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EXAMINING THE CONSTITUTIONALITY AND PRUDENCE OF STATE AND LOCAL GOVERNMENTS ENFORCING IMMIGRATION LAW

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND BORDER SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TWELFTH CONGRESS

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EXAMINING THE CONSTITUTIONALITY AND PRUDENCE OF STATE AND LOCAL GOVERNMENTS ENFORCING IMMIGRATION LAW

TUESDAY, APRIL 24, 2012

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION, REFUGEES,
AND BORDER SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Subcommittee met, pursuant to notice, at 10:05 a.m., in Room G–50, Dirksen Senate Office Building, Hon. Charles E. Schumer, Chairman of the Subcommittee, presiding.

Present: Senators Schumer and Durbin.

OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Chairman SCHUMER. Good morning, everyone. The hearing will come to order.

At today's hearing we will be discussing the constitutionality and prudence of the many State and local immigration laws enacted during the past few years. In 2011 alone, State legislators from across the country introduced 1,607 bills and resolutions relating to immigration. By the end of the year, 42 States had enacted 197 new laws.

Tomorrow the Supreme Court is going to be considering whether the Arizona law, known as SB 1070, is constitutional. Specifically, the Court will be deciding if States can enact comprehensive immigration enforcement laws designed to promote the self-deportation of illegal immigrants. Five States—Alabama, Georgia, Indiana, South Carolina, and Utah—have crafted laws following Arizona's example. Court challenges have been filed against all five of those laws, and the outcome of those cases will likely be dictated by the Supreme Court's decision in the Arizona case.

Discussing both the constitutionality and prudence of these laws is necessary because the Supreme Court will base its decision upon what the Senate had previously said about the role of State and local government in enforcing federal immigration law.

The wisdom of the Arizona law is also currently being debated around the country. For instance, SB 1070 has recently been endorsed as a model for the country by Mitt Romney, the Republican nominee for President. Others such as Marco Rubio have said they do not believe the Arizona law should be expanded nationwide. In

my view, these State laws are both counterproductive and unconstitutional.

In terms of being counterproductive, the statistics could not be any clearer in terms of the economic damage these laws cause. In Arizona, studies have shown that after SB 1070 was passed, the convention and tourism industries lost as much as $140 million. Moreover, the agriculture industry has seen much of its crops destroyed due to a lack of labor. In Alabama, a study by the University of Alabama found that the Alabama law is projected to shrink Alabama's economy by at least $2.3 billion annually and cost the State $70,000 per year—sorry, 70,000 jobs per year.

In terms of being unconstitutional, our Founding Fathers gave Congress plenary power over immigration law. The Supreme Court has consistently interpreted the naturalization language in Article I to mean that the establishment of the immigration laws and their manner of execution are committed solely to the Federal Government. Even though some on the other side want to limit the Federal Government's power and increase the power of the States, immigration is not and never has been an area where States are able to exercise independent authority. This makes sense, both legally as a matter of constitutional interpretation and practically as a matter of sound public product.

Immigration involves international commerce and sensitive foreign relations. Just as we would never allow 50 States to have their own inconsistent and independent trade laws, we should not have 50 States establishing and enforcing their own inconsistent immigration laws. And even if States like Arizona say they are only helping the Federal Government to enforce the law, this issue is much like federal tax law where the Federal Internal Revenue Service interprets and enforces the law as opposed to 50 State agencies going to people's houses to ensure that they have properly filed their federal tax returns.

Only federal comprehensive immigration reform can accomplish the three objectives most Americans want to see achieved with regard to immigration: first, ending illegal immigration; second, fixing our dysfunctional legal immigration system; and, third, addressing the status of people here without legal status.

In 2010, many of my Democratic colleagues on this Committee released a white paper with me outlining our proposal for immigration reform. Then, as a good-faith downpayment to encourage negotiations with those who said fix the border first, we passed a $600 million supplemental Border Security Act that added 1,500 troops on the border, deployed more unmanned aerial drones, and increased border fencing and technology. The border bill was hailed by my Arizona colleagues as a significant border security accomplishment that they were proud to cosponsor. As a result of this bill, Arizona's 373-mile border with Mexico is now patrolled by over 5,200 Border Patrol agents and 300 National Guardsmen, a 31 percent increase from 2008, which has resulted in a 61 percent reduction in unlawful border crossing over the same period. And yesterday, a Pew Hispanic Center study reported that immigration from Mexico has dropped to net zero when comparing the number of people entering the U.S. from Mexico to the number of people returning to Mexico.

Some in Arizona might wish to take credit for this, but the study shows this is a national trend based on increased federal enforcement at the southern border and decreased availability of jobs for foreign workers. And this chart reveals immigration to the U.S. from Mexico. It is national. And because of what we have done on the border, as you can see, the number has gone significantly down from a high of 770,000 people in 2002, now 140,000 people in 2010. That is a dramatic drop.

We have repeatedly invited our Republican colleagues to sit down with us and discuss how best to reform our broken immigration system in a manner both parties can support. It will only pass if it is bipartisan. To this date, our colleagues will not even sit down with us and discuss comprehensive immigration reform legislation.

Finally, when small, noncontroversial immigration matters are proposed that can help create jobs, they are blocked in the Senate. Consequently, States are now taking matters into their own hands and are passing a multitude of immigration laws that touch upon a variety of subjects, such as employment authorization and verification, border security, work visas, and higher education—areas that have always been the exclusive province of the Federal Government.

I believe it is simply too damaging to our economy and too dangerous to our democracy to have 50 States doing 50 different things with regard to immigration policy. I also believe that Congress has clearly and repeatedly indicated its intent to preempt States from creating their own immigration enforcement regimes, which is why I believe SB 1070 and laws like it are unconstitutional.

