

ALONG RACIAL LINES

The Genesis of Arizona’s SB 1070 Is a Cautionary Tale of Race-based Immigration Policy

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Introduction 1
 SB 1070 Belongs to a Long Line of Anti-Immigrant Policies in Arizona 2
 SB 1070 Is Based on the Premise of Criminalizing Immigrants 4
 SB 1070 Authors Branded Longstanding Mexican Migration as a “Foreign Invasion” 5
 SB 1070 Authors Stoked Xenophobic Fears of Culture Wars 6
 SB 1070 Was Rooted in Hateful Nationalism That Sought to Profile and Expel
 “Global Riffraff” 7
 Conclusion..... 8
 Bibliography 10



This past September, an opinion issued by the Arizona Attorney General’s Office brought an end to six years of litigation over the state’s controversial “show me your papers” law, Senate Bill 1070 (SB 1070).¹ The statement clarified that Arizona law enforcement officers may not use race or ethnicity as the basis to suspect that someone is in the United States without authorization, nor may they stop or hold someone solely to investigate their immigration status. Although this has rendered Arizona’s racial profiling law largely unenforceable, the fact that such a law was enacted at all is cause for deeper reflection as to the motives behind it. To that end, this report examines excerpts from emails that were sent and received by the law’s authors and supporters.² Their own words debunk the claims that SB 1070 was intended primarily to enforce immigration laws, and they unmask the underlying racial and xenophobic motives of those who first conceived of Arizona’s infamous anti-immigrant law.

As designed by its architects, then–Arizona state senator Russell Pearce and current Kansas secretary of state Kris Kobach, SB 1070 created an integrated web of criminal and civil provisions, all with one central purpose: to drive immigrants out of Arizona and the U.S.

¹ The Arizona legislature later passed House Bill 2162 (HB 2162), which modified SB 1070. For ease of reference, this report refers to this law as SB 1070.

² Most of the emails were obtained through discovery in *Valle del Sol, et al. v. Whiting, et al.*, No. 2:10-cv-01061-SRB (D. Ariz) (filed May 17, 2010).

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In a recent column for the *Arizona Republic*, E.J. Montini recalled an interview from 2006 in which Pearce explained the “attrition through enforcement” strategy that would become the stated goal of SB 1070: “Disneyland taught us that if you shut down the rides[,] people leave the amusement park” (Montini, Sept. 1, 2016). The intent of the law, as explained by its sponsor, was to make the daily activities of unauthorized immigrants so impossible that they would leave the country voluntarily and others would choose not to come at all. After SB 1070 was passed in Arizona, legislators in five other states—Alabama,³ Georgia, Indiana, South Carolina, and Utah—rushed to pass “copycat” laws that eventually were largely nullified as a result of litigation filed against them. These legislative efforts fulfilled the clear intent of those who had crafted SB 1070 that it be replicated across the country.

In today’s toxic political climate around immigration, we have a civic obligation to reflect on how laws like SB 1070 come into existence, in order to understand their broader implications for the country. Sadly, Arizona’s approach to immigration enforcement echoes past policies toward populations that have been deemed unwanted, removable, or criminal based on race. The presumption of illegality applied not only to Mexicans and Latinos, but to other people of color, too, in the enforcement of SB 1070 has striking similarities to the enforcement of the Fugitive Slave Act of 1850, which allowed for all African Americans to be profiled as slaves because of their race and regardless of their legal status as free people (McKanders, 2012). Although SB 1070 and the Fugitive Slave Act arose during different periods of our country’s history, the similarity in motivation behind their provisions enforcing exclusion based on race illustrates why racial profiling laws like SB 1070 are so dangerous.

