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SENNATE BILL 1070: THE IMPLICATIONS OF ARIZONA’S IMMIGRATION LAW UPON MLB

Scott Nakama*

INTRODUCTION

On April 23, 2010, Arizona Governor Jan Brewer signed the Support Our Law Enforcement and Safe Neighborhoods Act (“S.B. 1070”)¹ - one of the most controversial pieces of immigration legislation in recent history.² Judge John T. Noonan, Jr. of the Ninth Circuit Court of Appeals believes S.B. 1070 “has become a symbol. For those sympathetic to immigrations to the United States, it is a challenge and a chilling foretaste of what other states might attempt. For those burdened by unlawful immigration, it suggests how a state could tackle that problem.”³

S.B. 1070, as amended by House Bill 2162 (“H.B. 2162”),⁴ made it a crime in Arizona for immigrants unlawfully present in the United

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⁴ H.B. 2162, 49th Leg., 2d Sess. § 3-6 (Ariz. 2010) (amending S.B. 1070 by adding a provision prohibiting Arizona law enforcement officers from using race, color, and national origin when enforcing S.B. 1070 “except to the extent permitted by the United States or Arizona Constitution”).
States to willfully fail to carry their alien registration documents. S.B. 1070 also allows officers to arrest immigrants without a warrant if they had probable cause that such immigrants committed a removable offense. S.B. 1070 requires Arizona law enforcement officers to investigate the immigration status of immigrants if they have reasonable suspicion that the immigrants were undocumented. Arizona’s intent for passing S.B. 1070 was to “discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.” The Arizona legislature found that “there is a compelling interest in the cooperative enforcement of federal immigration laws throughout all of Arizona.” S.B. 1070 was later amended to prohibit officers from using race, color, and national origin when enforcing S.B. 1070 “except to the extent permitted by the United States or Arizona Constitution.”

Proponents who support S.B. 1070 argue the bill simply allows Arizona to implement legislation aimed at addressing the problem of illegal immigration in Arizona.

I’ve decided to sign Senate Bill 1070 into law because, though many people disagree, I firmly believe it represents what’s best for Arizona. Border-related violence and crime due to illegal immigration are critically important issues to the people of our state, to my Administration and to me, as your Governor and as a citizen. There is no higher priority than protecting the citizens of Arizona. We cannot sacrifice our safety to the murderous greed of drug cartels. We cannot stand idly by as drop houses, kidnappings and violence compromise our quality of life. We cannot delay while the destruction happening south of our international border creeps its way north. We in Arizona have been more than patient waiting for Washington to act. But decades of federal inaction and misguided policy have created a dangerous and unacceptable situation.

Critics opposing S.B. 1070 argue the bill encourages racial profiling and undermines the trust between police and local communities. Pres-

7. S.B. 1070, 49th Leg., 2d Sess. § 2(B) (Ariz. 2010); ARIZ. REV. STAT. ANN. § 11-1051; see infra Part IV.B.1.
8. S.B. 1070, 49th Leg., 2d Sess. § 1 (Ariz. 2010).
9. Id.
10. H.B. 2162, 49th Leg., 2d Sess. § 3-6 (Ariz. 2010).
12. Id.
ident Barack Obama believes S.B. 1070 “undermine[s] basic notions of fairness that we cherish as Americans, as well as the trust between police and our communities that is so crucial to keeping us safe.”\(^{13}\) The Mexican American Legal Defense and Educational Fund fears the law will create “a spiral of pervasive fear, community distrust, increased crime and costly litigation, with nationwide repercussions.”\(^{14}\) Alessandra Solar Meetze, Executive Director of the ACLU of Arizona stated some of the consequences of the bill: “Since this discriminatory bill was signed, we have seen cases of racial profiling and unlawful detentions increase, and our communities are acutely aware of what more could happen if the bill is enacted.”\(^{15}\) Robert Server, Phoenix Suns Managing Partner stated: “The enactment of this bill just puts [Arizona] farther behind the eight ball in attracting companies to do business here and I think it will have a negative economic effect and a negative effect on our ability to create jobs for people who are looking for work.”\(^{16}\)

For years, scholars have well documented the widespread concern that police will abuse their discretion while investigating minorities.\(^{17}\) If that is the case, S.B. 1070 will affect hundreds of Major League Baseball (“MLB”) and minor league Latino baseball players each year, as they head to Arizona to complete in Spring Training and the Arizona Fall League. To understand the impact of S.B. 1070 – I offer the following hypothetical situation: a teenage baseball player from


\(^{14}\) Id.


\(^{18}\) This hypothetical does not take into account the United States District Court of Arizona’s order granting preliminary injunction of four provisions of S.B. 1070. The United States v. State of Arizona, et. al (D. Ariz. July 28, 2010) (No. 2:10-cv-01413-NVV) (July 28, 2010) (order granting preliminary injunction of sections 2(B), 3, 5(C), and 6 of S.B. 1070), aff’d, (9th Cir. April 11, 2011) (No. 10-01413). Although the preliminary injunction was upheld on appeal by the 9th Circuit Court of Appeals, the State of Arizona has filed a writ of certiorari with the Supreme Court on August 10, 2011. State of Arizona, et. al v. the United States, *petition for cert. filed*, (U.S. Sep. 10, 2011). The author believes a final determination of S.B. 1070 will not be determined until the Supreme Court makes a final ruling. The hypothetical in the introduction intends to show how S.B. 1070 negatively affects professional baseball players if all of the provisions are enforced.
the Dominican Republic, who does not speak much English, just arrived in Arizona to participate in MLB Spring Training. The player is struggling to earn a spot on the roster of the San Francisco Giants. The player’s friend drives him to a local McDonalds. His friend, whom is also Latin American, is pulled over for speeding while driving on a freeway.

The Dominican player can barely speak English and wears attire stereotypically worn by people in the Dominican Republic. Additionally, they were pulled over in a neighborhood that is reported to have a high number of undocumented immigrants. The officer asks the Dominican player’s friend for his license. The Dominican player’s friend gives the officer his license. As the officer continues to check his friend’s license, the officer begins communicating with the Dominican player. The officer asks the Dominican player where he is from and where he lives. The officer speaks fast and the Dominican player cannot understand. He becomes nervous and wonders why the officer is questioning him. The player responds first in Spanish, and later, in broken English that he does not understand why the officer is questioning him. The officer then asks the Dominican player where he was born. The player responded that he is from the Dominican Republic.

According to S.B. 1070, Arizona law enforcement officers are required to investigate the immigration status of a person during a lawful stop, detention, or arrest if reasonable suspicion exists that the person is an immigrant that is unlawfully present in the United States. The officer must request the player show his driver’s license

19. The United States Supreme Court has held that an officer does not need reasonable suspicion that a person is an unlawful alien to inquire about that person’s name, place of birth, or immigration status. Muehler v. Mena, 544 U.S. 93, 101 (2005) (holding that an “officer did not need reasonable suspicion to ask [a person] for [their] name, date and place of birth, or immigration status”).


21. S.B. 1070, 49th Leg., 2d Sess. § 2(B) (Ariz. 2010) or Ariz. Rev. Stat. Ann. § 11-1051(B) (2010) “require[s] ... an officer (to) make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is ... reasonable suspicion ... the person is unlawfully present in the United States, and requiring verification of the immigration status of any person arrested prior to releasing that person.” see also infra Part IV.B.1.University of Arizona School of Law Professors Gabriel J. Chin, Carissa Byrne Hessick, Toni Massaro, and Marc L. Miller believe the mandatory duty imposed in § 2(B) of S.B. 1070 “applies in some cases to people not suspected of a crime. Normally, suspects are ‘stopped’ or ‘arrested.’ The Supreme Court has used the word ‘detain’ or ‘detention’ to refer to people forcibly seized without any suspicion, such as passengers held in a traffic stop, or residents of a home or business held during the execution of a search warrant. Since § 11-1051(B) requires police officers in Arizona to investigate the immigration status of those lawfully detained, it appears to require investigation of people not otherwise suspected of a crime. Arizona law authorizes the police to stop and detain suspected civil traffic offenders, so they are seemingly included in the law as well.” Gabriel Chin
or any documents proving his legal residence, such as his P-1 Visa.\textsuperscript{22} The Dominican player does not have his visa because the Giants keep such paperwork at their facilities. The officer tells the Dominican player that he has to detain him\textsuperscript{23} until he can prove to federal officials that he is a lawfully permanent resident.\textsuperscript{24} The Dominican player is detained until members of the San Francisco Giants provide officers with the player’s P-1 Visa.