For instance, in 1997, Congress passed Section 287(g) of the *Immigration and Nationality Act*, which allows State and local law enforcement to enter into partnerships with ICE to conduct immigration enforcement within their jurisdictions. In enacting 287(g), Congress made it clear it did not want the States, like Arizona, taking immigration enforcement matters into their own hands and instead wanted State officials to act with guidance, training, and supervision of the Federal Government.

In addition, Congress explicitly wrote employment verification laws that were designed to punish employers rather than employees for violations of immigration law. Arizona, by contrast, has decided to criminalize the individuals who seek work to feed their families. This conflict of law plainly contravenes our stated intent in passing numerous federal immigration workplace statutes.

I am, therefore, announcing that, should the Supreme Court choose to ignore these plain and unambiguous statements of Congressional intent and uphold SB 1070, I will introduce legislation that will reiterate that Congress does not intend for States to enact their own immigration enforcement schemes.

My legislation will re-emphasize that State officials can only engage in the detection, apprehension, and detention of unlawfully present individuals if they are doing so pursuant to an explicit agreement with the Federal Government and are being supervised and trained by federal officials. States like Arizona and Alabama will no longer be able to get away with saying they are simply "helping the Federal Government" to enforce the law when they are really writing their own laws and knowingly deploying untrained

officers with a mission of arresting anyone and everyone who might fit the preconceived profile of an illegal immigrant.

My legislation will also re-emphasize that State and local governments are preempted from enacting their own employment verification laws and penalties. Federal preemption of employment verification laws has been endorsed by the U.S. Chamber of Commerce and many other business groups and trade associations. And I hope colleagues from both sides of the aisle will join me in this effort in the event it becomes necessary, which I hope and believe it will not because I do believe the Supreme Court will decide that SB 1070 is not constitutional based on the evidence that is all on one side here.

I now would like to turn it over to Senator Durbin for an opening statement.

STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator DURBIN. Mr. Chairman, thank you very much for calling this hearing of the Immigration Subcommittee on the question of SB 1070, the Arizona immigration law, which I join you in hoping that the Supreme Court finds unconstitutional. Under our Constitution, States do not have the right to pass their own laws preempting Federal laws on immigration.

It is wrong and counterproductive to criminalize people because of their status, their immigration status. Law enforcement, incidentally, does not have the time or resources to prosecute or incarcerate every undocumented immigrant. The Arizona immigration law will simply deter undocumented immigrants from being part of the community and cooperating with law enforcement where necessary.

Do not take my word for it. Ask the Arizona Association of Chiefs of Police who oppose SB 1070.

There is another troubling aspect of the Arizona immigration law. According to experts, this law encourages racial profiling. Last week, I held a hearing on racial profiling, the first one in 10 years on Capitol Hill. We heard testimony about the provision in this law, Arizona's immigration law, requiring police officers to check the immigration status of any individual if they have "reasonable suspicion" that the person is an undocumented immigrant. The explanation of the law went further to say how you can gather this notion of reasonable suspicion, and it went on to say by the way a person dresses or by their command of the English language.

Now, one of the witnesses at this racial profiling hearing was Ron Davis. He is the chief of police of East Palo Alto, California. Chief Davis, an African American, along with 16 other chief law enforcement officers and the Major Cities Chiefs of Police Association, filed a brief in the Arizona case before the Supreme Court. This is what they said: "The statutory standard of 'reasonable suspicion' of unlawful presence in the United States will as a practical matter produce a focus on minorities, and specifically Latinos."

Now, instead of measures that hurt law enforcement and promote racial profiling, like SB 1070, we need practical solutions to fix our broken immigration system. I could not agree with my col-

league Senator Schumer more. Congress needs to face its responsibility to pass immigration reform.

Eleven years ago, I introduced the *DREAM Act*. This legislation would allow a select group of immigrant students who grew up in this country, came here as infants and children, but would give them a chance to earn their way to citizenship by attending college or serving in the military. Eleven years we have been struggling to pass this. We have had majority votes on the Senate floor but never the magic 60 number that we need to pass it.

The best way, I have said to my colleagues, to understand what the *DREAM Act* is about is to get to meet the young people who would qualify for this legislation. As Senator Rubio of Florida has said, "Let us let these young people get right what their parents got wrong." These people call themselves "Dreamers." Under the Arizona law, SB 1070, these young people would be targets for prosecution and incarceration. Why? It is beyond reasonable suspicion. They have stood up and said, "We are undocumented, we are *DREAM* students. We want a chance to become American citizens." Under the *DREAM Act*, they would be future citizens who would make our country a better place.

I want you to meet six targets of this bill, the Arizona immigration law. Each and every one of them is a resident of Arizona. They have stepped up publicly to tell their stories about being brought to the United States by their parents as infants and children, now begging for a chance to earn their way to legal status and citizenship.

The first, Dulce Matuz. She graduated from Arizona State University with a bachelor's degree in electrical engineering. She cofounded the Arizona *DREAM Act* Coalition, an organization of more than 200 *DREAM Act* students. Last week, Dulce was named one of the 100 Most Influential People in the World by *Time Magazine*. Dulce Matuz is a target of the Arizona immigration law.

Now meet Mayra Garcia. She is president of the Cottonwood Youth Advisory Commission in her hometown of Cottonwood, Arizona. She graduated from high school in 2010 with a 3.98 GPA. She is now a sophomore at a prestigious university in California. She would be a target of the Arizona immigration law.

Now meet Juan Rios. In high school, Juan was a leader in the Air Force Junior ROTC. In 2010, he graduated from Arizona State University with a degree in aeronautical engineering. Since graduation, Juan has put his life on hold. Because of American law, he cannot enlist in our military or work in the aerospace industry. Juan is a target of the Arizona immigration law.

Now meet Jose Magana. Jose graduated as valedictorian of his high school. At Arizona State University, he joined the speech and debate team, where he ranked fifth in the Nation. In 2008, Jose graduated summa cum laude with a major in business management from Arizona State University. Later this year, Jose will graduate from Baylor University Law School in Waco, Texas. He cannot be licensed to practice law in the United States because he has no country. Jose is a target of the Arizona immigration law.