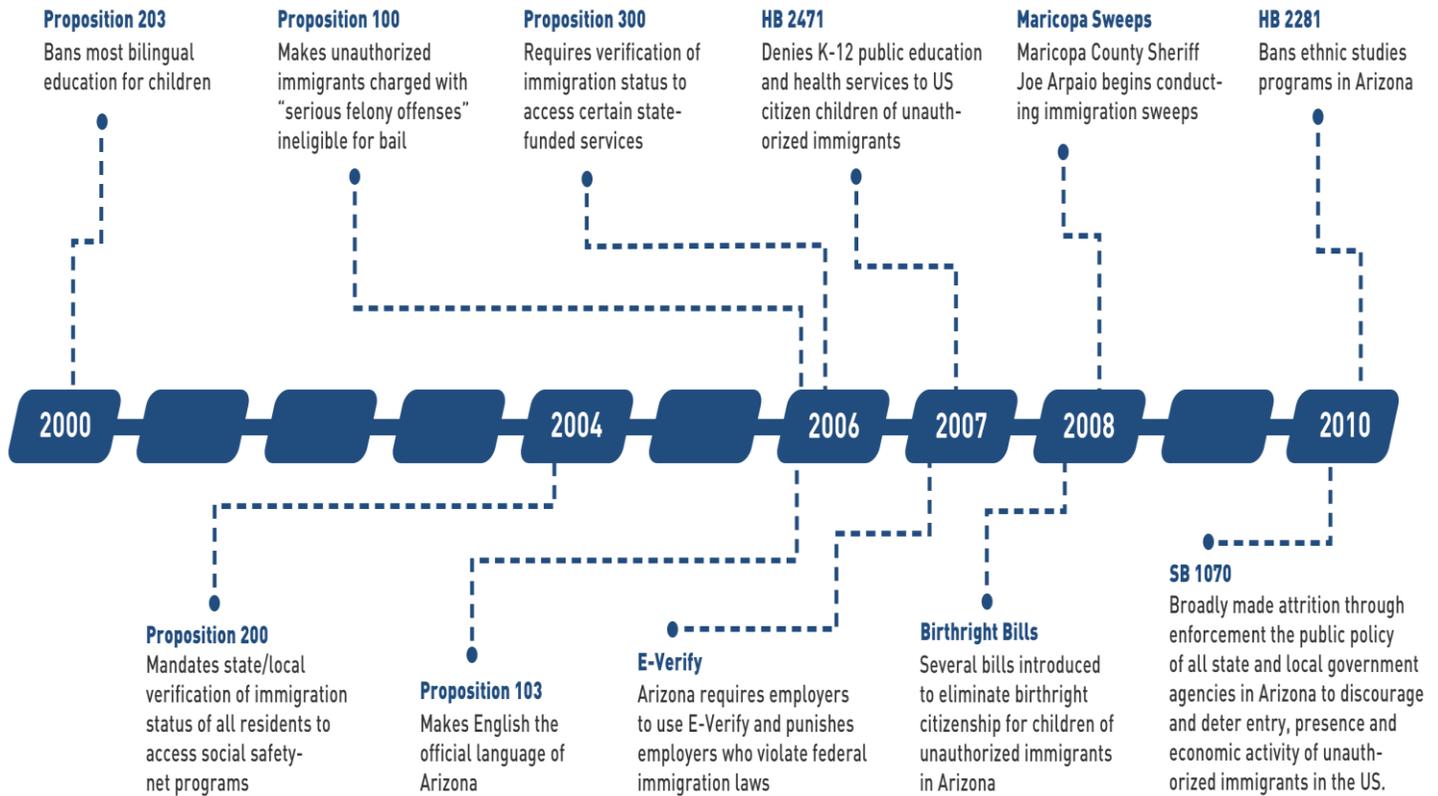
Policies must be understood in terms of the motivations of those who feel compelled to propose and support them. As the email excerpts featured in this report demonstrate, the ideological seeds of SB 1070 had taken root many years prior to its passage. Indeed, a string of racially motivated policies—including several pieces of legislation introduced by Pearce—had been either proposed or enacted in Arizona during the decade that led up to SB 1070.

SB 1070 Belongs to a Long Line of Anti-Immigrant Policies in Arizona

On April 23, 2010, Arizona’s legislature passed what was at the time the most draconian anti-immigrant law in the country. Among its harsh provisions, SB 1070 made it criminal to solicit work as a day laborer, or for everyday residents of Arizona to give a ride to or share a home with an unauthorized immigrant. Famously, in what amounted to a statewide “stop and frisk” policy, the law mandated that police demand “papers” of those they thought might be in the country without authorization. While this may have seemed to some like a sudden and sharp right turn in a xenophobic direction, for anyone who had been paying attention to what was happening in Arizona the passage of this discriminatory piece of legislation was not a surprise. Anti-immigrant and, in particular, anti-Latino sentiment had been rampant and on the rise in Arizona, including in the state legislature and through ballot initiatives spurred on by the same cast of characters who would push for SB 1070.