The hypothetical above reflects what hundreds of minority minor league baseball players and MLB players may experience while playing baseball in Arizona. Although a federal court’s preliminary injunction

\begin{quote}
In this hypothetical, the Dominican player was lawfully stopped when his friend was pulled over by police. The evidentiary standard for reasonable suspicion is low and less stringent than preponderance of the evidence. Illinois v. Wardlow, 528 U.S. 119, 123-24 (2000). Federal and Arizona law allow officers to take into account “language, accent, clothing and hairstyle” in addition to other factors “such as neighborhood (including whether it is said to be a high-crime neighborhood or a neighborhood with a high number of undocumented people), proximity to the border, origin and destination of travel, [and] the nature and location of a vehicle . . .” when formulating reasonable suspicion that a person is an undocumented alien. Gabriel Chin et. al, A Legal Labyrinth: Issues Raised by Arizona Senate Bill 1070, 25 Geo. IMMIGR. L.J. 47, 71 (2010) (citations omitted). In this hypothetical, the Dominican player acting nervously and his ‘furtive behavior’ are subjective factors. The United States Supreme Court recently held an officer’s formation of reasonable suspicion is an objective formulation. Kentucky v. King, No. 09-1272, slip op. at 10-11 (U.S. May 16, 2011). Thus, the Dominican player’s furtive behavior and behavior suggesting nervousness cannot be taken into account when forming reasonable suspicion. However, the officer arguably had reasonable suspicion based on objective factors such as the Dominican player (a) wearing stereotypical clothing of people from the Dominican Republic; (b) difficulty speaking English; (c) the player and his friend were stopped in a neighborhood reported to have a high number of undocumented aliens; and (d) the Dominican player stated he was born in the Dominican Republic. Gabriel Chin et. al, A Legal Labyrinth: Issues Raised by Arizona Senate Bill 1070, 25 Geo. IMMIGR. L.J. 47, 71 (2010) (citations omitted).
\end{quote}

\textsuperscript{22} See infra Part II.B.2 for discussion of a P-1 Visa.

\textsuperscript{23} The officer arguably had probable cause to objectively believe the Dominican player was an undocumented immigrant. Here, the Dominican player offered no evidence of a license or any other form of identification such as a Visa. Such form of identification will create a presumption that the Dominican player is lawfully present in the United States according to S.B. 1070. Gabriel Chin et. al, A Legal Labyrinth: Issues Raised by Arizona Senate Bill 1070, 25 Geo. IMMIGR. L.J. 47, 72-73 (2010) (citations omitted). Additionally, evidence that a person is foreign born “gives rise to a presumption that the person so born is an alien, and it is presumed that alienage continues until the contrary is shown.” Gabriel Chin et. al, A Legal Labyrinth: Issues Raised by Arizona Senate Bill 1070, 25 Geo. IMMIGR. L.J. 47, 72 (2010) (citations omitted). As such, the officer arguably had probable cause to believe the Dominican player was an unlawful alien based on his failure to produce any form of identification (in addition to the factors leading him to have reasonable suspicion – player stating he was foreign born, difficulty speaking English, and clothing). Thus, the officer arguably lawfully arrested the player according to S.B. 1070.

\textsuperscript{24} According to § 2(B) of S.B. 1070, “[a]ny person who is arrested shall have the person’s immigration status determined before the person is released,” and “[t]he person’s immigration status shall be verified with the federal government.” As such, once the Dominican player was arrested, he must be detained until he can prove he is not an undocumented alien.
tion of four of S.B. 1070’s most controversial provisions were upheld by the Ninth Circuit Court of Appeals, the State of Arizona has filed a writ of certiorari to the Supreme Court to challenge the lower court’s ruling. The Supreme Court will likely grant the writ, especially in light of the publicity toward the Arizona law and the partial dissenting opinion of Judge Carlos Bea. If the provisions of S.B. 1070 are enforced, minority players, such as Latinos, will be subject to the risk of false arrests, increased harassment, and detention.

This Article will examine the implications of S.B. 1070 upon MLB. Part II describes the history of Latino baseball players in the United States. Through this discussion, it is necessary to emphasize the importance of Latino baseball players in America and their significant contributions to MLB. Part III addresses S.B. 1070 and the controversy surrounding Arizona’s new immigration law. It details the origin of the bill and the bill’s major provisions. Part IV describes the current status of the bill, including the District Court of Arizona’s injunction of some of the major provisions of the bill. Part V then discusses the implications of S.B. 1070 upon MLB. First, foreign baseball players and their families that are lawfully present in the United States do not face the risk of being wrongfully convicted under S.B. 1070. Second, the enforcement of S.B. 1070 will lead to increased harassment, false arrests, and the detention of Latino baseball players that are lawfully present in the U.S. Lastly, other immigrant baseball players besides Latinos will be affected by S.B. 1070.

II. History of Latino Baseball Players

Baseball is considered America’s national pastime. Historically, MLB predominately consisted of Caucasian players. As immigrants from Ireland, Germany, and Italy entered America in the late 19th and early 20th century, baseball quickly became a way for such groups to assimilate into American culture. Although Irish Americans ex-

28. The author does not discuss the constitutionality of S.B. 1070. The issue of whether S.B. 1070 is preempted by federal law is outside the scope of this Article.
experienced some racial discrimination, they were quickly accepted by MLB. In the late 19th century, an estimated one third of MLB players were Irish American. By 1915, 11 out of the 16 MLB managers were Irish. In contrast, Jewish MLB baseball players were underrepresented in the early 20th century primarily due to social conditions such as racism and parental discouragement. Although great Jewish MLB players such as Hank Greenberg, Al Rosen, and Sandy Koufax excelled, modern Jewish baseball players are still underrepresented in MLB. Despite that fact, the majority of today's MLB

32. For example, Irish American baseball player Jim O'Rourke was offered a contract by a MLB team only if he changed his last name. After O'Rourke refused to change his last name, the MLB team still signed him because they respected his character for refusing to change his last name. See David L. Fleitz, *The Irish in Baseball: An Early History* 7-8 (2009); see also Ralph Wilcox, *Irish Americans in Sports: The Nineteenth Century, in Making the Irish American: History and Heritage of the Irish in the United States* 447 (J.J. Lee & Marion Casey eds., 2006) ("The reputation of Irish ballplayers soon become that others began to take Irish names to help them in their baseball careers.").


35. See Steven A. Riess, *From Pike to Green with Goldberg in Between: Jewish Americans and the National Pastime, in The American Game: Baseball and Ethnicity* 124 (Lawrence Baldassaro & Richard A. Johnson, eds., 2002) (reporting Henry Ford published Articles in September 1921 blaming Jewish gamblers for the infamous Black Sox scandal. Ford also stated that "[If fans wish to know the trouble with American baseball, they have it in three words - too much Jew") (citation omitted); Id. at 122 (stating the lack of Jewish baseball players in the early 20th century "reflected the social conditions among second-generation eastern European Jews who lived in crowded neighborhoods where they did not get enough experience playing baseball"); Harold Seymour, *Baseball: the People's Game* 97-98 (1990) (noting how Jewish immigrant parents and grandparents discouraged Jewish children from playing baseball in the early 20th century).

players are Caucasian. In 1981, for example, 68 percent of MLB players were Caucasian.37 Sixteen years later, in 2007, 59.8 percent of MLB players were Caucasian.38

Minorities or non-Caucasian baseball players were not common in the early history of professional baseball. That would all change in 1947 when Jackie Robinson made his debut for the Brooklyn Dodgers.39 Robinson’s debut preceded the Civil Rights movement, but served as a stepping-stone for minorities to move toward social equality.40 By playing for the Brooklyn Dodgers, Robinson broke the color barrier in MLB that lasted nearly half a century. Although light-skinned Cubans and other Latinos that appeared white were playing MLB at the time,41 Robinson’s debut was the catalyst for MLB teams to sign more minorities.42 Jackie Robinson’s success paved the way for other minorities to play MLB.43 Soon after Robinson’s debut, MLB teams signed other African American baseball players such as Larry Doby, Roy Campanella, and Willie Mays.44 As African American

40. See American Dreams: A Fit for a Fractured Society: Baseball and the American Promise, in BASEBALL AND THE AMERICAN DREAM: CLASS, GENDER, AND THE NATIONAL PASTIME 13 (Robert Elias ed., 2001) ("[Jackie] Robinson was a pioneer in the civil rights movement and he symbolizes an important component of the American dream: the quest for racial equality . . .") (citation omitted); see also Peter Dreier, Jackie Robinson's Legacy: Baseball, Race, and Politics, in BASEBALL AND THE AMERICAN DREAM: RACE, CLASS, GENDER, AND THE NATIONAL PASTIME 48 (Robert Elias ed., 2001) ("[Robinson's] actions on and off the diamond helped pave the way for America to confront its racial hypocrisy. The dignity with which Robinson handled his encounters with racism . . . drew public attention to the issue, stirred the conscience of many white Americans . . .")
41. See infra p 13 and notes 60-63.
42. GEORGE GEDDA, DOMINICAN CONNECTION: TALENT FROM THE TROPICS CHANGES FACE OF NATIONAL PASTIME 12 (2009) (finding that Robinson’s entrance in MLB “opened the door for players elsewhere, especially the Caribbean”); see also Alan Klein, Dominican Republic, Forging an International Industry, in BASEBALL WITHOUT BORDERS: THE INTERNATIONAL PASTIME 122 (George Gmelch, ed., 2006) (stating that “signing of Jackie Robinson in 1946 and the resulting breakdown of American baseball’s racial barrier” helped pave the way for MLB to develop a relationship with Dominican Republic professional teams); Samuel O. Regalado, Jackie Robinson and the Emancipation of Latin American Baseball Players in Race, Sports, and the American Dream 157 (Joseph Dorinson & Joram Warmund eds., 1998) (reporting that Dominican baseball player Felipe Alou stated: “To see [Jackie] Robinson in the Brooklyn lineup gave us hope . . . [T]here was a black man out there with a major league uniform on”).
43. See supra note 29 and accompany text.
44. SCOTT SIMON, JACKIE ROBINSON AND THE INTEGRATION OF MLB 154 (2007).
baseball players prospered, MLB teams then envisioned expanding their rosters to include foreign-born players. Baseball was a popular sport in South America and in Asia. It seemed logical that other countries could produce exceptional baseball players.