Finally, meet Angelica Hernandez. In high school, she served in Junior ROTC and was president of the National Honor Society. Last year, she graduated from Arizona State University as the

Outstanding Senior in the Mechanical Engineering Department. Angelica is a target of the Arizona immigration law.

Unlike the Arizona immigration law, the *DREAM Act* is a practical solution to a serious problem which treats these young people and thousands of others in a humane and just way. SB 1070 would harm law enforcement and encourage racial profiling, going after the very people that you have just met. That is not consistent with our values as a Nation. It is not consistent with our constitutional values.

Mr. Chairman, thank you for this hearing.

[The prepared statement of Senator Durbin appears as a submission for the record.]

Chairman SCHUMER. Thank you, Senator Durbin, for an excellent and heartfelt statement.

Having no other people here, we will turn to our panelists. I am going to introduce each of them. Their entire statements will be read into the record, and then we will let each of them make a statement.

Russell Pearce is currently the president of BanAmnestyNow.com, an organization advocating for increased immigration enforcement and border security. He was the former president of the Arizona State Senate, a position he held until November 2011. He is most widely known as the author of SB 1070, the Arizona law whose constitutionality is being decided by the Supreme Court and that is the subject of this hearing today. He was originally elected to the Arizona House of Representatives in 2000 and the Arizona Senate in 2008. He also served as the director of Arizona's Motor Vehicle Division, the director of the Governor's Office of Highway Safety, and as a deputy for 23 years with the Maricopa County Sheriff's Office.

Dennis DeConcini served as U.S. Senator for Arizona for 18 years, from 1977 to 1995. Prior to that, he served as Pima County attorney, the chief prosecutor and civil attorney for the county and school districts within the Tucson border area. He currently serves as a partner in the law firm of DeConcini, McDonald, Yetwin & Lacy, with offices in Tucson, Phoenix, and Washington, D.C.

State Senator Steve Gallardo is a member of the Arizona State Senate representing District 13. He previously served in the Arizona House of Representatives from 2003 through 2009. He has served on numerous State and local boards and committees and is the leading sponsor of the State Senate bill, Arizona State Senate bill, that would repeal SB 1070.

Todd Landfried is the executive director of Arizona Employers for Immigration Reform, a grassroots organization comprised of 400 small, medium, and large businesses committed to sensible federal immigration policy. Mr. Landfried's organization filed an amicus brief with the U.S. Supreme Court in opposition to SB 1070.

Gentlemen, your entire statements will, without objection, be read into the record, and we will first call on Mr. Pearce. You may proceed as you wish, sir.

STATEMENT OF RUSSELL PEARCE, PRESIDENT, BANAMNESTYNOW.COM, MESA, ARIZONA

Mr. PEARCE. Good morning. I am Russell Pearce, the author and driving force behind SB 1070, which is overwhelmingly supported by citizens across this Nation. Thank you, Chairman Schumer, for inviting me here before this honorable Committee. It is an honor for me to appear. As you know, the illegal alien problem is a critical issue, not just in Arizona but across this Nation, and the effects of it ripple throughout society.

In addressing this problem, we must begin by remembering that we are a Nation of laws. We must have the courage, the fortitude, to enforce, with compassion but without apology, those laws that protect the integrity of our borders and the rights of our citizens from those who break our laws. SB 1070 removes the political handcuffs from law enforcement. All law enforcement agencies have the legal authority and moral obligation to uphold our laws, just like Sheriff Joe, who keeps his oath and does the job he was hired to do.

The invasion of illegal aliens we face today—convicted felons, drug cartels, gang members, human traffickers, and even terrorists—pose one of the greatest threats to our Nation in terms of political, economic, and national security.

During the debate of SB 1070, a rancher friend of mine, Rob Krentz, was murdered on the border by an illegal alien. I have attended the funerals of citizens and law enforcement officers murdered by illegal aliens. I have a son, a deputy sheriff, who was critically wounded in the line of duty in a gun battle with an illegal alien while serving a warrant. I, too, was critically wounded, shot in the chest and hand in the line of duty. I have seen the real costs and damage caused by the presence of illegal aliens in this country.

In Arizona alone, the annual cost of the illegal immigration problem is approximately $2.6 billion; that is just to educate, medicate, and incarcerate. And those numbers do not reflect the costs of crimes committed by those here illegally or the jobs lost by residents.

The terrorist attacks of September 11, 2001, underscored for all Americans the link between immigration, law enforcement, and terrorism. Four of the five leaders of the 9/11 attack were in violation of our immigration laws and had contact with law enforcement but were not arrested. The failure to enforce U.S. immigration laws was instrumental in the deaths of nearly 3,000 people on that tragic day in America.

Under federal law, sanctuary policies are illegal, but the Obama administration does not sue those cities that adopt such illegal policies. Instead, it chooses to sue Arizona for enforcing the law, protecting its citizens, protecting jobs for lawful residents, and protecting the taxpayers and the citizens of this Republic in attempting to secure our borders.

During my 11 years in Arizona Legislature, I authored numerous legislative initiatives designed to protect the State of Arizona from the adverse effects of illegal immigration and, most importantly, to uphold the rule of law. They include: in 2004, voter ID at the polls, passed by 57 percent of the voters; in 2006, a constitutional amendment denying bond to illegal aliens who commit serious crime,

passed by 78 percent of the voters, 60 percent of Hispanics; also in 2006, illegal aliens who sue an American citizen cannot receive punitive damages, passed by 75 percent of the voters; in 2007, protecting American jobs and honest employers by mandating the use of e-verify for every business in the State of Arizona.

I am also proud to say that each of these initiatives has become law and survived the various legal challenges. In fact, the last time I was in Washington, the Supreme Court upheld the e-verify law against the unpatriotic challenge by the Chamber and the Obama administration.