³ A hotline set up for Alabamians after passage there of HB 56 collected stories from the people impacted. See *Racial Profiling After HB 56: Stories from the Alabama Hotline* (NILC, 2012), www.nilc.org/wp-content/uploads/2016/02/Alabama-Stories-2012-08-23_final.pdf.

Below is a brief—and certainly not exhaustive—timeline of voter- and legislature-approved policies aimed at marginalizing Latinx, Asian American, Native, and African American communities in Arizona.



The nationwide backlash against SB 1070 was immediate. A coalition of civil rights groups, including the ACLU Immigrants’ Rights Project, the Mexican American Legal Defense and Educational Fund, and the National Immigration Law Center,⁴ sued to block the law from taking effect, and the U.S. Department of Justice filed a constitutional challenge to the law as well. While both the federal government and the civil rights coalition argued in their lawsuits that various pieces of SB 1070 were preempted by federal law, only the civil rights coalition argued that SB 1070 was enacted out of racial animus towards Latinos, and specifically toward Mexican immigrants, in violation of the Equal Protection Clause of the U.S. Constitution.

A federal court blocked implementation of several key pieces of SB 1070 in the summer of 2010, in a ruling that Arizona ultimately appealed all the way to the U.S. Supreme Court. The Supreme Court upheld the majority of the initial block on SB 1070 but allowed one of the most devastating provisions of the law, which allows law enforcement officials to demand “papers” of those they suspect may be in the country without authorization, to take effect.

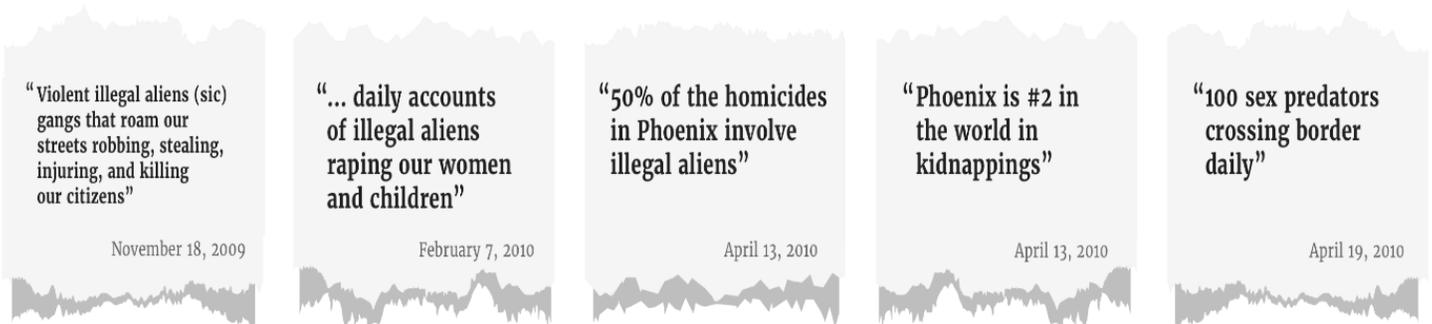
⁴ Other counsel in the case included: ACLU of Arizona; Altshuler Berzon LLP; Asian Americans Advancing Justice - Los Angeles; Asian Americans Advancing Justice - Washington, DC; Munger Tolles & Olson LLP; NAACP; National Day Laborer Organizing Network; and Roush McCracken Guerrero Miller & Ortega.

Even with the legal victories that limit the harmful reach of SB 1070, its devastating effects reverberated throughout Arizona and beyond.