A. Latino Baseball Players

In 2010, 229 out of 833 MLB players, or 27.7 percent of MLB players, on opening day rosters and the disabled lists were born outside the United States. The majority of foreign-born MLB players are from the Dominican Republic, Puerto Rico, Japan, Mexico, Canada, Panama, Venezuela, and Cuba. Additionally, 3,370 of 7,026, or 48%, of minor league players are foreign born.

1. Cuba

Historians recognize Cuba as the first Latin American country to adopt baseball. The origins of Cuban baseball “are shrouded in hopeless confusion and enmeshed in a tangled web of contradictory accounts.” Regardless of its origin, Cuba was recognized as the “the


47. Id.

48. Id.


hub of Caribbean baseball for over 80 years, from the late 1870s until 1960.”

The color barrier did not prohibit all Latinos from playing MLB. Of the 54 Latino baseball players that played between 1911 and 1947, 45 were Cuban. MLB teams were open to signing some light skinned Cuban players. Although a few light skinned Cubans were able to play MLB, they were often subjected to “stereotypes and jokes.”

Political problems between Cuba and the U.S. also created a significant barrier for Cuban players to play MLB. On February 3, 1962, the United States imposed a trade embargo upon Cuba. The U.S. had such authority to impose an embargo pursuant to the Trading with the Enemy Act (“TWEA”). In 1977, the TWEA was amended. The amendments had two effects on MLB teams: (1) all MLB teams were prohibited from providing payments to Cuban nationals to play MLB, and (2) MLB teams were prohibited from traveling to Cuba to scout or sign Cuban nationals. MLB teams were eventually able to sign Cuban players who defected from Cuba through international free agency. For example, MLB teams can scout and sign Cubans who defect to other countries, such as the Dominican Republic that

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55. See id. (citation omitted).
56. See JULIA SWEIG, CUBA: WHAT EVERYONE NEEDS TO KNOW 88 (2009).
59. Id. at 358-60 (2009).
60. Id. (citing 31 C.F.R. § 515.415(a)(1)).
61. Id. (noting Cuban defector Jose Conteras signed a four-year $32 million contract with the New York Yankees as an international free agent).
grant them political asylum or citizenship. Another way MLB teams sign Cuban defectors is through the MLB annual draft. Cubans who defect to America are eligible to be drafted by any MLB team.

2. Dominican Republic

The majority of foreign-born players are from the Dominican Republic. Some of the best players in MLB history were born in the Dominican Republic – Albert Pujols, Sammy Sosa, Vladimir Guerrero, Manny Ramirez, etc. In the 1890s, Cuban immigrants introduced baseball to the Dominican Republic. After Jackie Robinson broke the color barrier, MLB teams slowly began to sign Dominican players. MLB developed a relationship with the Dominican Republic teams in the early 1950s. As part of this “working relationship”, the Dominican baseball season schedule was changed from the summer to winter. In most cases, the MLB team “dictated the terms of the relationship.” The first Dominican MLB player was Ozzie Virgil. Soon, other Dominican players were signed such as Juan Marichal and the famous Alou brothers – Felipe, Mateo, and Jesus. Marichal, a MLB hall of famer, won 243 games as a starting pitcher

62. Id.
66. Alan Klein, Dominican Republic, Forging an International Industry, in Baseball Without Borders: The International Pastime 118 (George Gmelch, ed., 2006) (describing that Cuban immigrants Ignacio and Ubalde Aloma organized Dominican teams after emigrating from Cuba); see also Rob Ruck, The Tropic of Baseball 5 (1999) (“In June 1891, [Ignacio and Ubalde Alomo] formed the first two clubs to play ball on the island and filled their lineups with Cuban compatriots, a handful of Dominicans, a few North Americans, and a German restaurateur.”).
67. See supra note 27 and accompany text.
70. Id.
71. Jonathan Helfgott, The Growing Game Abroad, the Changing Game at Home, in The Hardball Times Baseball Annual 2008 86 (Carolina Balado, Joe Distelheim & Bryn Tsao eds., 2008). But see Alan Klein, Dominican Republic, Forging an International Industry, in Baseball Without Borders: The International Pastime 121 (George Gmelch, ed., 2006) (arguing Felipe Alou should be considered the first Dominican MLB player from the island because Virgil immigrated to the U.S. at a very young age).
with a career earned run average of 2.89. The success of Marichal and the Alou brothers encouraged teams to sign more Dominican players. MLB teams were also motivated to sign Dominican players for financial reasons. For example, it cost MLB teams $100,000 to $150,000 in the late 1970s to sign a top draft pick while it only cost an estimated $4,000 to sign a good Dominican player. Today, the Dominican Republic impacts MLB more than any other foreign country by producing the most foreign-born players. As of 2010, over 350 current or past MLB players were born in the Dominican Republic.

3. Puerto Rico

In 1942, Hiram Bithorn became the first Puerto Rican MLB player when he signed with the Chicago Cubs. Many Puerto Rican players experienced racism in America during the 1950s, especially in southern states. The most famous Puerto Rican baseball player was MLB Hall of Famer Roberto Clemente. Clemente’s accomplishments included a career .317 batting average, 12 gold gloves, 12 All-Star selections, and a MVP award. Clemente’s success paved the way for other Puerto Rican and Latino MLB players. As of 2010, over 230 current

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73. Alan Klein, Dominican Republic, Forging an International Industry, in BASEBALL WITHOUT BORDERS: THE INTERNATIONAL PASTIME 122 (George Gmelch, ed., 2006); see also Id. at 123 (“Two Dominicans entered the Major Leagues during the 1950s; 22 in the 1960s; 38 in the 1970s; 65 in the 1980s; and 133 in the 1990s.”).
75. Id. at 37 (citation omitted).
and former MLB players were born in Puerto Rico including Roberto and Sandy Alomar, Orlando Cepeda, and Ivan Rodriguez.83

4. Mexico

As of June 2010, over 80 current and former MLB players were born in Mexico.84 Fernando Valenzuela is, arguably, the most famous MLB player from Mexico.85 Valenzuela played in six All Star games and was the 1981 NL Cy Young Award winner.86 Valenzuela’s success reinforced the notion that baseball was becoming an international game.87 Similar to Cuba, there is a debate as to how baseball originated in Mexico.88 Several factors have contributed to the popularity of baseball in Mexico, such as the introduction of the similar British game of cricket and the influence of American railroad and industrial workers.89

In 1882, Vincent Nava became the first Mexican professional baseball player in America.90 In 1925, the Mexican League was established.91 By the mid 1940s, several MLB players opted to sign more lucrative contracts with Mexican League teams or used offers from Mexican League teams as leverage in their contract negotiations with

85. JOYCE DUNCAN, SPORT IN AMERICAN CULTURE: FROM ALI TO X GAMES (2004) 381.
87. See ALAN M. KLEIN, GROWING THE GAME: THE GLOBALIZATION OF MAJOR LEAGUE BASEBALL 67 (2006) (“The arrival of Fernando Valenzuela has one of the greatest social impacts in the history of the sport because it ushered in the sport’s self awareness of having entered an international era.”).
89. SAMUEL OCTAVIO REGALADA, VIVA BASEBALL!: LATIN MAJOR LEAGUERS AND THEIR SPECIAL HUNTER 16 (1998) (citation omitted).
MLB teams. Minor League Baseball currently recognizes the Mexican League as a minor league. Unlike minor league teams in America, Mexican League players do not have player development contracts with MLB teams. As such, Mexican League players are not promoted to the MLB "with much frequency." 

5. Venezuela

Cubans introduced baseball to Venezuela in the 1890s. The first Venezuelan MLB player was Alejandro Carrasquel who debuted with the Washington Senators in 1939. As of December 2010, over 200 current and former MLB players were born in Venezuela such as Miguel Cabrera, Francisco Rodriguez, Omar Vizquel, and Ozzie Guillen. MLB teams have recently started to open baseball academies in Venezuela.