Because most provisions of SB 1070 are in effect, the citizens of Arizona are safer. According to the Phoenix Law Enforcement Association, which represents the rank-and-file police officers, and I quote, "Since SB 1070, Phoenix has experienced a 30-year low crime rate. Six hundred police vacancies, budget cuts, and old policing strategies did not bring about these falling crime rates. SB 1070 did . . . .The deterrence factor this legislation brought about was clearly instrumental in our unprecedented drop in crime. And all of this without a single civil rights, racial profiling, or biased policing complaint."

Simply put, SB 1070 has clearly worked, and Arizona has acted within its authority. The Supreme Court has held the States can utilize their inherent police powers to enforce immigration laws. SB 1070 directs Arizona law enforcement officers to cooperate and communicate with federal authorities regarding enforcement of federal immigration laws and imposes penalties under Arizona law for non-compliance.

It is only these simple and clear law enforcement measures that are before the Supreme Court. This common-sense law is fully within the authority of Arizona as it protects the citizens from the effects of illegal immigration and upholds the rule of law. And protecting our citizens is the highest duty of any public official.

Thank you, God bless, and may God continue to bless this Republic.

[The prepared statement of Mr. Pearce appears as a submission for the record.]

Chairman SCHUMER. Thank you, Mr. Pearce.

Next we will go to Senator DeConcini.

STATEMENT OF DENNIS W. DECONCINI, PARTNER, DECONCINI, McDONALD, YETWIN & LACY, P.C., TUCSON, ARIZONA

Mr. DECONCINI. Mr. Chairman and Senator Durbin, I want to thank you very much for the opportunity to address this very important issue not only to my home State of Arizona but to our Nation. The constitutionality and prudence of federal immigration laws being enforced by State and local governments is indeed a complex issue.

Mr. Chairman, I am a native Arizona resident. I grew up in that State. I came from neighborhoods and a business and had a law practice with a multitude of Hispanic and Mexican friends, investors, and what have you. We worked together. We shared each other's heritage and experiences. The culture of our State reflects the rich history of the Latino influence. But during the last two years, Mr. Chairman, we have unduly harmed our legal Latino residents

in this process: Unfortunately the solution to the problem of people coming into this country illegally, we have let rhetoric and political advantage cloud sound judgment.

Mr. Chairman, this hearing partly is about 1070, and maybe mostly, seeing that the Supreme Court will address it tomorrow. I believe SB 1070 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 clearly.

Prior to being elected to the U.S. Senate in 1976, as the Chairman pointed out, I was the Pima County attorney. During that time, I was appointed by Governor Raul Castro to head the Arizona Drug Control District because of the tremendous drug trafficking problem we had along our border with Mexico. The creation of this Drug Control District did not create laws that contradicted federal responsibility. It was a cooperative effort put together by the legislature, a Republican legislature, to address the problem in accordance with the cooperation of the federal agencies, and we did just that. I mention this because there is some similarity to the illegal immigration issue, but laws need to be formulated in cooperation but not hostile to each other.

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 Border Patrol, Customs, and the General Services Administration. I used all the jurisdictions to focus law enforcement resources on the U.S. southwest border along with my many colleagues at the time, including some not from border States, like Alan Simpson and Mark Hatfield of Oregon. We worked in a bipartisan effort.

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 President Reagan's administration. Let me remind everyone, President Reagan supported that bill and the setting of a date to grandfather those in this country who were here illegally with a pathway to citizenship if they did not have a criminal record. I continue to work hard to see that this happens and occurs.

Many ask why our efforts did not work way back in 1981, and there is an answer. We did not secure the borders even though we passed comprehensive immigration reform.

Former Senator Pete Domenici and I chaired the Appropriations Committee, and we constantly added earmarks—sorry to use that word here in this august body today—but we added money that was not in the budget, and often it was taken out for other reasons.

At that time, the Congress and the public just was not focusing on the severity of the border problems. When I left the Senate, the number of Border Patrol agents had increased from approximately 4,000 in 1995 well over 21,000 today, as the Chairman points out, with over 5,000 agent deployed to the Arizona border.

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. It started under the previous administration, a Republican administration, and continues now with such programs as Secure Communities.

We are called here today to debate the merits and the constitutionality of 1070. I believe it is unconstitutional for many of the reasons the Chairman pointed out, which I will not reiterate. 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—behavior—not people. This law does the opposite. It profiles people. If you have brown skin in my State, you are going to be asked to prove your citizenship. The law has bad consequences. Let me play a clip here of an individual, and it will show you just exactly what I am talking about. This was taken just a few days after the bill passed both Houses and right before the Governor signed it.

Would you play the clip, please?

[Videotape played.]

Mr. DECONCINI. Mr. Chairman, thank you for taking the extra time to view this video. This may have been unintended consequences, as they say, but this is what has happened to many in my State. This is not just one example that jumps out at you.

Let me just give you one more quick one. Some statewide political leaders and county elected officials say that as a direct result of undocumented people coming into our State, horrific crimes have been caused, such as beheadings in the desert of Arizona along our border; that terrorists are sneaking in. There is no proof to this. These examples have turned out to be totally false, including those made by our Governor, who had to retract them about the beheadings found in the desert.

But this demonstrates how political this issue has become. It has not been about creating law enforcement solutions to secure our borders from criminals or about deportation of those with criminal records—which by the way is a minor percentage of those illegals who commit the crimes here. I could go on and tell you a lot of different stories because I talk to a lot of different people.

Finally, let me ask: Who is the target of 1070? As Senator Durbin pointed out, if anyone tells you it is only the drug or gun-trafficking criminals, they are mistaken. SB 1070 targets those with brown skin, and in my State those are my neighbors, my friends, and successful business associates. I have been in law enforcement and the U.S. Senate when we could fix this law, and we fixed part of it, and now 1070 has taken us in the wrong direction.