Behind extreme anti-immigrant policies like SB 1070 is the idea that immigrants pose a threat to the very existence of the U.S. as a nation. To channel this fear into legislative action, the proponents of SB 1070 were careful to message the bill around public safety—an effective frame that obscured the bill’s true intentions. In fact, behind closed doors the bill’s architects displayed a type of xenophobic paranoia that, although it does not usually appear in the public record, nevertheless comprised the actual ground upon which they built their policy proposals. As email excerpts from the law’s authors and proponents demonstrate, those who for decades had shaped anti-immigrant policies in Arizona, as well as in other parts of the U.S., had long painted immigrants as an inherently criminal element.

SB 1070 Is Based on the Premise of Criminalizing Immigrants

In what has become a recurring theme for immigration hardliners, the hypercriminalization of immigrants has fueled a false perception that violent criminals are flooding across the border to terrorize Americans. This fearmongering tactic has been used to justify the strict immigration enforcement measures of SB 1070 and its copycats. Indeed, the metaphor most often used by Pearce during the legislative debate on the bill was that of “immigrants are criminals.” Expert sociolinguistic analysis found that the instances in which the senator characterized unauthorized immigrants as criminals outnumbered any other by a ratio of more than 2 to 1 (Santa Ana, 2015). In the months leading up to the vote on SB 1070, Pearce fabricated statistics and made insidious claims that framed unauthorized immigrants as criminals, as seen in the email excerpts below:



Amid protests that SB 1070’s enforcement provisions would result in rampant racial profiling, Pearce tried to dispel the perception of racism: “Illegal is not a race, it’s a crime” (Apr. 13, 2010). However, emails from as early as 2007 reveal a race-based understanding of “illegal” among those who championed aggressive immigration enforcement, long before SB 1070 was introduced. One email from the assistant for then-senator Karen Johnson, sent to both Senators Johnson and Pearce, described the landscaping crew that usually worked in the area. The assistant noted that “[t]he crew has always been totally Hispanic” before she giddily observed:

Yesterday there were two men who were obviously NOT Hispanic—very white and very American looking—like college kids. Hooray! It looks like the illegals are starting to depart. (Winfield, July 6, 2007)

The message is clear: only “very white” people can be Americans, and Hispanics (or Latinos) are “illegals.” The Latino landscapers were assumed not to be American and, furthermore, were assumed to be in the country without authorization. Only months before receiving the email from Johnson’s assistant, Pearce had engaged in this same racial criminalization by accusing individuals of being “illegal aliens” simply for speaking Spanish. Upon hearing that a rendition of the “Star-Spangled Banner” had been sung in Spanish, Pearce angrily declared:

Last week, Denver’s illegal aliens sang our national anthem in Spanish and bastardized the words of OUR country’s most sacred song. Talk about audacious, arrogant and condescending! Tell me if you think they are becoming Americans. Ladies and gentlemen; this is an invasion by a foreign country. (Jan. 29, 2007)

The United States, in the minds of those advancing SB 1070, had only one language: English. As can be seen in these email excerpts, the driving force of the bill, and of those who supported it, reflects a purely racial distinction in determining which people are welcome and which are criminals, without any regard to facts. The characterization of “Hispanics” as “illegals” purely based on their appearance or on the language they speak is intimately tied to the perception of them as “foreign invaders” by those who promote strict immigration enforcement policies.

SB 1070 Authors Branded Longstanding Mexican Migration as a “Foreign Invasion”

In a 2006 blog post entitled “America Will Become America Again,” Frosty Wooldridge, a former advisory board member of the anti-immigrant Federation for American Immigration Reform (FAIR), proclaimed that then-Mexican president Vicente Fox was the most dangerous threat facing the U.S. According to Wooldridge, Fox was the “Saddam Hussein of the western hemisphere” who was executing a “cunning invasion” by exporting millions of Mexicans illegally into the U.S. Fox’s master plan, as Wooldridge fantastically described it, was to populate the four border states, absorb them into Mexico, and then expand into other states. By default, he concluded, America will become Mexico: “Fox’s invaders will double in numbers and become the dominant population in America without firing a shot” (Jan. 17, 2006).

One day after it posted, Pearce urged supporters to read Wooldridge’s paranoid rant, asking them to forward it to their elected representatives. Years before introducing SB 1070 in the Arizona legislature, Pearce was advancing legislation based on this fear of the U.S. being subsumed by Mexican immigrants. In 2007, he introduced HB 2471 to deny K-12 public education and health services to U.S. citizen children of unauthorized immigrants. That same year he wrote an email newsletter entitled “Invasion USA” that echoed Wooldridge’s belief that Mexicans intended to take over the U.S. one immigrant at a time.

