

ARIZONA CIVIL RIGHTS ADVISORY BOARD
Minutes of Public Meeting
Tuesday, March 26, 2013

Board Members Present

Jeff Lavender (Chairperson)
Wendy Freeman (Vice-Chairperson)
Daisy Flores
Juan Ciscomani
Robert Garcia
Beverly Dupree

Board Members Absent

None

Staff Members Present

Sandra Kane, Executive Director
Jennifer Larson, Legal Counsel
Brian Kolosick, Administrative Assistant

I. Call to Order

Chairperson Jeff Lavender called the meeting to order at 6:07 p.m., with the following Board Members present: Daisy Flores, Juan Ciscomani, Robert Garcia, Beverly Dupree, and Wendy Freeman. The meeting took place at Phoenix College – Dome Auditorium, 3110 North 10th Avenue, Phoenix, Arizona 85013.

II. Approval of Minutes of February 28, 2013 Meeting

Upon motion by Beverly Dupree, which was seconded by Juan Ciscomani, the Board unanimously voted to approve the minutes of the February 28, 2013 Board meeting.

III. Public Forum re: Law enforcement post-SB1070

(a) Into by Chairperson Jeff Lavender

Mr. Lavender welcomed the public, explained the Board's goal in holding the forum, and introduced Sandra Kane to provide background on SB 1070.

(b) Recap re-AZPOST training and message from Attorney General/Sandra Kane

Sandra Kane provided an outline of the historical development of SB 1070. She noted that in April 2010, SB 1070 was signed into law in Arizona. On the proposed effective date of the law in July 2010, the U.S. District Court enjoined a number of provisions of SB 1070 and the case was ultimately heard by the U.S. Supreme Court. In June 2012, the U.S. Supreme Court upheld Section 2(b) of SB 1070, the controversial "show me your papers" provision. This provision allows police officers to check immigration status during the course of their regular duties (i.e. lawful stop, detention or arrest) if they have a reasonable suspicion that someone is unlawfully present in the United States. However, the Supreme Court struck down three other provisions. The court indicated

that it was too soon to know whether this law would be a problem. In September 2012, the U.S. District Court made way for enforcement of SB 1070, Section 2(b). In October 2012, the Arizona Civil Rights Advisory Board (ACRAB) expressed an interest in having a forum to see what type of training was being provided to law enforcement via AZ Post regarding the implementation SB 1070. In February 2013, the Board received a presentation from AZ Post and watched the training video that was provided to law enforcement officials regarding SB 1070. Sandra Kane noted that the training video emphasized that racial profiling was illegal. However, AZ Post informed the Board that they do not monitor or set policies on how individual police agencies implement the law. The Board also heard from representatives of the American Civil Liberties Union (ACLU) that they had been receiving complaints of racial profiling since the enforcement of SB 1070. The Board decided to hold a forum to hear directly from the community and to see if there is a problem with regard to SB 1070's enforcement and to hear from law enforcement on how they are enforcing SB 1070. The Board and audience viewed a video presentation by Arizona Attorney General Tom Horne regarding the purpose of ACRAB and the SB 1070 forum.

(c) Presentation by ACLU re experience and concern re law enforcement post-SB1070.

Victoria Lopez, Program Director of the ACLU of Arizona, explained the purpose of the ACLU and its continuing opposition to SB 1070. The ACLU has been working primarily with Hispanic and Spanish speaking communities to launch public education efforts so that people understand the status of the law. Their goal is to ensure that the civil rights of all Arizonans are protected. She stated that people face severe consequences when they are asked about their immigration status, and has heard about legal citizens, legal residents and people in the process of changing their immigration status being detained by law enforcement for hours or even days.

Dan Pochoda, Legal Director of ACLU, stated that SB 1070 negatively impacts communities of color, especially Latinos. He explained how 5 of the 6 provisions of SB 1070 have been found to be unconstitutional and have been enjoined by the courts. However, Section 2(b) has gone into effect. ACLU takes issue with this provision because it requires selections of persons based on their race and not based on criminal activity. The ACLU has filed a suit in court with regard to SB 1070, and has begun the process of discovery, which will be ongoing until May 2014. The ACLU is collecting information on the impact of SB 1070's 2(b) implementation. He encouraged the Board to consider the long standing history of racial profiling and racial bias in the state of Arizona. He believes that SB 1070, in practice, will require racial profiling. He stated that the ACLU litigated a case against the DPS in 2006 regarding racial profiling, which resulted in a comprehensive settlement. He stated that SB 1070 reduces the discretion of law enforcement officials and mandates that they "shall" investigate if someone is here undocumented. It also allows any resident to sue their local law enforcement agency if they feel it is not enforcing SB 1070. He contends that public safety has been reduced by the MCSO's focus on immigration enforcement, and response times for serious crimes have gone up because of the shifting of resources away from those crimes. He informed the Board that immigrants have constitutional rights whether they are here legally or not. He noted that attitudes have changed in local law enforcement departments toward enforcing this law because police departments want to avoid