As a legislator, I know—and as law enforcement—that whenever you mix politics and law enforcement, you create a toxic environment, and that is what has happened in my State of Arizona.

Thank you, Mr. Chairman. I apologize for being longer than anticipated.

[The prepared statement of Mr. DeConcini appears as a submission for the record.]

Chairman SCHUMER. No problem. Thank you, Senator DeConcini.

And now we will hear from Senator Gallardo.

STATEMENT OF HON. STEVE M. GALLARDO, SENATOR, ARIZONA STATE SENATE, PHOENIX, ARIZONA

Mr. GALLARDO. Thank you. Mr. Chairman and Members. For the record, my name is Steve Gallardo. I am a State Senator from Arizona representing District 13. It is my privilege to have the opportunity to give my perspective and experience regarding Arizona's Senate bill 1070.

Mr. Chairman and Members, Senate bill 1070 has perpetuated a climate of fear and division within the State of Arizona. Without any doubt, Senate bill 1070 has done Arizona and her people a great disservice and has done nothing to secure the borders or resolve any of our immigration problems.

Arizona law has unfortunately subjected Latino citizens to racial profiling and harassment.

The following situations will illustrate how Senate bill 1070 has negatively affected the lives of many Latinos throughout the State of Arizona.

Senate bill 1070 has created racial tension and distrust between Latinos and law enforcement as well as Latinos and non-Latino neighbors.

I will give you an example: The tragic death of Juan Varela, a United States citizen who was murdered in front of his home by his neighbor, Gary Kelley, just 13 days after Governor Brewer signed Senate bill 1070 into law. Right after the bill was signed into law, Gary Kelley yelled racial slurs: "Go back to Mexico. If you do not go back to Mexico, you are going to die." Before long, Gary Kelley pointed his .38 revolver at Juan Varela and shot him in the face. Mr. Varela died in the front of his home. He leaves a wife and a 13-year-old daughter.

Senate bill 1070 has made Latinos the target of criminals because Latinos are less likely to report crimes to local law enforcement for fear of having themselves deported or even a loved one deported.

Many Latina women face nightmare situations if they are victims of domestic violence. Because of Senate bill 1070, many of these women are placed in the position where they cannot report their abuser in fear of getting deported. In some cases, these women are held hostage in their own home. Mr. Chairman and members, no woman, regardless of immigration status, should ever be placed in harm's way.

Senate bill 1070 has shifted the priorities of law enforcement to focus its attention away from the criminal investigations and placed squarely on local law enforcement, immigration enforcement. This comes at the expense of rape, assault, and murder victims.

Most recently, the Maricopa County Sheriff's Office has come under fire for their failure to investigate 400 sexual assault cases. Many of these cases involve children. Maricopa County Sheriff's Office focuses their attention on immigration enforcement.

Senate bill 1070 and laws like it have fostered and legitimized vigilante movements responsible for violent and sometimes lethal attacks on Latinos. Here is another example.

The case of nine-year-old Brisenia Flores and her father, Raul, who were killed at the hands of Shawna Forde and Jason Bush—

all members of the Minutemen Defense organization in Arizona. The Flores were murdered in their own home as they were being robbed. Brisenia Flores was nine years old when she pleaded for help and was shot dead in her home.

If Senate bill 1070 has been successful in anything, Mr. Chairman, it has been successful in breaking up families by separating hard-working immigrant parents from their children and limiting the success of our Latino students.

These parents and children live in fear every day, fear of being separated from each other. It is a common practice of parents to teach their children a phone number of a family member that they can trust in the event that the parents get swept away in one of Sheriff Joe Arpaio's raids in Phoenix.

Mr. Chairman and Members, the State of Arizona has dealt with a lot of anti-immigration type legislation. The most recent was a ballot initiative that preceded Senate bill 1070 requiring undocumented students to pay out-of-State tuition. The *DREAM Act* has been exactly that—only a dream. I use my Carl Hayden High School Robotics Team in my district, a source of pride in my legislative district, a school team that has beaten teams all over the world, including the Massachusetts Institute of Technology. If it was not for their immigration status, these students would have unlimited promise.

Unfortunately, laws like Senate bill 1070 pander to a climate of fear and division that run rampant through the State of Arizona. Mr. Chairman, this fear was created for a purpose.

Mr. Chairman and Members, I would submit to you that Senate bill 1070's true intention, its primary objective, is to make second-class citizens of U.S. Latinos, to discourage them from voting, from going to school, seeking employment, and realizing the American dream.

Immigration enforcement is only a secondary objective. By their own admission, the authors and sponsors of Senate bill 1070 intend to harass immigrants, to create a hostile and miserable environment so that immigrants would choose to "self-deport." They show no regard for the civil rights abuses of U.S. Latino citizens.

This by its very nature defines their strategy as reckless and abusive. Senate bill 1070 is neither an immigration policy nor a legal position but, rather, a campaign of harassment and intimidation directed solely on the person's complexion.

Finally, the prime sponsor of Senate bill 1070 will try to give you some rationale for the chaos of this legislation. However, I would submit to you that any effort to justify profiling, harassment, or oppression of anyone is un-American, illegal, and unconstitutional on its face.

Mr. Chairman and Members, I would pray you see the wisdom of passing legislation preempting States from addressing and enforcing immigration laws and put emphasis on passing comprehensive immigration reform, specifically the priority of passing the *DREAM Act* for the students not only in the State of Arizona but across this great country.

Mr. Chairman and Members, these are my comments, and I respectfully submit them.

[The prepared statement of Mr. Gallardo appears as a submission for the record.]

Chairman SCHUMER. Thank you, Senator Gallardo.

Mr. Landfried, you may proceed.