Their goal is to populate themselves into majority numbers until they can run Americans out of our own country. The failed and corrupt government of Mexico will manifest itself in America to create the same kind of misery for all Americans. (Jan. 29, 2007)

In fact, by 2007 Pearce was claiming that a takeover had already occurred in Los Angeles at the level of local government, referring to the city's Mexican-American mayor Antonio Villaraigosa as "Fox's general ... commanding an American city" (Jan. 29, 2007). Three years later, Pearce expressed concern that this same Mexican invasion had occurred in Arizona through the educational system: "Tucson public schools use race based ethnic study courses to denigrate the U.S., inculcating loyalty to Mexico" (Apr. 19, 2010). Accordingly, in addition to SB 1070, Arizona passed House Bill 2281 (HB 2281) in 2010, which banned ethnic studies programs in the state, specifically, the Mexican-American studies program in Tucson.

Despite the fact that generations of Mexicans historically had lived in and migrated to Arizona and the southwest U.S., Pearce and his colleagues in the Arizona legislature, considered recent immigration from Mexico to be a foreign invasion. For those who favored these anti-immigrant policies, this imagined threat of foreign invasion was embodied in the Latino immigrant and in Latinos more generally, whose presence was perceived to corrupt American culture and denigrate the American way of life.

SB 1070 Authors Stoked Xenophobic Fears of Culture Wars

SB 1070's racial roots show prominently when the perceived threats of unauthorized immigrants as "criminals" and "foreign invaders" are expressed in cultural terms by its proponents. Those who supported the bill had long held the belief that the country was in a process of dividing into mutually hostile enclaves that would destroy the cohesiveness of the nation. As illustrated below, race deeply informs the understanding of American cultural belonging that lay at the heart of this perceived threat.

In 2006, current advisory board member of FAIR and former Colorado governor Richard Lamm gave a speech entitled "I Have a Plan to Destroy America." To make his case for legislation to target immigrants, Pearce included text from Lamm's speech in his email newsletter.

First, to destroy America, turn America into a bilingual or multi-lingual and bicultural country. History shows that no nation can survive the tension, conflict, and antagonism of two or more competing languages and cultures. It is a blessing for an individual to be bilingual; however, it is a curse for a society to be bilingual. (Apr. 24, 2006)

Lamm's speech became an instant call to action to those who supported laws like SB 1070. For Pearce, the message could not have been clearer. During his years in the Arizona state legislature, he proposed "English only" legislation in 2005 and 2006. In his view, the continued use of the Spanish language by immigrants in the U.S. signified a grave threat to the nation, because it endangered the American way of life. Just as he had criminalized people as "illegals" for singing the U.S. national anthem in Spanish, he viewed any expressions of Mexican or Latino culture as acts of defiance in the face of what he understood as American culture. To Pearce, any demonstration of cultural heritage by Mexican and Latino immigrants was proof that they were either unwilling or incapable of assimilating to American society.

If you watched the Mexican flags flying above the demonstrators and their chants, you understand they have no intention of assimilating into the American way of life. (Jan. 29, 2007)

Most revealing in terms of the racial motivations behind SB 1070 was the manner in which the Mexican immigrant was understood as an “alien” or “other” who is incapable of assimilating and will never become American, thus contaminating American society. In one email, Pearce casually compares the presence of Spanish-speaking immigrants in the U.S. to cancer and leprosy.

Can we maintain our social fabric as a nation with Spanish fighting English for dominance? It's like injecting yourself with cancer cells to see what will happen. It's like importing leper colonies and hope we don't catch leprosy. (Jan. 29, 2007)

Importantly, in these email excerpts, the “illegality” of these immigrants is not mentioned. Rather, it is their very presence as Mexicans and ethnic Latinos that is perceived to pose a threat to the nation's future existence.