94. Id. at 20.

95. Id.


B. The Process for Immigrant Baseball Players to Enter the United States

The United States usually issues two types of immigration visas to foreign baseball players: the O-1 visa and P-1 visa. The visa process begins when a MLB team files a Form I-129, “Petition for Nonimmigrant Worker” with the United States Citizenship and Immigration Service ("USCIS") on behalf of the player. All applicants for immigration visas “are subject to criminal and national security background checks . . .” A MLB team can file the petition for an O-1 visa or P-1 visa up to one year prior to their actual need for the player's services. The player must also sign a contract with a MLB team. Each visa requires a player to meet certain ability requirements. Both visas are designed for foreign players who intend to remain in the United States temporarily.

1. O-1 Visa

The United States may issue an O-1 visa to baseball players with extraordinary baseball abilities. A foreign player with extraordinary baseball ability is one who “demonstrate[s] sustained national or international acclaim and recognition for achievement” in baseball. A player can meet this evidentiary burden by proving he received a major, internationally recognized baseball award. Alternatively, a foreign baseball player satisfies this evidentiary burden by establishing other factors listed under the statute. Additionally, an American peer group consisting of experts in the field of baseball (i.e., players, coaches, and officials) must attest to the foreign player's exceptional

106. Id.
109. Id. at 214.2(o)(3)(m)(B).
110. Id. at 214.2(o)(3)(m)(A).
111. Id. at 214.2(o)(3)(m)(B).
ability. If the player is traded to another team, the new team must file a separate petition. An MLB team can also file a petition for the foreign player's coach and/or trainer to receive an O-2 visa, which would allow them to accompany the foreign player. The coach or trainer must have extraordinary ability in coaching or training, respectively. Likewise, a MLB team can also file a petition for an O-1 or O-2 recipient's family to receive O-3 visas.

2. P-1 Visas

The passing of the COMPETE Act in 2007 made P-1 Visas available to minor league baseball players. The standards for the USCIS to issue a P-1 visa are less rigorous than the standards to grant the O-1 visa. The P-1 visa requires the athlete be internationally recognized. To meet this less rigorous standard, the immigrant must have a contract with a major American team and documentation of at least two factors listed under the statute. The P-1 visa recipient's spouse and unmarried children under the age of 21 can receive P-4 Visas to live in the United States.

III. Arizona Immigration Statute

S.B. 1070 dramatically changed Arizona immigration law. It makes failure of an immigrant to carry an alien registration document a vio-
lation of Arizona law;\textsuperscript{122} punishes any person occupying a motor vehicle that blocks or impedes traffic while attempting to hire and pick up passengers;\textsuperscript{123} and criminalizes the unlawful transporting, moving, concealing, harboring or shielding of unlawful immigrants while committing another crime.\textsuperscript{124} The law also requires police officers to investigate the immigration status of a person during a lawful traffic stop or detention or arrest when "reasonable suspicion exists that the person is an alien and is unlawfully present in the United States."\textsuperscript{125} Additionally, a law enforcement officer, without warrant, may arrest a person if the officer has probable cause to believe that the person has "committed any public offense that makes the person removable from the United States."\textsuperscript{126}

By enacting S.B. 1070, the Arizona legislature intended to "discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States."\textsuperscript{127} The Arizona legislature's rationale for the enactment of S.B. 1070 is that the "enforcement of federal immigration laws throughout all of Arizona"\textsuperscript{128} is a compelling state interest.\textsuperscript{129} S.B. 1070 was later amended to address fears that "the original law would somehow allow or lead to racial profiling."\textsuperscript{130} H.B. 2162 prohibits Arizona law enforcement officers from using race when inquiring about a person's status, "except to the extent permitted by the United States or Arizona Constitution."\textsuperscript{131}

A. Origins of S.B. 1070

Arizona Senator Russell Pearce sponsored S.B. 1070.\textsuperscript{132} He believed S.B. 1070 would take "the handcuffs off of law enforcement and
let[ ] them do their job.”133 Senator Pearce first introduced the bill in 2003.134 Much of the language contained in S.B. 1070 was drafted by University of Missouri-Kansas City School of Law professor Kris Kobach.135 Kobach became interested in immigration law while “reading about California’s Proposition 187, a 1994 voter-approved measure that would have denied health-care, education and social-service benefits to illegal immigrants.”136 Kobach also became interested in reducing illegal immigration after the September 11, 2001 terrorist attacks on New York City’s World Trade Center.137 After learning that the terrorists who performed the 9-11 hijackings lived in America illegally, Kobach remarked: “That realization struck home with me. People were saying, ‘How could we have prevented this?’”138

Kobach later worked as chief advisor on immigration law and order security for U.S. Attorney General John Ashcroft.139 Kobach joined the Federation for American Immigration Reform (“FAIR”), which aims to improve “border security, to stop illegal immigration, and to promote immigration levels consistent with the national interest.”140 After leaving the Justice Department in 2003, Kobach represented FAIR in lawsuits pertaining to illegal immigration. In 2006, Kobach began working on curtailing illegal immigration in Arizona.141 Senator Pearce contacted Kobach to prepare a bill that later became S.B. 1070.142 Kobach believes S.B. 1070 does not target any specific ethnicity. He asserts: “I could . . . care less whether [the illegal immigrants] . . . come from Mexico or Germany or Japan or China . . . . An alien

133. Id.
136. Id.
138. Id.
139. Id.
142. Id.
who also is here with terrorist intentions can carry any passport. This isn’t about race or national origin.\textsuperscript{143}

B. Provisions

1. Requirement that Police Officers to Investigate People’s Immigration Status

Section 2(B) of S.B. 1070 requires law enforcement officials investigate the immigration status of a person during a lawful stop, detention, or arrest if “reasonable suspicion exists that the person is an alien and is unlawfully present in the United States.”\textsuperscript{144} Section 2(B) further states a law officer shall make “a reasonable attempt. . . when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation.”\textsuperscript{145} A law enforcement official “may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution.”\textsuperscript{146} Additionally, “[a]ny person who is arrested shall have the person’s immigration status determined before the person is released. The person’s immigration status shall be verified with the government pursuant to 8 United States Code [S]ection 1373(c).”\textsuperscript{147}

An alien is presumed to be lawfully present in the U.S. by providing proof of any of at least one of the following: a valid Arizona driver license, a valid Arizona non-operating identification license, a valid tribal enrollment card or other form of tribal identification, and if the entity requires proof of legal presence in the U.S. before issuance, then any valid United States federal, state or local government issued identification.\textsuperscript{148} An officer is “indemnified against reasonable costs and expenses, including attorney’s fees, incurred by the officer in connection with any action, suit, or proceeding brought pursuant to this

\begin{footnotesize}
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\item[144.] S.B. 1070, 49th Leg., 2d Reg. Sess. § 2(B) (Ariz. 2010); ARIZ. REV. STAT. ANN. § 11-1051(B) (2010).
\item[145.] Id.
\item[146.] H.B. 2162, 49th Leg., 2d Reg. Sess. § 4(c) (Ariz. 2010).
\item[147.] S.B. 1070, 49th Leg., 2d Reg. Sess. § 2(B) (Ariz. 2010); ARIZ. REV. STAT. ANN. § 11-105(B); 8 U.S.C. 1373(c) (“The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.”).
\item[148.] S.B. 1070, 49th Leg., 2d Reg. Sess. § 2(B)(1-4) (Ariz. 2010); ARIZ. REV. STAT. ANN. § 11-1051 (2010).
\end{itemize}
\end{footnotesize}
section to which the officer may be a party . . . except in relation to matters in which the officer is adjudged to have acted in bad faith.”

One of the most controversial aspects of S.B. 1070 is whether an officer can consider race as reasonable suspicion that a person is an unauthorized immigrant or undocumented immigrant. S.B. 1070 specifically states race cannot be considered grounds for reasonable suspicion that a person is an undocumented immigrant. However, the statute as amended allows the consideration of race to the “extent permitted by the United States or Arizona Constitution.” This provision potentially permits law enforcement officers to use race as one of many factors to consider for reasonable suspicion that a person is an undocumented immigrant. In Part V.B.1-2, this article discusses how federal and Arizona law allows the use of race as one of many relevant factors when determining if a person is an unauthorized or undocumented immigrant.