STATEMENT OF TODD LANDFRIED, EXECUTIVE DIRECTOR, ARIZONA EMPLOYERS FOR IMMIGRATION REFORM, PHOENIX, ARIZONA

Mr. LANDFRIED. Thank you, Mr. Chairman, for inviting me to speak today. For the record, my name is Todd Landfried, and I am the executive director of Arizona Employers for Immigration Reform. AZEIR, as we refer to ourselves, was formed in 2007 and has approximately 400 small, medium, and large business members. We are not open borders, pro-illegal businesses addicted to cheap labor, nor do we put profits before patriotism. We know there are serious problems on the border, and people's lives are being affected, and the issue needs to be addressed. Businesses want legal and efficient access to the labor it needs when it needs it from wherever it must come, with little government interference or interaction as possible. Most importantly, we want you in Congress to solve the problem.

My remarks will focus on whether laws like Arizona's Senate bill 1070 and others are good public policy based upon their impacts on business and the economy. By good public policy, I mean what are the outcomes? Did they secure the border? Did they create jobs and reduce State expenses? Did they fulfill their proponents' promises?

It is a legitimate question, especially at a time when program accountability is so important. What is wrong with holding State-level immigration laws to the same scrutiny?

In my written testimony, I have shown that this attrition through enforcement scheme has been tried before at the city, county, and State level going back to 2006. What has come from these past attempts? The short answer: Nothing good, unless your only goal is to make brown people move.

After Oklahoma passed HB 1804 in 2007, the Oklahoma Bankers Association found the loss of 90,000 unauthorized workers and their families resulted in a $1.9 billion loss to the State's gross State product. The Urban Institute and the Migration Policy Institute found negligible savings on Oklahoma public services from the departure of the undocumented because they are ineligible for those benefits in the first place.

A Georgia Restaurant Association survey found in November 2011 that 71 percent of their members had labor shortages and estimates the average monthly sales losses due to the labor shortage was $21,000 per store.

Georgia farmers told their Governor they needed 11,000 workers to bring in that spring's fruit crop. Governor Deal offered up probationers as a solution, and on the first day, 11 showed up. A week later, there were seven left. The losses that farmers encountered in 2011 was an estimated $391 million. One analyst said, "We have turned good workers into criminals and turned criminals into bad workers, losing on both ends of the deal." Exactly.

Alabama is rethinking HB 56; 25 percent of Alabama's construction workers have left the State, with few replacements. Towns like

Russellville report sales tax revenue losses exceeding $8.5 million. Statewide losses in State income and sales tax collections are estimated to be between $56 million and $264 million.

Arizona continues to suffer. Total losses from cancellations and bookings for conferences and tourism were $394 million and a loss of 4,236 jobs. In fact, there is a chart in the back of my written testimony that highlights those losses.

Foreign businesses and executives refuse to work in Arizona. The loss of 150,000 consumers from the Arizona economy resulted in an estimated decline in gross State product of $24.4 billion, or 9.6 percent, the loss of 291,000 direct and indirect jobs, and a resulting lost in tax revenue of $2.1 billion. Do these sound like the effects of a good law?

We were told Senate bill 1070 would bolster the economy and create jobs, yet history convincingly demonstrates exactly the opposite. If these laws are so good, then why are the impacts so bad? The answer is you have bad outcomes because you had bad inputs. Put bluntly, we are being misled by proponents who routinely distort data, exaggerate impacts, cherrypick statistics, and in many instances, make it all up.

You heard testimony about how it supposedly costs Arizona $2.6 billion to educate, medicate, and incarcerate illegal aliens. The problem is that is not the whole story as it ignores financial contributions these workers make to the economy. Economic studies that consider both sides of the ledger show immigrants are a net benefit to Arizona of just under $1 billion.

You heard 17 percent of Arizona's prisoners are illegal aliens when in reality it is impossible to know. Why? Because the Arizona Department of Corrections combines unauthorized inmates with those who are here legally into a category calls "criminal aliens." The latest number is 13.2 percent; therefore, the undocumented population must be lower.

We are told because of Senate bill 1070 crime in Phoenix is at a 30-year low, yet there are no data from Phoenix P.D., the Department of Public Safety, or the FBI to back that up. That fact was reiterated in this morning's *Arizona Republic*.

Mr. Chairman, nearly every statistic used to justify Senate bill 1070 has serious factual problems with it. Newspaper fact-check researchers found that nine out of 10 immigration statements they checked, including some you heard today, are not the whole truth. I would encourage you to take a look at the four-plus gigabytes of reports and data on the DVD I provided to the Committee and educate yourself on the real facts.

I am not saying all the concerns are illegitimate. I am not saying there are no costs. No one questions the serious issues of drugs and smuggling on the border. No one questions the security threats. No one denies there is an immigration problem. We can agree on all of this. But shouldn't we spend our time looking at solutions that might work rather than on one we know that does not?

If you want to ask a question, it should be: What else have you got? It amazes me that, with this scheme's history of failure, Senate bill 1070 was the best idea they could come up with. Maybe it is because no other solutions were allowed to be heard and discussed. Fortunately, there are some great ideas for solving this

problem, but you do not get to hear them because we are spending too much time arguing about Senate bill 1070. We will discuss some of these solutions May 1st in the Rayburn Gold Room starting at 10 a.m. We have invited all Members of Congress. We hope your staff will attend.

This continued fixation on Senate bill 1070 as some kind of viable solution when we know better is crazy. The Supreme Court's decision will do nothing to change the fact that it remains bad policy and bad law. Congress, however, can and must do something about that, and you should not waste any time getting started. That solution must deal with the demand for labor as well as and at the same time as border security. Nothing else will work.

Thank you, Mr. Chairman and Members of the Committee, for your time and attention.

[The prepared statement of Mr. Landfried appears as a submission for the record.]

Chairman SCHUMER. Thank you, Mr. Landfried, and let me thank all of our panelists for this testimony, and now we will begin with questions.

I am going to direct some first questions to you, Mr. Pearce. First, I want to thank you for coming because we do not agree. That is obvious. But you have had the courage and integrity to come here and defend your views, and that is very much appreciated.

