

Testimony of Senator Dennis DeConcini (Ret.-AZ)  
Before the Senate Committee on the Judiciary  
Examining the Constitutionality and Prudence of State and Local  
Governments Enforcing Immigration Law  
April 24, 2012

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to address a very important issue not only to my home state of Arizona but to our entire nation. The constitutionality and prudence of Federal immigration enforcement law by State and Local governments is a very complex and divisive issue.

Mr. Chairman, I am a native Arizona resident. I grew up with in a state steeped in the latino culture due to the close proximity of the border with Mexico. The fond memories of friends, business associates and otherwise, of the Mexican descent shaped my childhood into adulthood. We worked together, we shared each others' heritage, and experiences. The culture of our state reflects the rich history of the latino influence. But. during this last year, we have unduly harmed our legal latino residents in the process.

Before becoming a U.S. Senator, I was a County Prosecutor. My Dad, was a judge, Supreme Court Judge and an Attorney General. I have spent much of my life involved in or exposed to the legal system in our State.

The issue of illegal immigration is not a new issue. It is something I have lived with my entire life. But, in today's climate, instead of trying to find legitimate solutions to the problem of people coming into our country illegally, we have let rhetoric and political advantage cloud sound judgment.

Mr. Chairman, this hearing is about the enactment of SB 1070 in Arizona. I believe it is ill-founded, mean-spirited and divisive. In addition, it requires state and local law enforcement to carry-out immigration responsibilities that lie with the Federal government. Prior to being elected to the United States Senate in 1976, when I served as the Pima County Attorney in southern Arizona, our State and the entire southwest for that matter, was facing a daunting task of trying to stop illicit drug traffickers from bringing drugs into the United States, mainly from Colombia via the U.S. Mexico border. I was appointed by the then Governor Raul Castro to head the Arizona Drug Control District, a statewide task force to strategically and tactically stop the trafficking of illegal drugs over our borders. We opened offices in Phoenix and Tucson and led coordinated efforts with local, state and federal agencies to attack this problem. This program, initiated in the early 1970's, was a model used by other law enforcement at all levels to combine both financial, investigative and tactical resources to attack smuggling organizations.

I mention this history because the illegal drug smuggling activities and human smuggling are similar. The methods used to attack both are also similar. Illegal immigration has been a long-standing problem on the southwest border, illegal drug trafficking was an emerging problem in the early 1970s.

When I came to the Senate, I was appointed to this august committee, the Judiciary Committee and the Committee on Appropriations. Both had jurisdiction over the Border Patrol, Customs, and the General Services Administration. I used all of that jurisdiction to focus laws and resources on the U.S. southwest border. Along with many of my colleagues at the time, including some not from the border like

Alan Simpson, and others, we worked in a bipartisan manner to address the real border problems.

I participated as a member of the Select Committee on Immigration and Refugee Policy along with my friends Strom Thurmond, Alan Simpson and Ted Kennedy. The Committee issued a report in 1981 which led to the passage of a comprehensive immigration reform bill during the Reagan administration. Let me remind everyone today, President Reagan supported that bill and the setting of a date to grandfather those in the country illegally with a pathway to citizenship. I continued to work hard to address border security and immigration issues which impacted my state.

Many ask why our efforts did not work and why we find ourselves in the predicament we are in today. From my perspective, we failed because we did not secure the border at the same time we addressed comprehensive immigration reform. Pete Domenici and I constantly tried to fund efforts fought an uphill battle back in the 80s and 90s trying to get the funding and focus needed to beef up border security. Every year we tried to add money to the Border Patrol budget for more agents on the border. Much of the funds we added for this purpose were deleted from final budgets and our border security efforts fell short. At that time, the illegal immigration and drug issues were not as politically charged as they are today. But, there has been a radical change since I left the Senate. The number of Border Patrol agents has increased from approximately 4,500 agents in 1995 to some 21,000 in 2012. And, they are using high tech tools along the border to enhance the human capabilities. As a result of those enhancements, Border Patrol apprehensions declined dramatically from 1 million in at the close of 1994 to less than 500,000 at the end of 2010.

So those who say the Federal government has not done its job in ensuring border security are wrong. I was in Congress from 1977 to 1995. I can tell you, the Federal government in recent years has made heroic efforts to secure our borders.

Can more be done, of course, but when do you reach the point of diminishing returns?

We are called here today to debate the merits and constitutionality of SB1070. I believe it is unconstitutional. Having worked with law enforcement officers much of my life, I know this law puts law enforcement in an untenable position. Police officers are trained to profile behavior not people. This law does the opposite. Mr. Chairman and Members of this committee, can you tell me what an illegal immigrant looks like and when it is proper to start asking people about their status? I can't. I do know one thing: SB1070 discriminates against anyone with brown skin in my state. I don't hear proponents of SB1070 talking about people from Canada, Germany or other places that live in my state being an issue.

This law has bad consequences. Let me play a news clip which ran in Phoenix after the Legislature passed SB1070 and just before Gov. Brewer signed the bill into law. It clearly shows what is wrong with this law and how it makes law enforcement officers profile people rather than profile behavior. (PLAY CLIP).

Mr. Chairman, this is just one example of many how this law has changed life for many legal US citizens who now live in fear. There but by the grace of God go I and each and every one of us.

And, let me give you another example. Some statewide political leaders and county elected political officials opine that as a direct result of undocumented people coming into our state horrific crimes have been caused such as beheading in the deserts of Arizona long the border. These examples turned out to be totally false including those made by our Governor who had to retract them. But, this demonstrates how political this issue has become. It has not been about creating a law enforcement solution to secure our borders from criminals or about deporting those with a criminal record. Which, by the way, is a minor percentage of those coming into the U.S. who are undocumented. Why? Because most undocumented people, particularly from our southern border come in for purposes

of jobs that no one else in the U.S. is willing to do. I can give you many examples but will not due to time constraints.

I would agree with Secretary Napolitano, then Governor Napolitano who stated, “Give me a 25 foot wall and I will give you a 50 foot or ladder”. Let’s be realistic. The fence or wall is not the answer to border security.

Finally, let’s ask who is the target of SB1070? If anyone tells you it is only the drug or gun trafficking criminals, they are mistaken. SB1070 targets those with brown skin and in my state, those are my neighbors, my friends, and successful business associates. I have been a law enforcement officer and a U.S. Senator and when you mix law enforcement at the benefit of political expediency as our Legislature did with SB1070, you create a toxic environment. I am sorry for my state, and I am worried that the ill- considered consequences the actions our State leaders have caused our latino population.

Mr. Chairman, I am happy to answer any questions the Committee members may have.