Years before SB 1070 was ever introduced in Arizona's state legislature, the bill's eventual sponsor, Senator Russell Pearce, was promoting the idea that America was being “lost” to a foreign element. These particular foreigners were perceived as a threat, not because they had broken any law or presented a risk to public safety, but because they represented the ruin of the “American” life. In the words of another anti-immigrant propagandist whose ideas Pearce had spread since as far back as 2006, “The invading illegal alien horde is diminishing our quality-of-life” (Mar. 3, 2006).

For all their insistence that strict immigration enforcement policies were solely a question of respecting the rule of law and preserving the U.S. as a nation of laws, the fears expressed by supporters of those policies expose a desire to save a particular vision of American culture. For those who feared being “overrun” by immigrants, as the proponents of SB 1070 and the ethnic studies ban clearly did, Latino culture represents something inferior to the America they imagine.

SB 1070 Was Rooted in Hateful Nationalism That Sought to Profile and Expel “Global Riffraff”

The notion that Mexican or Latino immigrants devalued American society had fueled decades of anti-immigrant proposals in Arizona that would ultimately lead to SB 1070. In one email from 2007, Pearce declared that “nasty illegals” had already managed to “conquer our language and our schools,” which, as a result, “will plummet all of us into chaos, poverty and Third World Momentum.” Ignoring the contributions of generations of Mexican immigrants and their descendants in the U.S., Pearce warned, “We are much like the Titanic as we inbreed millions of Mexico's poor, the world's poor and we watch our country sink” (Jan. 29, 2007).

Pearce's comments reveal his racially laden view that Mexican immigrants embody poverty and corruption, and, because he sees them as incapable of assimilation, he believes such a culture will inevitably reproduce itself in the U.S. if they are allowed to live in the country. As he himself declared, “Fact: Corruption is a mechanism by which Mexico operates. Its people spawn more corruption wherever they go because it is their only known way of life” (Jan. 29, 2007).

Email correspondence demonstrates that, three years later, SB 1070 was grounded in this same stereotyped cultural understanding of Mexican immigrants. Mere days after it was signed into law, Kobach, who also serves as counsel for FAIR's affiliated legal organization, Immigration Reform Law Institute (IRLI), wrote Pearce to suggest targeting property and rental codes as a way to satisfy the "reasonable suspicion" provision that allowed law enforcement to inquire about a person's immigration status.

From: [Kobach, Kris W.](#)
To: [russellpearce](#) : rpearce@azleg.gov
Sent: Wednesday, April 28, 2010 7:42 PM
Subject: One more change!

Russell,

I discussed all of the changes with Mike Hethmon and he concurred. But there is one additional point that he suggested--which you will certainly agree with. When we drop out "lawful contact" and replace it with "a stop, detention, or rest, in the enforcement of any title or section of the Arizona code" we need to add "or any county or municipal ordinance." This will allow police to use violations of property codes (ie, cars on blocks in the yard) or rental codes (too many occupants of a rental accommodation) to initiate queries as well.

I have not received anything from the people on the phone this afternoon. Please ensure that they make this addition as well. Thanks!

Kris

By targeting "cars on blocks in the yard" and "too many occupants of a rental accommodation" (see the above screenshot of a message Kobach sent to Pearce on Apr. 28, 2010), Kobach cynically crafted legislation against the presence of unauthorized immigrants by targeting unacceptable "code" violations. The primary codes that Kobach's email illustrates, however, are the racial codes driving SB 1070 and motivating its authors to put an end to what Pearce referred to as an "invasion of global riffraff, turning America into a third world dumping ground" (May 21, 2008). For the authors of SB 1070, Latino immigrants signified the arrival of the "Third World" to the U.S. that would drag down the "property value" of the country as an "exceptional" nation, which for them was the greatest threat of all.

Conclusion

For the authors and supporters of Arizona's SB 1070, the existence of the United States as a nation was being threatened by unauthorized immigration. Specifically, this threat was understood to come from immigrants entering the U.S. from Mexico. Their argument claimed that the nation could be saved from this threat only through the strict and punitive enforcement of the country's immigration laws, even by way of flagrant racial profiling. Using the words of the very individuals who authored SB 1070—and of those who share that worldview—this report has exposed the underlying racism that motivated such an egregious law.