Okay. Now, I am interested in trying to understand the general context behind the Arizona law. You were on Fox News on July 29, 2010. You said your intent in writing Senate bill 1070 was—and this is your quote—"to take the handcuffs off law enforcement, they will go home, they will self-deport." Do you still stand by that statement?

Mr. PEARCE. Yes, sir.

Chairman SCHUMER. Okay. Now, some have said that the Arizona law is necessary because the Federal Government has not secured the border. But to be clear, even if the border were completely secure and the government could show that no new people are entering the country illegally, you would still want Senate bill 1070 to remain in effect to ensure that all of those who are already here without status either leave America or get apprehended or deported. Is that correct?

Mr. PEARCE. Mr. Chairman, can I give better than just a "yes" to that?

Chairman SCHUMER. Sure, yes.

Mr. PEARCE. Mr. Chairman, it is simply the rule of law. You know, we have laws, all kinds of laws. You are never going to get 100 percent compliance. We understand that. But laws without consequences are not laws at all. And I have heard some misinformation here today that is more disappointing. You know, if you will remember the case *Muehler* v. *Mena* in 2005, a 9–0 landmark decision by the United States Supreme Court, it struck down a prior decision by the Ninth Circuit Court about the Fourth and Fourteenth Amendments of those that are here illegally and when you can ask and when you cannot, and they struck it down and said you can ask anytime. Those safeguards are not in the federal law, and the Supreme Court has upheld you can ask anytime.

In Senate bill 1070, we prohibit racial profiling. In Senate bill 1070, we say you have to have a legitimate contact. In Senate bill 1070, we say you have to have reasonable suspicion. Those are the basic things taught in a police academy to every young recruit. Civil rights, you know, the proper respect and decorum of our citizens and those that we come in contact with.

I find it very demeaning to law enforcement that we would assume that those kinds of things go on. You are always going to have exceptions to every law when you have thousands and thousands of arrests, Mr. Chairman.

Chairman SCHUMER. Okay. Thank you.

Mr. PEARCE. But that is demeaning to our law enforcement community to make that. And I want to——

Chairman SCHUMER. Go ahead, please.

Mr. PEARCE. If I might, sir, when you talk about the police chiefs not supporting Senate bill 1070, those that are appointed bureaucrats from open border mayors in most cases, what did support it is nine out of 15 sheriffs. Arizona Police Association, 10,000 officers, 23 agencies, Arizona cops, 6,000 officers, the FOP, every single organization that represents boots on the ground supported Senate bill 1070 and worked with me to make sure that we created the kind of exceptions that they could make in doing their job when necessary. It is the rule of law, mirrors federal law. It is not—we did not regulate. That is an exclusive—exclusive—responsibility of the Federal Government, and I agree with you, Mr. Chairman, on that. But enforcement has never been the exclusive responsibility. We do not hear this about drug laws. We do not hear this about gun laws. We do not hear this about bank robbery or the other federal crimes that we enforce on a daily basis. States have always had—had Congress wanted to preempt the States from enforcing the law, they would have used their plenary powers. They have never done that. There has never been a preemption. It has always been a collaborative effort between local law enforcement and the Feds to secure this Nation, and that should always be our priority, the rule of law, dignified, compassionate, respectful, but not apologetic for enforcing our laws and securing our borders.

Chairman SCHUMER. I appreciate that, and I wanted to give you the opportunity to state your whole case because, obviously, you are outnumbered here.

Mr. PEARCE. That is usually the case, Mr. Chairman.

Chairman SCHUMER. Okay. Well, again, I appreciate your being here. But I do want to ask the question again, just if you could give me a yes or no answer on that.

Mr. PEARCE. Yes, sir.

Chairman SCHUMER. Which is, if the border were completely secure, if the government could show and we would all agree that no new people are crossing the border, however that was accomplished, you would still want Senate bill 1070 to remain in effect so that the people who are already here without status would leave or be apprehended and deported. Is that right?

Mr. PEARCE. Mr. Chairman, I do not mean to be difficult. A yes or no answer does not——

Chairman SCHUMER. Just give me your answer to that question.

Mr. PEARCE. Well, let me give the answer, because, again, we are a generous Nation. We have more people in this country than every other developed nation combined, legally. But, yes, the laws must be enforced, and with that number you talk about, there ought to be still arrest and deportation. The largest gangs in this country are made up of illegal aliens. The terrorists, the kidnappers, the human smugglers, the drug smugglers. You cannot ignore—you cannot just carve out a little section when you do these kind of things.

Chairman SCHUMER. No, I appreciate that. But your answer is yes.

Mr. PEARCE. Yes.

Chairman SCHUMER. Okay. In trying to promote self-deportation, do you make any distinctions if the person has been in America for 20 years or has U.S. citizen children or was brought here as a minor through no fault of their own? The law does not make any distinctions among those types of people, right?

Mr. PEARCE. Mr. Chairman, federal law does not make any distinction. That is a regulatory function, not a function of the States.

Chairman SCHUMER. Okay. Next question. Do you believe that many national political leaders agree with your policy of self-deportation? Or do you think you have a minority view here even within your own party?

Mr. PEARCE. Mr. Chairman, I have a majority view. Senate bill 1070 is supported two to one from coast to coast across this Nation. After it was originally passed, 73 percent, a Rasmussen poll, 73 percent of Arizonans supported Senate bill 1070. It is still by far the majority in favor of Senate bill 1070. Thirty-four States I have had contact with, they have indicated their desire to pass 1070-like bills. It is——

Chairman SCHUMER. So you believe it is a majority opinion of your party and of the country. Is that right?

Mr. PEARCE. By far the majority opinion of my party, but the majority opinion of America from coast to coast.

Chairman SCHUMER. Thank you.

