

Thursday, September 18, 2008

## Immigration Update: The Ninth Circuit Upholds LAWA

By Nancy-Jo Merritt and Matthew J. Martinez

In a decision published on September 17, the U.S. Ninth Circuit Court of Appeals upheld the Legal Arizona Workers Act of 2007 ("LAWA").

Soon after LAWA was signed by Governor Napolitano in May of 2007, legal challenges followed, filed by a disparate group of business and community organizations. The two key arguments against LAWA included claims that LAWA is invalid because it is preempted by federal law, and that the mandatory requirement that employers use the federal E-verify system is an inappropriate use of a voluntary federal program.

The Ninth Circuit forcefully shot down those arguments. The opinion states that the district court correctly determined that LAWA is a "licensing" law as allowed by the Immigration and Nationality Act and thus not expressly preempted. The opinion also found that LAWA's requirement that all Arizona employers enroll in E-verify is not expressly or impliedly preempted by federal law.

However, the Ninth Circuit notes that because the lawsuit was filed prior to any enforcement of the statute, it was brought against "a blank factual background of enforcement and outside the context of any particular case." The Court suggests that future enforcement of LAWA could result in challenges to LAWA that arise outside the boundaries of the current decision.

For now LAWA stands, having weathered the series of challenges brought in the last year. Stay tuned.

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