Immigration Legislation: SB 1070

On April 23, 2010, Arizona Governor Jan Brewer signed the Support Our Law Enforcement and Safe Neighborhoods Act. This bill, which became widely known as SB 1070 after its introduction in the Arizona State Senate, requires law enforcement officers in Arizona to attempt to determine the immigration status of anyone whom they reasonably suspect to be in the US illegally, during a lawful stop, detention, or arrest.

The law also requires that legal immigrants in Arizona carry proof of their immigration status with them at all times or risk conviction of a state misdemeanor. Since its passage, SB 1070 has served as a model for legislation in at least 17 other states that are intent on removing undocumented immigrants from their borders, including Georgia, Pennsylvania, and Minnesota.

In Alabama, legislators recently passed the most restrictive state immigration legislation in the country, largely modeled on SB 1070. The Alabama legislation, which is known as HB 56 and is currently being challenged in federal courts, requires public schools to check the immigration status of students, prohibits landlords from renting to undocumented immigrants, and criminalizes the provision of almost all kinds of assistance to undocumented immigrants.

SB 1070’s declared purpose was to reduce the number of undocumented immigrants in Arizona with an “attrition through enforcement” strategy. It dramatically expands the authority of law enforcement officers to stop and question anyone who looks like they might be in the country illegally, and arrest those who cannot prove on the spot that they have permission to be in the US.

Some of the most controversial provisions, including the authority to stop people suspected of being undocumented and the criminalization of the failure to carry documents proving legal immigration status, were temporarily blocked by a federal judge on July 28, 2010— one day before the legislation was scheduled to go into full effect.

While a number of the bill’s less-controversial measures are now the law in Arizona, those that were enjoined by the court are still being challenged in lawsuits by the US Department of Justice and other groups. But even the mere possibility that SB 1070 could become the law in Arizona has already increased fear of authorities within immigrant communities and undermined community policing efforts.

Why Was SB 1070 Passed?

SB 1070 was often portrayed in the media as a political response to growing anti-immigrant sentiment among Arizona’s populace and the conservative politicians who crafted the bill. While this undoubtedly has some truth to it, the influence of the private corrections industry on the passage of the bill, which would likely lead to a dramatic surge in the number of immigrants detained in Arizona, has been largely ignored.

The authority to detain people suspected of immigration violations lies with Immigration and Customs Enforcement (ICE), but only a very small percentage of immigration detainees are actually held in ICE facilities. While ICE contracts with local law enforcement agencies to detain several thousand immigrants every day, almost half of the roughly 34,000 immigrants held in detention every day are held in facilities run by private immigration detention contractors. The two largest private immigration detention contractors are the Corrections Corporation of America (CCA), which housed an average of 6,199 immigrants each day in 2009 and reported annual revenues of $1.69 billion in 2010; and the Geo Group, which housed 4,948 immigrants per day in 2009 and had 2010 revenues of $1.17 billion.

At a cost of between $122 and $166 to detain one immigrant for one day, private contractors stand to benefit enormously from the...
increase in immigration detention that was expected as a result of SB 1070. Indeed, these companies’ profits are directly tied to federal and state policies that have dramatically increased the use of immigration detention in recent years.

Not surprisingly, CCA and Geo have invested significant time and money to ensure that their immigration detention beds are filled. In 2009, for example, CCA spent $1.98 million lobbying Congress, DHS, and the Department of Justice on issues related to the private prison industry.

CCA is also actively involved with the American Legislation Exchange Council (ALEC), an organization designed to bring together state legislators and private corporations. Both CCA employees and Russell Pearce, the Arizona State Senator responsible for SB 1070’s passage, hold seats on the board of ALEC’s Public Safety and Elections Task Force.

Indeed, SB 1070’s language was largely created in a December 2009 ALEC meeting after Pearce presented his ideas to an audience that included CCA employees. CCA employees helped turn these ideas into model legislation at the ALEC meeting, and Pearce would later introduce this legislation in the Arizona Senate. Of SB 1070’s 36 co-sponsors, two thirds were either ALEC members or present at the December 2009 meeting, and 30 would receive donations from private prison contractors in the months after the legislation was introduced.

The Human Rights Implications of SB 1070

Legal challenges to SB 1070 have rightly focused on the fact that it allows law enforcement officers to stop and arrest any person where there is a “reasonable suspicion” that he or she is in the US illegally. Though the legislation does not define how an officer may develop a “reasonable suspicion” that somebody is undocumented, it leaves the door wide open for racial profiling. SB 1070 will effectively divide Arizona’s population into two categories—Hispanic and non-Hispanic—and allow for major police intrusions into the lives of Arizona’s Hispanic population, whether they are here legally or not.

This codification of racial discrimination violates the right of every human, regardless of their immigration status, to be free from arrest based on the color of their skin.

Even without SB 1070 and its potential to dramatically increase the use of immigration detention, the US reliance on the immigration detention system to hold nearly 400,000 people each year raises serious human rights concerns. The immigration detention system has grown dramatically since 2001—from 209,000 people detained in 2001 to 392,000 detained in 2010. The use of local and state jails and private prison contractors to detain this population has made the system ripe for human rights violations. While ICE has issued a set of detention standards to govern the treatment of detainees housed in ICE facilities, these standards are not binding on non-ICE facilities. The result is a patchwork system of standards with little or no oversight or accountability, especially in the case of private detention facilities.

The volume of allegations of substandard care and inhumane treatment in immigration detention facilities is staggering. Since 2003, over 100 detainees have died while in immigration detention, many because of delayed or inadequate medical care. One detainee, Francisco Castaneda, was denied medical treatment for a lesion by ICE for 11 months, despite the recommendation of several doctors who warned that it could be cancerous. ICE authorized ibuprofen and antihistamines, and Castaneda later died of cancer.

While most incidents thankfully do not reach this level, the provision of medical care (or lack thereof) in immigration detention facilities frequently violates the basic human right to a minimum standard of health. Any increased use of immigration detention without binding standards of treatment and robust oversight will only worsen what is already an epidemic.

Moreover, the use of immigration detention in general raises serious human rights concerns. Thousands of immigrants are subject to laws that require them to be detained for the duration of their immigration court proceedings, which can take years. In many cases, they can be detained even after an Immigration Judge allows them to stay in the United States.

Humane alternatives to detention, which are available but severely underused, alleviate the human rights concerns associated with detention and have the potential to significantly reduce the costs associated with the detention system. Of course, proponents of alternatives to detention must contend with the powerful private prison lobby, whose interests are best served by laws that increase the use of immigration detention.

Without a serious effort to protect the human rights of immigrant detainees, laws like SB 1070 will have profound and devastating effects on immigrants, their families, and communities across the country.

Looking Forward: What’s Happening Now and What Can Health Professionals Do?

Human rights and immigrant rights organizations across the country have mobilized in opposition to SB 1070 and similar bills. Health professionals who are concerned about human rights and immigration detention can lend their voices to this important debate and take a stand against the increased use of immigration detention by educating their colleagues and contacting their local and federal lawmakers to oppose this dangerous trend.

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