2. Law Enforcement Officer May Arrest a Person If the Officer Has Probable Cause the Person Committed Any Removable Offense

S.B. 1070 authorizes peace officers to arrest a person if they have probable cause that the person committed a removable offense. The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Under the Fourth Amendment, “[p]robable cause exists where ‘the facts and circumstances within [an officer’s] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution

149. S.B. 1070, 49th Leg., 2d Reg. Sess. § 2(J) (Ariz. 2010);
150. S.B. 1070, 49th Leg., 2d Reg. Sess. § 5(D)(2) (Ariz. 2010) defines unauthorized alien as “an alien who does not have the legal right or authorization under federal law to work in the United States and described in 8 United States Code Section 1324a(h)(3).”
151. E.g., Complaint at 6, ¶ 33, Escobar v. Brewer, et. al (D. Ariz. Apr. 29, 2010) (No. 4:10-cv-00249-DCB) (alleging SB 1070 allows “for use of race, color and national origin as permissible factors to consider in establishing reasonable suspicion that a person is an undocumented alien”); Complaint at 32, ¶ 78, Friendly House, et. al v. Whiting (D. Ariz. May 17, 2010) (No. 2:10-cv-01061-MEA) (alleging S.B. 1070 requires officers to verify the immigration status of individuals based on a “reasonable suspicion” standard that is unworkable and cannot be applied by state and local officers; that requires impermissible reliance on race, national origin, and language. . . .)
152. S.B. 1070, 49th Leg., 2d Reg. Sess. § 2
154. See discussion infra Part V.B.1-2.
155. Id.
156. S.B. 1070, 49th Leg., 2d Reg. Sess. § 2(E) (Ariz. 2010); ARIZ. REV. STAT. ANN. § 11-1051.
157. U.S. CONST. amend. IV.
in the belief that ‘an offense has been or is being committed.’”\textsuperscript{158} The probable cause standard is a “nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians act.”\textsuperscript{159} An officer “may draw inferences based on his own experience in determining whether probable cause exists.”\textsuperscript{160} The following are examples of removable offenses:

1. The alien being inadmissible at time of entry or of adjustment of status;
2. Violating nonimmigrant status or condition of entry;
3. Termination of conditional permanent residence;
4. Knowingly smuggled or encouraged, induced, assisted, abetted, or aided another alien to illegally enter the United States;
5. Marriage fraud;
6. Convicted crime(s) of moral turpitude;
7. Convicted of aggravated felony;
8. Failure to register as a sex offender;
9. Crimes of domestic violence, stalking, or violation of protection order;
10. Crimes against children;
11. Commits or conspires to human trafficking offenses pursuant to 8 U.S.C.A. §1182(a)(2)(H);
12. Participated in terrorist activities;
13. Participated in Nazi persecution, genocide, or committing any act of torture;
14. Recruitment of children soldiers;
15. Violation of any United States or State law or foreign law relating to a controlled substance.\textsuperscript{161}

University of Arizona School of Law professors Gabriel Chin, Carissa Byrne Hessick, Toni Massaro, and Mark Miller believe the law is intended to allow more authority for Arizona law enforcement officers to make arrests, but the law seems “redundant if the point was to allow arrest for federal crimes.”\textsuperscript{162} They noted that the Ninth Circuit Court of Appeals already held “that local police have inherent

\textsuperscript{160} Ornelas v. United States, 517 U.S. 690, 700 (1996).
\textsuperscript{161} 8 U.S.C.A. § 1227 (West 2011).
authority to arrest for federal crimes, including immigration misdemeanors." Additionally, they explained how “[t]he Arizona Supreme Court held in 1954 that state peace officers may make arrests for federal crimes under their general arrest authority.”

3. Failure of an Alien to Carry an Alien Registration Document

Senate Bill 1070 makes it a crime for an alien to willfully fail “to complete or carry an alien registration document.” According to the bill, an alien who does not carry such documents violates the Alien Registration Act of 1940 or 8 U.S.C. § 1304(e) or 1306(a). In other words, the Arizona legislature has made it a state crime for a person to violate a federal law, the Alien Registration Act. One of Congress’s motives for passing the Alien Registration Act of 1940 was to prevent aliens suspected of participating in subversive activities or actions involving the overthrow of the U.S. government from entering the country. The Alien Registration Act requires aliens to register within 30 days of arrival who are 14 or older, did not enter under immigrant or non-immigrant visas issued under 8 U.S.C. § 1201(b), and remain in the U.S. for thirty days or longer. The Alien Registration Act “requires those issued a Certificate of Alien Registration or Alien Registration Receipt Card by the federal government to carry it; noncompliance is a misdemeanor punishable by 30 days in jail, a $100 fine, or both.” Under U.S. the Act, an alien who willfully fails to register has committed a misdemeanor “punishable by 6 months in jail, a $1,000 fine, or both.” In contrast, a person who

163.  Id. (citing Gonzalez v. City of Peoria, 722 F.2d 468, 474 (9th Cir. 1983), overruled on other grounds by Hodgers-Durgin v. De La Vina, 199 F.3d 1037 (9th Cir. 1999)).

164.  Id. (citing Whitlock v. Boyer, 271 P.2d 484, 487 (Ariz. 1954)).

165.  S.B. 1070, 49th Leg., 2d Reg. Sess. § 3(A) (Ariz. 2010); ARIZ. REV. STAT. ANN. § 13-1509.


168.  86 Cong. Rec. 7818 (1940) (“The Committee of the Judiciary is very anxious to secure action on this measure, because it [will] assure the public that Congress is doing something about the so-called ‘fifth column’ and in correcting subversive activities.”).


violates the Arizona law may receive “up to 20 days in jail and a $100 fine for a first offense, and 30 days for a second offense.”

It is important to note that this new Arizona state crime is inapplicable to those with visas or those “who maintain authorization from the federal government to remain in the United States.” S.B. 1070 limits “liability to those who are not authorized to live in the country,” meaning that baseball players with P-1 or O-1 visas are not subject to this aspect of the Arizona law. In addition, there are no reported cases where an immigrant was prosecuted under federal law for having expired or invalid documents. While the failure to carry registration documents is not a ground to convict lawfully permitted immigrants, such failure in addition to evidence that the alien is foreign born may provide Arizona law enforcement officers with probable cause to arrest such immigrants. Courts have held that police officers have probable cause to arrest a person who is foreign born and who lacks immigration documents. Consequently, lawfully permitted immigrants are in danger of being falsely arrested if they fail to carry documents verifying their immigration status.

4. Blocking or Impeding Traffic While Attempting to Hire and Pick Up Passengers in a Motor Vehicle

S.B. 1070 makes it unlawful for “an occupant of a motor vehicle that is stopped on a street, roadway or highway to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.” Additionally, “[i]t is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported at a different location if the

173. S.B. 1070, 49th Leg., 2d Reg. Sess. § 3(F) (Ariz. 2010).  
176. Id. at 52-53.  
motor vehicle blocks or impedes . . . traffic.” Moreover, under the statute, it is unlawful for an unauthorized immigrant “to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor.” An individual who violates this section is guilty of a Class 1 misdemeanor and may serve up to six months in jail. This section likely has no affect on MLB because it is intended to deter employers from picking up undocumented immigrants. Nearly all foreign baseball players have either O-1 or P-1 Visas.

5. **Unlawful Transporting, Moving, Concealing, Harboring or Shielding of Unlawful Immigrants While Committing Another Crime**

Senate Bill 1070, as codified in Ariz. Rev. Stat. Ann. § 13-2929, prohibits people from transporting, moving, concealing, harboring or shielding an unlawful alien while committing a criminal offense. Additionally, it is a crime to “[e]ncourage or induce an alien to come to or reside in this State if the person knows or recklessly disregards the fact that such coming to, entering or residing in this State is or will be in violation of law.” In violation of a criminal offense “seems to apply to a person who, at the time of transporting, harboring or encouraging an undocumented alien, is also committing a crime, for example, a person transporting undocumented people across the border while going 20 miles an hour or more above the speed limit.” On the other hand, “a person transporting undocumented non-citizens who violated a mere civil traffic rule would not seem to be ‘in violation of a criminal offense’ and therefore would not be liable under the statute.”

In order to convict a person under this section, a defendant must commit a criminal offense separate from Ariz. Rev. Stat. § 13-2929 and “know or recklessly disregard the fact that the alien has come to,

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180. S.B. 1070, 49th Leg., 2d Reg. Sess. § 5(B) (Ariz. 2010).

181. S.B. 1070, 49th Leg., 2d Reg. Sess. § 5(E)(2) (Ariz. 2010) defines unauthorized alien as “an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 United States Code Section 1324a(h)(3).”

182. S.B. 1070, 49th Leg., 2d Reg. Sess. § 5(C) (Ariz. 2010).


185. S.B. 1070, 49th Leg., 2d Reg. Sess. § 5(A) (Ariz. 2010);


187. *Id.* at 59.
has entered or remains in the United States in violation of law.  

A violation of this section is deemed a misdemeanor, and the person shall receive a minimum one thousand dollar fine unless the violation involved ten or more illegal immigrants. If it involves the latter, the person has committed a class 6 felony and shall receive a minimum one thousand dollar fine for each unlawful immigrant involved. 

This section will most likely have little to no impact on MLB players, since all MLB players are documented immigrants. Furthermore, the section is aimed more at those aiding illegal immigrants in avoiding law enforcement than at illegal immigrants themselves.

IV. CURRENT STATUS OF S.B. 1070

A. Lawsuits Challenging S.B. 1070

Several lawsuits have challenged provisions of Arizona S.B. 1070. In National Coalition of Latino Clergy and Christian Leaders, the plaintiffs alleged S.B. 1070 will lead to "national origin' and 'race' discrimination, in violation of Title VII of the Civil Rights Act and the Fair Housing Act . . . ." Additionally, they argued federal law preempted several provisions of S.B. 1070. For example, the plaintiffs argued: "states and localities are preempted by federal law from making their own independent assessment as to whether an alien has committed an immigration violation and imposing penalties against such aliens." The plaintiffs also argued the provision prohibiting the "solicitation of work... by undocumented immigrants in a public place" violates the First Amendment because solicitation of work is protected speech under the First Amendment.