lawsuits by the public. Mr. Pochoda encouraged the Board to recommend that local law enforcement agencies collect and maintain statistical data on stops made by officers (i.e. race of person stopped, reason for stop.) In addition, police departments should have clear statements of policy that specify that victims and witnesses won't be referred to a federal agency, and that police should be aware of people with deferred action status and what that means, and be trained on how to verify deferred action status. Jeff Lavender asked Mr. Pochoda if he is aware of an agency that is not doing data collection or making clear policies of this nature. Mr. Pochoda responds that he is not aware of any agencies that are collecting data or making clear policies of that nature, except for the DPS as a result of the ACLU's settlement decree with DPS. Beverly Dupree asked Mr. Pochoda to elaborate on the processes by which legal residents are detained by law enforcement. Mr. Pochoda responded that there are too many cases where individuals have documentation of legal presence and are still detained because law officers want to err on the side of caution, unnecessarily causing disruption to their lives and family members.

Dulce Juarez, ACLU immigration rights coordinator, shared complaints that her office has received from the community pre- and post-implementation of SB 1070. She informed the Board that her organization has received over 500 calls from the community since the implementation of SB 1070. The majority of complaints involve the Phoenix and Tucson Police Departments. People report that they have been stopped for minor infractions, or have been unnecessarily detained for hours or days. For example, police officers are asking witnesses of crimes and passengers in vehicles about their immigration status. She contended that law enforcement officers are using traffic stops as a pretext to racially profile members of the community. One man, a deferred action applicant, was stopped for squealing his tires. He was taken to ICE and detained for 8 hours while they verified his immigration status. Another woman, who was lawfully authorized to be in the U.S., was purportedly stopped for a cracked windshield. Even though she had her immigration paperwork in her car, she was still detained for 5 days. A legal resident was pulled over by Phoenix police and was told that if he could respond to all of the officer's questions in English, he would let him go. The police officer then told him he was illegal and detained him for 24 hours before he was released. These incidents result in a deep fear of the police.

(d) Call to the Public

Cesar Valdez Flores, a student and deferred action applicant, testified that he was stopped while taking his brother to school for having expired tags. The police officer was very rude to him. He was detained for more than 20 hours. When he was taken to ICE headquarters, ICE was able to confirm his status within 2 minutes. Later, the MVD revealed that the tags were not yet expired.

Maria Guadalupe A. testified that on September 22, 2012, a Mesa police officer stopped her for going 11 mph over the speed limit, although she denied that she was speeding. The first thing the police officer asked her for was a Mexican passport, not a state driver's license. After she said she didn't have identification with her, she was arrested, handcuffed, and detained for an hour until she was fingerprinted and released. The police officer told her that she had no rights, and tried to get her to admit that she was

"illegal," but she wouldn't say that. She stated that immigration officials later showed up at her house after the incident and took her and her son, but they were not deported due to pressure from the community.

Dulce Juarez reminded the Board that both Cesar and Maria had been legal residents of the United States for many years.

Isabel Garcia, Tucson Attorney and Co-Chair of Derechos Humanos, informed the Board that her organization has been documenting abuses for a long time. She asserted that Section 2(b)'s only purpose is to allow racially profiling. She believes that many stops are pretextual. She stated that once a person is stopped, it is hard to establish reasonable suspicion about an immigration status without referring to race. She requested that the Board hold a similar forum in Tucson because many Tucsonans were fearful of coming to Phoenix to testify before the Board due to SB 1070. She recommended that police departments be required to keep statistics and data on stops.

Maria Eugenia Carrasco, promoter of Derechos Humanos, answers calls from the general public. She indicated that she received a call from a teacher that wanted to report a domestic violence matter but was afraid to because the family was undocumented. She stated that police are stopping people for minor traffic violations and questioning their immigration status. She recounted how a woman who was involved in a traffic accident was referred to border patrol even though the accident was not her fault. One family had a flat tire on the freeway. When the DPS officer came by, he saw they were Mexican and asked for their papers. When the man could not produce papers, the DPS took the man and asked everyone else for their papers. One family was afraid to call 911 when their call was being stolen. Instead they went outside to throw rocks at the thief.