In email after email, proponents of SB 1070 fabricated statistics and concocted fictitious stories of unauthorized immigrants as rapists and murderers "flooding" across the border, to justify the need for strict enforcement through fearmongering. The racial motivations behind

SB 1070, however, were most apparent when its supporters made claims that the bill would stamp out perceived cultural threats to the American way of life. The bill's proponents fomented fears that Mexican immigrants came with the purpose of covertly taking over the U.S. by imposing a Latino culture they characterized as "Third World." Their words remind us that SB 1070 was born along racial lines of distinction between those who are perceived to belong inside American society and those whose presence is perceived to be so unwelcome that they must be removed. It is from this distinction that the law's intended goal of "attrition through enforcement" operates, and it is from these racial notions of belonging that a person comes under "reasonable suspicion" of being an unauthorized immigrant. Pearce and other proponents of SB 1070 used anti-immigrant propaganda to sell the idea that Latinos—immigrants, as well as U.S.-born and naturalized citizens—were dangerous to the future existence of the country and that America could be protected only by expelling them.

Civil rights groups have recently settled their lawsuit with Arizona authorities, just as the nation is embroiled in a public conversation that feels eerily reminiscent of private musings among SB 1070's most ardent supporters. The email excerpts in this report provide just a few examples of why Americans should be alarmed by the motives behind Arizona's law and laws cast from its mold. Not only did Kobach help draft SB 1070 and the copycat laws, but he also drafted the immigration and border security plans found in the current Republican Party Platform.⁵ Meanwhile, the "attrition through enforcement" principle of Arizona's law is visible today in deprivation tactics engaged in at the local, state, and national levels to choke off funding to communities that choose to embrace immigrants. Students of history need only look at the first half of this decade to see that, regardless of the public justification, anti-immigrant policies appeal to the ugliest, most xenophobic aspects of our society.

SB 1070 serves as a cautionary tale. Those who have lived through the daily realities of SB 1070 in Arizona know how much damage the law has caused communities across the state and recognize that it should not be replicated on a national level. Recently, the editorial board of the conservative *Arizona Republic* newspaper publicly reflected on SB 1070's negative implications for the country: "Arizona understands that we don't need a repeat of that divisive, unproductive fiasco on the national level" (Editorial Board, Sept. 27, 2016).

⁵ See www.kansansforkobach.com.

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Email message from Kris Kobach to Russell Pearce dated Apr. 28, 2010, originally published in Andrea Nill Sánchez, “Email from Author of Arizona Law Reveals Intent to Cast Wide Net Against Latinos,” *ThinkProgress*, Apr. 30, 2010.

EMAIL MESSAGES FROM RUSSELL PEARCE, LISTED BY DATE (EARLIEST TO LATEST)

Exhibit E-21: Copy of an email message and attachments from Russell Pearce dated Jan. 17, 2006, https://www.aclu.org/files/assets/715-6_exhibit_e_-_pochoda_declaration_1.pdf.

Exhibit E-23: Copy of an email message from Russell Pearce dated Mar. 3, 2006, https://www.aclu.org/files/assets/715-6_exhibit_e_-_pochoda_declaration_1.pdf.

Exhibit E-9: Copy of an email message and attachments from Russell Pearce dated Apr. 24, 2006, https://www.aclu.org/files/assets/715-6_exhibit_e_-_pochoda_declaration_1.pdf.

Exhibit E-8: Copy of an email message and attachments from Russell Pearce dated Jan. 29, 2007, https://www.aclu.org/files/assets/715-6_exhibit_e_-_pochoda_declaration_1.pdf.

Exhibit E-35: Copy of an email message and attachments from Russell Pearce dated May 21, 2008, https://www.aclu.org/files/assets/715-6_exhibit_e_-_pochoda_declaration_1.pdf.

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Exhibit JJ: Copy of an email and attachments from Russell Pearce dated Apr. 19, 2010 (SB1070_0085559-70).

EMAIL MESSAGE FROM KAREN WINFIELD

Exhibit E-20: Copy of an email message from Karen Winfield to Russell Pearce and Karen Johnson dated July 6, 2007, https://www.aclu.org/files/assets/715-6_exhibit_e_-_pochoda_declaration_1.pdf.

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