189. Id.
190. Id.
193. Id. ¶¶ 2, 3, 7 & 67.
194. Id. ¶ 7.
195. Id. ¶ 69.
Other complaints challenging S.B. 1070 raised similar arguments. For example, in Escobar v. Brewer, an Arizona police officer challenged S.B. 1070 on the grounds that the act violated federal due process,\textsuperscript{196} federal equal protection,\textsuperscript{197} the First Amendment,\textsuperscript{198} the Fifth Amendment,\textsuperscript{199} the Fourth Amendment,\textsuperscript{200} and was preempted by federal law.\textsuperscript{201} In Friendly House v. Whiting, the ACLU, on behalf of labor unions, churches, local businesses, and individual plaintiffs alleged that “SB 1070 has caused racial tensions because it is widely understood that it is motivated by and will result in discrimination against Latinos and other racial minorities in Arizona on the basis of their race and national origin.”\textsuperscript{202} The ACLU argued Section 2 of S.B. 1070 (mandatory duty for officers to investigate the immigration status) is preempted by federal law because “[t]he law requires state or local officers to attempt to determine immigration status, which must be determined through a federal administrative system applying complex federal statutes and regulations, and which is based upon historical facts about an individual that are not observable by an officer in the field.”\textsuperscript{203} The ACLU also alleged the bill chilled expressive speech, such as words, accents, and gestures.\textsuperscript{204}

In another lawsuit, the U.S. requested a declaratory judgment and a preliminary and permanent injunction against Arizona to prohibit the enforcement of S.B. 1070.\textsuperscript{205} The U.S. alleged the “United States Constitution forbids Arizona from supplanting the federal government’s immigration regime with its own state-specific immigration policy – a policy that, in purpose and effect, interferes with the numerous interests the federal government must balance when enforcing and administering the immigration laws . . . .”\textsuperscript{206} Specifically, it alleged S.B. 1070 “impose[s] significant and counterproductive burdens on the federal agencies charged with enforcing the national immigration scheme, diverting resources and attention from the dangerous aliens who the

\textsuperscript{197} Id. ¶¶ 45-47.
\textsuperscript{198} Id. ¶ 48-50.
\textsuperscript{199} Id. ¶¶ 51-53.
\textsuperscript{200} Id. ¶¶ 54- 56.
\textsuperscript{201} Id. ¶¶ 57-59.
\textsuperscript{203} Id. ¶ 82.
\textsuperscript{204} Id. ¶ 83.
\textsuperscript{206} Id. at 6, ¶ 5.
federal government targets as its top enforcement priority.” The U.S. believes the enforcement of the bill “will cause the detention and harassment of authorized visitors, immigrants, and citizens who do not have or carry identification documents specified by the statute, or who otherwise will be swept into the ambit of S.B. 1070’s attrition through enforcement approach. It will conflict with longstanding federal law governing the registration, smuggling, and employment of aliens.” Additionally, the U.S. alleged the mandatory duty of law officers to investigate, as specified in Section 2 of S.B. 1070, “will result in the prolonged detention of lawfully present aliens and United States citizens.”

B. District Court’s Injunction

On July 28, 2010, the United States District Court for Arizona ordered a preliminary injunction of several provisions contained in S.B. 1070. The district court’s order enjoined portions of S.B. 1070 - sections 2(B), 3, 5(C), and 6 - on the grounds that such provisions are preempted by federal law. Section 2(B) “require[s] ... an officer (to) make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is ... reasonable suspicion ... the person is unlawfully present in the United States, and requiring verification of the immigration status of any person arrested prior to releasing that person.” Section 3 creates “a crime for the failure to apply for or carry alien registration papers.” Section 5(C) made it “a crime for an unauthorized alien to solicit, apply for, or perform work.” Lastly, section 6 authorized “the warrantless arrest of a person where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States.” The State of Arizona subsequently appealed the court’s order.

207. Id. at 3, ¶ 4.
208. Id.
209. Id. at 17, ¶ 43.
211. Id.
212. Id.
213. Id.
214. Id.
215. Id.
C. 9th Circuit Court of Appeal Affirms District Court's Ruling

On April 11, 2011, the Ninth Circuit Court of Appeal affirmed the Federal District Court's order granting a preliminary injunction of the four aforementioned provisions of S.B. 1070.\(^{216}\) The majority opinion held all four provisions were preempted by federal law such as the Immigration and Nationality Act ("INA").\(^ {217}\) Additionally, Judge Richard A. Paez – the author of the majority opinion – argued that section 2(B) "complicated [the U.S.'s] dealings with foreign sovereigns" such as Mexico.\(^ {218}\) He believed it "thwarts the Executive's ability to singularly manage the spillover effects of the nation's immigration laws on foreign affairs."\(^ {219}\) Judge Bea's partial concurrence and dissenting opinion disagreed with the majority and concurring opinions that Section 2(B) and Section 6 of S.B. 1070 are preempted by federal law.\(^ {220}\) Judge Bea argued the INA did not preempt Sections 2(B) and 6 of S.B. 1070.\(^ {221}\) Additionally, he noted the federal government formerly welcomed efforts by other states such as New Jersey and Rhode Island to enforce the INA.\(^ {222}\) Judge Bea stated: "The record is bereft of any evidence that New Jersey's or Rhode Island's efforts have in any way interfered with federal immigration enforcement. To the contrary, the federal government embraced such programs and increased the number of removal officers to handle the increased workload."\(^ {223}\) As such, he argued that states can enact legislation to enforce federal immigration laws.

On September 10, 2011, the State of Arizona filed a writ of certiorari in the U.S. Supreme Court to hear an appeal of the Ninth Circuit's ruling affirming the preliminary injunction of Sections 2(B), 3, 5(C), and 6 of S.B. 1070.\(^ {224}\)

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\(^{216}\) Id.


\(^{218}\) State of Arizona v. United States, at 4827 (9th Cir. April 11, 2011) (No. 10-01413).

\(^{219}\) Id. at 4828.

\(^{220}\) Id. at 4859. Also, recall that Section 2(B) requires an officer make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is reasonable suspicion the person is unlawfully present in the U.S., and requires verification of the immigration status of the arrested person before releasing that person. Section 6 relates to the warrantless arrest of a person where there is probable cause to believe the person has committed a public offense that makes the person removable from the U.S.

\(^{221}\) Id.

\(^{222}\) Id. at 4857.

\(^{223}\) Id.

V. IMPLICATIONS FOR MLB

A. The Willful Failure of Immigrant Baseball Players to Carry Registration Documents Will Not Lead to Convictions

According to Section 3(A) of S.B. 1070, it is a crime for a non-citizen to willfully fail “to complete or carry an alien registration document.” A non-citizen who fails to carry such document(s) violates the Alien Registration Act of 1940 or 8 U.S.C. § 1304(e) or 1306(a). An immigrant convicted of this Arizona law serves “up to twenty days in jail and a $100 fine for a first offense, and thirty days for a second offense.” This provision of S.B. 1070 was enjoined by the District Court of Arizona because it was preempted by federal law. Due to the controversial nature of the law, the legality of the law will likely not be decided (unless or) until the Supreme Court hears the case. Regardless of whether the Supreme Court upholds the statute, foreign baseball players will not be convicted for failing to carry registration documents. As mentioned in Part III.B.3, the crime of willfully failing to bring registration documents does not apply to immigrants with visas or those “who maintain authorization from the federal government to remain in the United States.”

Thus, immigrants convicted under Ariz. Rev. Stat. § 13-1509(F) must be immigrants who: (1) fail to carry registration documents and (2) who are “not authorized to live in the country.” Foreign baseball players lawfully present in the U.S. with P-1 or O-1 visas cannot be convicted for willfully failing to carry registration documents. Additionally, foreign baseball players’ families who receive P-4 or O-3 visas also cannot be convicted. Although foreign baseball players and their families who are lawfully present in the U.S. cannot be convicted for willfully failing to carry registration documents, S.B. 1070 still imposes significa-
cant harm upon them. The next section will show how the adoption of S.B. 1070 may increase false arrests and the harassment of foreign baseball players and their family members.