Stephanie Quintana, organizer with the Southside Workers Center in Tucson, recounted stories of individuals who were deported after they were pulled over for minor traffic stops. She stressed the effect of these separations on families.

Ramon Aquino expressed his concern over SB 1070, especially due to the toll these family separations have on children when their parents are taken from them. In addition, he explained that SB 1070 has hurt Arizona's economy because some businesses have chosen not to do business with the State of Arizona due to SB 1070.

Lydia Guzman, National Chairman of LULAC (League of United Latin American Citizens Immigration Committee), informed the Board that her organization receives many intake calls from people who have interacted with the police regarding SB 1070, not just during traffic stops. She argued that police are using traffic stops as a pretext to racially profile members of the Latino community, i.e. one woman was stopped because her turn signal did not work. She stated that the inability to speak English should not be a basis for probable cause to suspect that someone is undocumented. She stated that there are many U.S. Citizens who cannot speak perfect English. She believes that SB 1070 has compromised the public safety of all our communities and that people choose not to report criminal activity to the police for fear of the police conducting a background check on them. One woman declined to report someone shooting a gun

outside her house because she feared being asked for documentation. Criminals use SB 1070 to threaten and control victims of crime because victims face the possibility of deportation if they report the crime.

Jeff Lavender requested that audience members remember to keep within the allotted time and to only speak about specific instances that they have personally experienced with regard to SB 1070. Daisy Flores asked members of the public to indicate, as they testify, whether they were actually cited for the original traffic violation and if there was more than one officer present at the traffic stop.

Garrett Smith, Arizona Teachers for Justice, explained that due to SB 1070, kids are afraid, anxious, and cannot concentrate on their schoolwork because they are worried that their family members will be detained or deported. He explained that his wife is Mexican and how he was pulled over by the MCSO with his mother-in-law, wife, and children in the car for speeding. He claimed that he was not speeding. He was detained for only about 5 minutes, but he believes that the stop was due to racial profiling because the patrol car drove parallel to his car for one-half of a mile and looked at the vehicle occupants before pulling him over.

Aldo Gonzales, a member of TMAS, a group of students focused on civic engagement in Maricopa County, stated that he asked Phoenix Police Sergeant Tommy Thompson if being brown was the basis for reasonable suspicion of immigration status. The Police Sergeant responded that being brown, in and of itself, was not a basis for reasonable suspicion; however, skin color, the ability to speak Spanish or broken Spanish, and not being able to show identification can constitute reasonable suspicion. Mr. Gonzales took that as confirmation that the law is designed to racially profile Latinos. Mr. Gonzales stated that the consensus among Latino voters that they have polled, who are citizens, is that they fear and mistrust the police due to SB 1070.

Adrian Martinez, member of MECHA, told the Board that he and his family are being hindered from enjoying their freedoms due to SB 1070. Moreover, he expressed concern for those children who are separated from their parents as a result of SB 1070.

Maria Cruz R. expressed concern for the children who are being separated from their parents as a result of SB 1070. Family separations are having a real negative impact in her community, and children are suffering psychological effects due to this law.

Rosalba P. said she is scared of taking her kids to school or going to the store. She is fearful that she or her husband will leave their home and not return.

Maria Vargas stated that she believes that people are being stopped because of the color of their skin. She says she is concerned that Sheriff Joe Arpaio's deputies are taking photographs of children outside of the schools that they are patrolling. She stated that the police are ignoring criminal acts of robbery and vandalism because they are busy questioning people of color. She indicated that many students that go to school during the day and work at night are being stopped, and yet criminals that are hurting the community are not being stopped or questioned.

Angelina R. stated that after her husband was detained in June of 2012, she now bears the responsibility of caring for their 7 children on her own. She believes that he was stopped and detained because of the color of his skin.

Johnny Lozoya, LULAC member, pointed out that racial profiling has been occurring for many years, but SB 1070 gives officers permission to racially profile people.

Vira H. recounted that when her house was broken into last year, she was afraid to call the police because she is an undocumented student. She finally did call the police and when they asked her for her identification, she provided them with a passport. The police asked her for a "real" ID. The police officer still took the report but asked questions about her status. She stressed how afraid the community is to communicate with police and to tell their stories. She stated that her 5 year old sister calls her constantly because she is afraid her sister will be detained due to SB 1070.

