's safety, including U.S. citizens, is put in jeopardy when victims and witnesses don't feel safe to come forward with critical information about crimes committed against them, their families, or members of the larger community. Police depend on the cooperation and trust of these communities to ensure public safety.

The law also creates new state crimes that allow Georgia police and prosecutors to punish individuals for routine interactions with undocumented immigrants. HB 87 puts individuals in jeopardy of prosecution for knowingly transporting undocumented persons, asking or helping them to enter the state of Georgia, or engaging in "any conduct that tends to substantially help [them] to remain in the United States." These new crimes would turn many family members of undocumented persons, immigration lawyers, good Samaritans, and good neighbors into criminals simply for behaving decently towards their fellow human beings.

In addition, HB 87 introduces overly-strict new documentation requirements for individuals applying for public benefits, seeking access to government facilities, and for other "official purposes." These requirements will make it difficult or impossible for many individuals who need and are legally entitled to benefits to receive them. HB 87's documentation requirements

also specifically disallow use of consular identification cards, which are an important form of secure identification for many foreign nationals.

What is the ACLU doing about the law?

The ACLU, National Immigration Law Center (NILC), Southern Poverty Law Center, Asian Law Caucus and other civil rights attorneys have filed a class action lawsuit in federal court on behalf of a broad array of individuals and organizational plaintiffs to stop HB 87 from taking effect. The lawsuit charges that the law violates numerous provisions of the U.S. Constitution. Notably, by unlawfully inviting the racial profiling of Latinos and others who might be profiled as foreigners, the law violates the Fourteenth Amendment's guarantee of equal protection under the law. By interfering with the federal government's authority to regulate immigration, it also violates the Supremacy Clause of the Constitution.

This bill was signed into law on May 13, 2011 by Georgia Governor Nathan Deal. Almost all of its provisions are scheduled to go into effect on July 1, 2011.

How does the law cause racial profiling?

By allowing police officers the discretion to investigate the citizenship or immigration status of anyone subject to investigation, including for minor traffic and other low-level criminal offenses, the law invites police officers to rely on racial and ethnic stereotypes relating to immigration.

Like the Arizona law that inspired it, this law invites racial profiling at two points in an encounter with the police. First, under HB 87, an officer may find a pretextual reason to stop someone on a very minor infraction based on the way they look, and then demand to see their papers. Or an officer may stop a person for a lawful reason but then, based on appearance or accent, demand their papers. Either way, racial profiling undermines fundamental American values of fairness and equality for all people. Americans come from every background and every corner of the earth, and no one should be subject to discriminatory or unequal treatment by the police based only on their race, ethnicity, or national origin.

Recent studies have shown that when local law enforcement agencies attempt to enforce immigration laws, it leads to racial profiling of Latinos and distorted criminal justice priorities focused on low-level, non-violent offenders. These types of policies lead to dragnets of Latino neighborhoods, discriminatory traffic checkpoints, and targeting of immigrant populations, all in an effort to detain people who look or sound foreign-born so that their status can be checked.

Indeed, the ACLU of Georgia has already documented serious civil rights concerns regarding Latino motorists in at least two counties – Gwinnett and Cobb. The evidence indicates a law enforcement practice of using pretextual traffic stops to investigate and detain people for alleged immigration violations.[1]

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[1] *See generally*, American Civil Liberties Union of Georgia, *The Persistence of Racial Profiling in Gwinnett: Time for Accountability, Transparency, and an End to 287(g)* (November 2009), available at

HB 87 contains a token prohibition on racial profiling, but this language, which is copied from Arizona's unconstitutional law, is ineffective and designed to pay lip service to community concerns about racial profiling. The operative language of HB 87 requires officers to suspect people of being undocumented immigrants. Other than based on appearance and language, it's hard to imagine any way a police officer in the state of Georgia (which has no international borders) could suspect that someone is not in the country legally. Relying on a person's appearance is not constitutional.

What's wrong with having Georgia police work on immigration enforcement?

As many top law enforcement officials have already acknowledged, the law will significantly harm the public trust that law enforcement officials need in order to protect the people of Georgia and will alienate police officers from the communities they serve. The law will direct police officers to divert scarce resources away from solving serious crimes. The criminal justice system is compromised when crime victims are unwilling to report crimes and witnesses are afraid to cooperate out of fear that they will be detained or targeted. Local officers will be put in the difficult position of relying on biased presumptions – and racial profiling – when asking anyone who looks or sounds foreign to confirm their citizenship or immigration status.

What is the difference between this law and the federal law?

Georgia's authorization for state and local police officers to demand the identity documents of anyone they stop for investigation, along with the unbridled discretion to detain people in order to verify their citizenship or immigration status, go well beyond what is permitted or even contemplated by federal immigration law.

First, the racial profiling of Latinos and others presumed to be foreign-born invited by HB 87 violates federal civil rights protections. Federal law recognizes that racial profiling undermines fundamental American values of fairness and equality for all people.