B. The Enforcement of S.B. 1070 May Lead to Increased Arrests and Harassment of Immigrant Baseball Players

The enforcement of S.B. 1070 increases the probability of Arizona law enforcement officers falsely arresting and detaining foreign-born baseball players. S.B. 1070 requires law enforcement officials investigate the immigration status of a person during a lawful stop, detention, or arrest if they have reasonable suspicion the person is residing in the United States unlawfully.233 When assessing whether reasonable suspicion exists, race cannot be considered grounds for reasonable suspicion that a person is an undocumented alien, except to the “extent permitted by the United States or Arizona Constitution.”234 Part V.B.1 contains a discussion about how race can be one of many relevant factors an officer can take into account when establishing reasonable suspicion that an immigrant is undocumented.235 S.B. 1070 also provides law officers with the ability to make a warrantless arrest when probable cause exists that a person committed a removable offense.236 In the event the statutes are upheld, foreign baseball players in Arizona are at risk of false arrests, increased harassment, and detention for failure to carry documents proving their lawful status in the country (i.e., alien registration documents or their passports or visas).

1. Race is a Factor Officers Could Use to Establish Reasonable Suspicion that a Foreign Baseball Player is an Undocumented Immigrant

With regard to the Fourth Amendment, when a court determines “whether a particular government action violates this provision, [it] inquire[s] first whether the action was regarded as an unlawful search or seizure under the common law when the Amendment was framed.”237 If “that inquiry yields no answer, [a court] must evaluate

235. See infra Part V.B.1.
the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which [the search] intrudes upon an individual's privacy, and, on the other, the degree to which it is needed for the promotion of legitimate government interests."

The evidentiary standard for reasonable suspicion is low and less stringent than preponderance of the evidence. However, this standard requires a "minimal level of objective justification." An officer cannot meet this standard by having an "inchoate and unperticularized suspicion or hunch" that a person is an undocumented immigrant. Nor can the formation of reasonable suspicion be based on subjective factors.

The U.S. Supreme Court and the Arizona Supreme Court held race is a relevant factor that officers could consider when forming reasonable suspicion that a person is an undocumented alien. In United States v. Brignoni-Ponce, the Supreme Court found that "[the] likelihood that any given person of a Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor." Additionally, the Arizona Supreme Court held an officer may use race as a factor for establishing reasonable suspicion that a person is an undocumented alien. The Arizona Supreme Court held: "Mexican ancestry alone is not enough to establish reasonable cause, but if the occupants' dress or hair style [is] associated with people living in Mexico, such characteristics may be sufficient."

Other federal and state courts allow the use of race as a factor for establishing reasonable suspicion that a person is an undocumented immigrant. For example, the Tenth Circuit Court of Appeals held that an officer had reasonable suspicion a person was an undocumented immigrant based upon several factors, such as "the defendant's pres-

238. Id.
240. Id. at 124.
245. Id.; but see State v. Gonzalez-Guitierrez, 927 P.2d 776, 781 (Ariz. 1996) ("Although defendant's appearance or aspects of his behavior may have replicated the behavior of some illegal aliens entering the United States, the same pattern is easily applicable to a large population of both United States citizens and legal immigrants," and "[w]ithout more clearly articulated evidence, the pattern could not create a reasonable suspicion that defendant and his passenger were in the country illegally").
ence in an area known to be frequented by illegal aliens from Mexico.”246 Additionally, the Sixth Circuit Court of Appeals held officers had reasonable suspicion to investigate individuals who “appeared to be of Hispanic origin, that none of the men or women spoke English, but that each individual spoke Spanish with a recognizable Salvadoran accent” and “wore huaraches and heavy tweeds, the typical dress of Central American natives.”247

University of Arizona School of Law professors noted that, under President Obama’s administration, the U.S. Department of Justice has regularly argued race is a factor and courts usually accept such arguments.248 In general, S.B. 1070 appears to provide law enforcement officers with the discretion to use race as one of several factors in determining if reasonable suspicion exists that a person lawfully stopped, arrested, or detained is an undocumented immigrant.

Foreign Minor League and MLB players are at risk of being arrested or detained under S.B. 1070. Although MLB teams have established baseball academies in the Dominican Republic, Venezuela, and Puerto Rico that teach English to Hispanic players,249 the academies are relatively new and the majority of Hispanic players have not enrolled in such academies. The reality is that foreign players often arrive in America without the ability to speak much English.250 In many cases, these players fail to carry their passport and visas. For example, one baseball executive said “his . . . director of minor league operations collect[s] the passport[s] of foreign players and keeps them in a safe at the team’s minor league facility. The policy is in place so the teenage players don’t lose their paperwork, which includes a P Visa . . . the government issues to internationally recognized trainers or


249. See supra Part II.A.1.B-C & E.

As mentioned earlier, the standard for reasonable suspicion is low – a standard less than the preponderance of evidence. Moreover, an officer can inquire about a person’s place of birth and immigration status without having reasonable suspicion. As the hypothetical in the introduction showed - the failure of a foreign player who was a passenger of a driver who was legally stopped - to carry registration documents, coupled with the inability to communicate effectively in English along with other factors (i.e., foreign born and wearing clothing of stereotypical of a particular nationality) is enough for law officers to have reasonable suspicion and probable cause that the player is in America unlawfully. If the player is arrested, he will be detained until his baseball team can provide immigration paperwork (i.e., P-1 visa) to gain his release.

2. Inadequate Training of Officers Will Lead to Increase Harassment of Foreign Baseball Players

One of the major concerns with regard to S.B. 1070 is providing adequate training for Arizona law enforcement officials to comply with the requirements set forth in S.B. 1070. The Ninth Circuit Court of Appeals emphasized this concern when they asked several questions regarding the meaning of S.B. 1070 during oral argument on November 1, 2010. Dennis Burke, U.S. Attorney for the State of Arizona stated: “If you have three 9th Circuit judges struggling over what the language of the statute means, what does that say for a police officer on the street?” For example, the justices inquired: “how a law-enforcement officer could determine what constitutes a removable of-

253. The U.S. Supreme Court has held that an officer does not need reasonable suspicion that a person is an unlawful alien to inquire about that person’s name, place of birth, or immigration status. Muehler v. Mena, 544 U.S. 93, 101 (2005) (holding that an “officer did not need reasonable suspicion to ask [a person] for [their] name, date and place of birth, or immigration status”).
255. According to § 2(B) of S.B. 1070, “[a]ny person who is arrested shall have the person’s immigration status determined before the person is released,” and “[t]he person’s immigration status shall be verified with the federal government.”
A removable offense can include crimes such as the immigrant being inadmissible at time of entry or of adjustment of status; violating nonimmigrant status or condition of entry; termination of conditional permanent residence; and knowingly smuggling or encouraging, inducing, assisting, abetting, or aiding another immigrant to illegally enter the U.S. All of the above mentioned removable offenses involve officers making determinations of the immigration status of an immigrant such as whether an immigrant was undocumented or whether an immigrant smuggled and/or assisting an immigrant to illegally enter the United States. These determinations require Arizona police officers become familiar with the requirements of complicated federal laws pertaining to removable offenses. Allowing Arizona officers to determine whether probable cause exists that a removable offense occurred, rather than specifically trained federal USCIS officers, puts Latino baseball players at risk of false arrest and increased harassment. Arizona law enforcement officers have not been trained to assess whether removable offenses occurred and it is likely that without such training, officers will make false arrest of lawfully present immigrants.

The Arizona Peace Officer Standards and Training Board released a training manual for Arizona law enforcement officers. If S.B. 1070 is upheld, the training manual recommends that Arizona officers should consider the following factors when establishing reasonable suspicion that an immigrant is unlawfully present in the United States:

- Lack of identification (if otherwise required by law)
- Possession of foreign identification
- Flight and/or preparation for flight
- Engaging in evasive maneuvers, in vehicle, on foot, etc.
- Voluntary statements by the person regarding his or her citizenship or unlawful presence
- Note that if the person is in custody for purposes of Miranda, he or she may not be questioned about immigration status until after the reading and waiver of Miranda rights.
- Foreign vehicle registration
- Counter-surveillance or lookout activity
- In company of other unlawfully present aliens
- Location, including for example:

258. Id.
259. See supra Part III.B.2; see also 8 U.S.C.A. § 1227 (West 2011).
• Places where unlawfully present aliens are known to congregate looking for work
• Locations known for human smuggling or known smuggling routes
• Traveling in tandem
• Vehicle is overcrowded or rides heavily
• Passengers in vehicle attempt to hide or avoid detection
• Prior information about the person
• Inability to provide his or her residential address
• Claim of not knowing others in same vehicle or at same location
• Providing inconsistent or illogical information
• Dress
• Demeanor – for example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact
• Significant difficulty communicating in English

As mentioned earlier, the evidentiary standard for reasonable suspicion is low and officers must look at the totality of the circumstances when forming reasonable suspicion. However, the ultimate question remains: How does an officer determine whether reasonable suspicion exists that an immigrant is undocumented? Specifically, how many of the factors must be satisfied before a determination that reasonable suspicion exists can be made? Foreign Latino baseball players who do not speak English are at a greater risk of being falsely arrested and detained than other foreign-born baseball players under S.B. 1070. Factors listed by the Arizona Peace Officer Standards and Training Board may easily be used against Latino baseball players who have difficulty communicating in English.