Daisy LNU stated that she was stopped on New Year's Eve because the police thought she looked drunk. She contended she was just coming home from work and was tired. She was given a sobriety test and passed. She was then asked for identification. When she did not respond, she was arrested and taken to immigration. She is currently fighting to stay in the country. She stated that her sister moved back to Mexico because she was too afraid to live in the United States. While in Mexico, her sister was robbed and one of her children was nearly abducted. She sent her daughters back to the U.S. to live with Daisy, and they have not seen their parents in a year.

Bertha LNU stated that she and her husband were pulled over by the police about a month ago. The police drove parallel with their car for some time. The police then pulled them over. After the police verified that there was nothing wrong with the vehicle, registration, or driver's information, the police then proceeded to ask her for her identification, even though she was not the one driving. She provided her identification and was subsequently released. She believes that this was racial profiling which has been allowed by SB 1070.

Ana Gonzales, Committees of Defense on behalf of the Community (CDBS) Tonatierra member, pointed out that there are many people who are stopped, and officers are asking people where they work. The officers then call the employers to find out about the person's immigration status.

Alely Ponce M., a student at Grand Canyon University, expressed concern for how this law will be applied on school grounds in the event her parents visit her on campus. She is a DACA applicant.

Carlos C. has lived in Phoenix since he was 8 years old, and is an undocumented immigrant. He stated that most undocumented immigrants are law abiding and hard-working. He stated that he was frisked while walking on the street on the way to the store to buy a green tea and was grateful that he had a New Mexico Driver's License. He explained how his mother was followed by a police officer for approximately two miles while she was on her way to pick up her husband from work. The police drove off as they saw her pull into the worksite. However, after she left the worksite with her

husband, a second police car pulled her over. She showed the police officer her New Mexico Driver's License. He said she was free to go and asked if they had any questions. Her husband asked why she was originally stopped. The police officer responded that her gas cap cover was open and that is illegal in Arizona.

Salvador Reza stated that his organization, Tonatierra, operates a school that has about 50 students. From July to present, 8 of those kids have been sent to I.C.E. One student was detained under SB 1070 and processed through I.C.E.; however, he was not ever arrested. He was taken on his way home from work at 2:00 a.m. He stated that there are 32 cases of the Phoenix Police Department where the only crime was not having a driver's license. He received this information from Phoenix Police Chief Garcia who indicated to Mr. Reza that they had to enforce the law.

Alfonso Reyes stated that a police officer stopped him and asked for his papers. When he took out his wallet, the officer snatched it from him and asked him for his Mexican documents. At no point did he tell the police that he was Mexican. He told the police officer that he did not speak very good English or Spanish because he is indigenous.

Jeff Lavender thanked the audience for their participation. Daisy Flores asked if there were any law enforcement representatives that wished to speak. None came forward.

IV. Planning for Future Meetings

Daisy Flores suggested that the Board put on a forum in Tucson, as suggested by the community. Juan Ciscomani stated that he supported this idea, especially since there was testimony that people were afraid to come to Phoenix. Beverly Dupree asked if this forum was helpful to members of the community. Vira H. stated that the forum was helpful but urged the Board to take action. Daisy Flores reminded the public about the limited powers of the Board and expressed interest in hearing from Tucsonans on this issue before the Board decided which actions they were able to take. Beverly Dupree indicated that the Board will take whatever actions they are able to do. Jeff Lavender expressed interest in exploring why public agencies are not collecting data on the implementation of SB 1070. He also stated that he would like to see which policies are actually in effect in police departments. Sandra Kane suggested holding the Tucson forum in May. The Board agreed to do a follow-up telephonic meeting to determine a time and location for the Tucson forum. Daisy Flores added that Mr. Pochoda, Chief Counsel of the ACLU, had mentioned that there are 16 states that have legislation requiring the collection of statistical information. She feels it would be helpful if the Board could see examples of that legislation and of the DPS settlement agreement mandating the collection of data. Robert Garcia thanked the community and said too often people just look at the enforcement side and not the impact of the law on the community. Juan Ciscomani thanked the public for their testimony.

V. Adjournment

Upon motion by Juan Ciscomani, which was seconded by Daisy Flores, the Board unanimously voted to adjourn the meeting at 8:18 p.m.