Georgia's HB 87 also oversteps the limits of a state's authority to engage in the enforcement of civil immigration laws, in violation of the Constitution's Supremacy Clause and the Fourth Amendment. States are not constitutionally permitted to create their own mandates on state and local police for the enforcement of federal immigration laws outside the authorization and supervision of the federal government. If Georgia and other states were permitted to do so, there would be a patchwork of fifty different immigration enforcement systems in this country, seriously undermining the authority and ability of the federal government to regulate and enforce the nation's immigration laws.

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http://www.acluga.org/GwinnettRacialReportFinal1.pdf, and, American Civil Liberties Union of Georgia, *Terror and Isolation in Cobb: How Unchecked Police Power Under 287(g) Has Torn Families Apart and Threatened Public Safety* (October 2009), available at http://www.acluga.org/racial%20profiling%20Cobb.pdf.

By imposing its own immigration enforcement obligations on state and local police officers, Georgia is essentially turning its officers into state-directed immigration agents. This interferes with the federal government's authority to establish its own priorities and strategies to protect national security, ensure public safety, and enforce the immigration laws.

HB 87 also departs from federal law by authorizing state and local police officers to detain people for an undefined period based on presumptions about their civil immigration status. Even federal immigration agents do not have such broad authority to detain or arrest people without a warrant, away from the border or international points of entry, under federal law. *See* 8 U.S.C. § 1357 (a)(2). The Georgia law impermissibly seeks to expand the limited circumstances in which federal law expressly allows state and local officers to arrest immigrants. *See* 8 U.S.C. § 1252c.

For these and other reasons, the federal district court blocked similar provisions in Arizona's law, SB 1070 – upon which Georgia modeled HB 87 – from taking effect. A panel of the federal court of appeals has affirmed that decision.

How is this law like Arizona's law, SB 1070?

While the language of Georgia's HB 87 is not identical to Arizona's SB 1070, its impact on average residents of the state is the same. Both laws compel all people, citizens and non-citizens alike, to carry specified identification documents on them at all times, or else risk prolonged investigation into their citizenship and immigration status by police officers if they are stopped. Georgia's law goes even beyond Arizona's in that it authorizes all police officers to demand the identification documents of anyone they stop or detain for investigation (Arizona's law limits this inspection to those whom police officers have "reasonable suspicion" to believe are in the country unlawfully).

Both laws also give state and local police authority to detain or arrest people without a warrant for presumed violations of civil immigration laws. Even federal immigration agents do not have this type of broad warrantless arrest and detention authority.

While the Georgia legislature has experimented with the language of its immigration enforcement authorization for state and local police officers in an effort to distinguish its provisions from those in SB 1070, it is not enough to cure the law of its constitutional defects.

What is the impact of the U.S. Supreme Court's decision in Chamber of Commerce v. Whiting, which upheld Arizona's 2007 law mandating employers to enroll in E-Verify, on the constitutionality of HB 87?

The Supreme Court's ruling in the *Whiting* case is limited to a narrow question about whether Arizona's employment sanctions law, the Legal Arizona Workers Act, fits within an express savings clause carved out by Congress in a federal statute that limits the ability of states to

impose sanctions on employers for hiring unauthorized workers.[2] The *Whiting* decision has nothing to do with the ability of a state to enact its own immigration enforcement and regulation scheme, as Arizona and a handful of other states, including Georgia with HB 87, have sought to do. To the contrary, the Court recognized in *Whiting* that only the federal government has the power to regulate immigration. The savings clause at issue in *Whiting* concerns only the power of States to regulate the licensing of employers, *not* immigration.

While there are some provisions in HB 87 that concern the ability of the state through its licensing powers to mandate that private employers participate in the flawed federal work authorization program, commonly known as E-Verify, to verify the status of new hires (HB 87, Sections 3 and 12), these provisions are not the subject of the lawsuit brought by the ACLU and other organizations.

The lawsuit challenging HB 87 is about whether the state of Georgia can enact its own pervasive and comprehensive law to regulate immigration that discriminates against people based on how they look or sound. The answer is no. Just like Arizona's SB 1070, Georgia's law violates core civil rights and liberties secured by the U.S. Constitution. The Arizona law has been blocked by the federal courts and the Georgia law should be blocked for the same reasons.

[2] The federal Immigration Reform and Control Act (IRCA) expressly preempts States from imposing "civil or criminal sanctions" on those who employ unauthorized immigrant workers, "*other than through licensing and similar laws*." 8 U.S.C. §1324a(h)(2) (emphasis added). The *Whiting* decision turned on the plain meaning of this seven-word savings clause. The majority found that Arizona's law was not preempted because the ability to revoke business licenses specifically fell within the powers that Congress expressly chose to leave to the States through the statute's savings clause. 563 U.S. ___ (2011).