As mentioned earlier, some teams do not permit players to carry documents proving legal residence due to the fear that the player may lose such documents. Additionally, since many of the factors involve the ability to communicate in English, foreign baseball players are inherently at a disadvantage because of their all-too-common difficulty to speak English. Moreover, many players may not wear American attire. The baseball season only lasts six-months and players may reside in their native country during the off season. As such, acclimation to American culture may take quite a long time and, during that

260. Supra note 254.
261. See supra Part V.B.1.
262. Supra note 254.
acclimation period, the players will likely continue to wear attire from their native Latin country. Furthermore, the factor involving the “inability to provide his or her residential address” is extremely troubling for Latino baseball players who may only be in Arizona for a weekend or a month while their team is playing in Arizona. The difficulty of foreign baseball players to communicate in English along with their failure to provide documents proving their lawful residence would likely provide officers with reasonable suspicion that Latino baseball players who were lawfully detained or arrested are undocumented immigrants. If such an officer makes this determination Latino players will be detained until their team can provide federal officials with paperwork proving their legal residence.

3. The Imprisonment of People Charged with Low-Level Offenses

The requirement of officers to verify an arrested person’s immigration status potentially leads to the imprisonment of foreign baseball players and others charged with low-level offenses. The verification process under 8 U.S.C. 1373(c) involves an Arizona law enforcement officer notifying the federal government or USCIS of the arrested person and for the USCIS to check the immigration status of that person. An arrested person showing his driver’s license or any other documents to an Arizona law enforcement official likely fails to meet this verification process because such documents need to be verified by the USCIS or another federal agency. In Arizona, a “stop and issuance of a citation in lieu of arrest is defined by Arizona law as an ‘arrest.’” Specifically, a misdemeanor or a petty offense is considered grounds for an arrest under Arizona law. S.B. 1070 requires arrested individuals have their immigration status verified. While such individuals have their immigration status verified, they will be detained. As such, the statute may lead to the imprisonment of people such as foreign baseball players “with low-level offenses who would ordinarily be released.”

264. Supra note 254.
265. See supra notes 18-21, 23-24 and accompanying text.
268. Id.
269. Id. (citing ARIZ. REV. STAT. ANN. § 13-3883(A)(4) (2010)).
271. Supra note 267.
4. The Immigration Status of Non-Suspects Are Investigated

The mandatory requirement for law enforcement officials to investigate the immigration status of those lawfully stopped, arrested, or detained also applies to those who are not a suspect to a crime. S.B. 1070 does not contain a provision limiting investigation to those who are arrested or who are legally detained or stopped for their participation in a crime. Arguably, a law enforcement official’s duty to investigate is not limited to a criminal suspect or a person who was arrested. The words detain or detention can “refer to people forcibly seized without suspicion, such as passengers held in a traffic stop[ ] or residents of a home or business held during the execution of a search warrant.” Moreover, the U.S. Supreme Court has held that an officer can question the immigration status of a person lawfully detained without any reasonable basis that the person is an undocumented immigrant. In the context of baseball, foreign baseball players who are car passengers during a lawful traffic stop could have their immigration status questioned if reasonable suspicion exists that they are an unlawful immigrant. If the players fail to carry their registration documents and exhibit other factors that might provide the officer with probable cause that they are an undocumented immigrant, then they may be detained until their immigration status is verified by the federal government.

C. Other Immigrant Baseball Players besides Latinos are Affected by S.B. 1070

Latinos are not the only immigrants that play professional baseball in the U.S. Japanese-born baseball players have become more common in MLB since the arrival of Hideo Nomo. Japanese baseball players such as Ichiro Suzuki and Daisuke Matsuzaka signed with MLB teams through the United States-Japanese Player Contract Agreement. Korean baseball players are also becoming more popular in the United States. In 1994, pitcher Chan Ho Park became the first Korean-born player to sign with a MLB team by signing a 1.2 million

272. Id.
273. Id.
274. Id.
275. Id. (citing Muelhler v. Mena, 544 U.S. 93, 100-01 (2005)); see also Florida v. Bostick, 501 U.S. 429, 434-35 (1991) (“[E]ven when officers have no basis for suspecting a particular individual, they may generally ask questions of that individual; ask to examine the individual’s identification; and request consent to search his or her luggage.”).
276. See supra notes 18-21, 23-24 and accompanying text.
dollar contract with the Los Angeles Dodgers. Park was the first of several Korean-born baseball players to play MLB. As of 2010, 13 Korean born players have played MLB. There will likely be more Korean MLB players in the near future as MLB expands its scouting to Asia. Unlike most Japanese baseball players who begin their careers with the Japanese Professional Baseball League, Korean baseball players often begin their baseball careers with MLB minor league teams rather than playing for the Korean professional baseball league. As a result, Korean baseball players are more attractive to MLB teams because they will likely begin their MLB careers at a much younger age than Japanese players.

The same issues potentially facing Latino baseball players may also be experienced by Asian-born baseball players. S.B. 1070 is not limited to Latino baseball players. The provisions apply to any foreign born player who does not carry their P-1 Visa and who has difficulty speaking English. Officers can legally stop Asian players for minor traffic offenses in Arizona just like how they can stop Latino players. Once an Asian player is stopped legally – whether the player is the driver or a passenger or whether the player was a witness to a liquor store robbery – S.B. 1070 applies. The Asian player’s status will be investigated if reasonable suspicion exist that he is an undocumented immigrant. The player can be arrested if probable cause exists that he is an undocumented immigrant. Thus, the player will be detained until his team can prove he is a lawfully admitted immigrant.

VI. CONCLUSION

Latino baseball players have contributed significantly to MLB. Some of the best players over the last thirty years have been Latinos. The enforcement of S.B. 1070 puts Latino and other immigrant baseball players at risk of being wrongfully arrested, harassed, and detained. The majority of Latino players enter the U.S. unable to speak much English. It is likely that players whose knowledge of the English language is deficient and who do not carry their alien registration documents might provide officers with a reasonable suspicion they are undocumented. Players can be harassed and detained (if probable

281. See Id.
cause exists to arrest them for being an unlawful immigrant) until representatives of their team provide law enforcement officials with documentation proving the player is a lawfully present immigrant.

It is important for MLB to publicly oppose S.B. 1070 as other states follow Arizona’s lead and enact copycat legislation. The Georgia legislature passed the Illegal Immigration Reform and Enforcement Act of 2011—a bill that puts Georgia in a league with Arizona” as far as legislation aimed at immigration reform” is concerned. Georgia Governor Nathan Deal believes the Georgia bill will “crack down on the influx of illegal immigrants into [Georgia].” Alabama also passed similar immigration legislation. Alabama Governor Robert Bentley believes “[i]f the federal government had done its job by enforcing its own immigration laws, there would be no need for Alabama – or other states - to pass a law such as this.”

Despite opposition of S.B. 1070 from MLB players and the MLB Players Association, MLB refuses to take a stand against S.B. 1070. A decision to relocate the 2011 All-Star Game held in Arizona would have sent a clear message to Arizona’s legislature, as well as other states considering adopting similar immigration legislation, that racism or racial-profiling is not tolerated by MLB. As America’s pastime, MLB had an opportunity to pressure other states from not passing copycat legislation by voicing its opposition. However, MLB continues to dodge the question of whether it opposes S.B. 1070. For

287. For example, 2-time MLB All-Star Jose Valverde called S.B. 1070 “the stupidest thing you can ever have.” Nick Piecoro, Arizona Immigration Law Stirs MLB Debate for 2011 All-Star Game In Phoenix, THE ARIZONA REPUBLIC, July 13, 2010, http://www.azcentral.com/news/articles/2010/07/13/20100713arizona-immigration-law-mlb-all-star-game-phoenix.html. Valerde further stated: “Nothing against Americans, but us Latinos have contributed so much to this country . . . We get our hands dirty and do the work gringos don’t want to do. We’re the ones out there cleaning the streets. Americans don’t want to do that stuff.” Id.
288. The MLB Players Union believes the enforcement of S.B. 1070 “could have a negative impact on hundreds of Major League players who are citizens of countries other than the United States.” Press Release, MLB Player’s Association Executive Director Michael Weiner, Regarding Arizona Immigration Law (Apr. 30, 2010), http://chicago.cubs.mlb.com/pa/pdf/20100430_weiner_statement_on_arizona_immigration_law.pdf. “The Major League Baseball Players Association opposes [S.B. 1070] as written. We hope that the law is repealed or modified promptly. If the current law goes into effect, the MLBPA will consider additional steps necessary to protect the rights and interests of our members.” Id.
example, in response to suggestions to relocate the 2011 MLB All Star Game away from Arizona, Commissioner Bud Selig stated: "We’ll do things when baseball can influence decisions. I’ll say that very clearly. And [S.B. 1070] will be solved in the political process at the appropriate time." MLB ultimately decided not to relocate the All Star Game. Commissioner Selig’s response reflects MLB’s general policy to dodge the question of whether it supports or opposes S.B. 1070. Until MLB decides to publicly oppose S.B. 1070 other MLB events such as Spring Training and the Arizona Fall League, will not be relocated away from Arizona.