I want to talk a little bit about racial profiling. There are many critics who say Senate bill 1070 is unconstitutional because it will lead to racial profiling of Latinos, Asians, and other groups. So I want to try to break down the law step by step with you to understand your thought process better because you are the author. No one knows this better than you.

First, to be clear, as you said to several Arizona news outlets, March 5, 2012, you "know why [SB 1070] was written and know every section of the bill. There is nobody better to explain this law to the Senate" than you. Is that an accurate quote?

Mr. PEARCE. That is an accurate quote.

Chairman SCHUMER. Okay. So let me go to Section 3B, known as the "Stop and Arrest Section," whose language is behind me. You are familiar with that section, I presume. You wrote the law.

Mr. PEARCE. Yes, sir.

Chairman SCHUMER. Okay. I want to show you a blow-up of the official training manual given to the Arizona police officers on Senate bill 1070. Behind me here on the screen are the factors the training says police may consider in developing a reasonable sus-

picion that a person is an illegal immigrant and needs to be checked. I am going to highlight a few. It says "in the company of other unlawfully present aliens." It says "the vehicle is overcrowded or rides heavily." It says "dress," and then it says "demeanor, for example, unusual or unexplained nervousness, erratic behavior, refusal to make eye contact."

The one that arouses my curiosity and bothers me is dress. What does an illegal immigrant dress like? Why is dress listed in those factors?

Mr. PEARCE. Mr. Chairman, that was put together by AZ Post. I understand they worked in cooperation with ICE to develop the profile of those folks after making legitimate contacts.

Chairman SCHUMER. But explain to me as the author, do you think dress is an appropriate——

Mr. PEARCE. This is—Mr. Chairman, this is not—this is from AZ Post. This is training material from AZ Post.

Chairman SCHUMER. Yes.

Mr. PEARCE. Not a part of the bill.

Chairman SCHUMER. From the Arizona Police.

Mr. PEARCE. Right, not a part of the bill.

Chairman SCHUMER. I understand. Well, do you think dress is an inappropriate measure——

Mr. PEARCE. I think when a combination——

Chairman SCHUMER [continuing]. Is a reason to stop somebody because of their dress? And then I would ask you, if it is not inappropriate, what does an illegal immigrant dress like?

Mr. PEARCE. Mr. Chairman, almost all—when you train a police officer—I have been in this business for a long time in law enforcement and public safety. It is a compilation of issues that tend to raise the level of suspicion to the level of probable cause, not any one isolated incident. This is just a list of things that lead you to ask questions. I know questions are a dangerous thing. People might actually give you an answer. So——

Chairman SCHUMER. Sometimes questions are a dangerous thing because they lead to profiling, and it seems to me when the word "dress" is used—I mean, just give me—do you in your experience—you have lived in Arizona your whole life, I believe?

Mr. PEARCE. Yes, sir.

Chairman SCHUMER. Do illegal immigrants dress any differently than——

Mr. PEARCE. Mr. Chairman——

Chairman SCHUMER [continuing]. Legal immigrants or American citizens?

Mr. PEARCE. I do not want to be confrontational, Mr. Chairman.

Chairman SCHUMER. No. I know.

Mr. PEARCE. But I want to tell you, this is a list of things to look for, and they are trained by ICE. This was ICE training in terms of a compilation, but it is like anything——

Chairman SCHUMER. ICE did not——

Mr. PEARCE. No one issue does—if I am responding to a bank robbery or a Circle K robbery and I have got a description kicked out by radio of a white male, average height, white T-shirt, dark pants, running down the street, I am responding to that crime scene and I see a white male, white T-shirt, dark pants, turns out

to be jogging past, I stop him. I have a pretty good reason to ask him a few questions. When I get to the Circle K and I find out he is not the guy, he gets released. You have to respond to reasonable suspicion to do your job, Mr. Chairman.

Chairman SCHUMER. My argument——

Mr. PEARCE. But this is just a list of things to look for.

Chairman SCHUMER. First, I do not believe ICE sanctioned the use of the word "dress." We will check that out. If they did——

Mr. PEARCE. I am just told that that is who they worked with in cooperation of developing that criteria, Mr. Chairman.

Chairman SCHUMER. So let me ask you this question: Instead of going through these criteria and other criteria, why didn't you just say—and, again, the criteria are not yours. The Arizona police, as you say.

Mr. PEARCE. Yes, sir.

Chairman SCHUMER. That is what we say up there, mandatory check. But why didn't you just say that everyone who is stopped by police has to be checked for legal immigration status? Why do you require the police to form opinions about whether a person is an illegal immigrant first before requiring police to ask that person for proof of legal status? Doesn't the way you wrote the law either require or certainly inveigh toward racial profiling?

Mr. PEARCE. Just the opposite, Mr. Chairman. Again, under federal law, you know—under the U.S. Constitution and the Arizona Constitution, we have the Equal Protection Clause. I knew those kinds of issues would be raised by those open-border folks that are against any enforcement. We have been sued on everything we have done from voting fraud, to stop voting fraud, welfare fraud, to going after illegal employers who compete illegally and immorally and have a competitive advantage over the honest employer. It does not seem like—no matter what we do, Mr. Chairman, we are attacked for simply enforcing the law and trying to protect American citizens and jobs for Americans. So you knew those questions would be asked. You knew they would come after you. We simply wrote the bill to preempt those kinds of silly arguments and try to protect—try to protect everybody's rights. As a civil libertarian, I am a believer that everybody—you have to have a reason to do stuff. I do not want a police state. I want a reason to do something. That is why those—that is why that bill was written in the manner it was written.

Chairman SCHUMER. So let me ask you again. Why wouldn't it have done just what you say, rule of law, not discriminate, why wouldn't it have been better to say that everyone stopped by the police should be checked for their status? Why come up with obviously a really problematic definition of suspicion? And you have seen in the regulations that it is problematic.

Mr. PEARCE. Well, Mr. Chairman, I do not agree that it is problematic. In Arizona, first of all, we made the proper exceptions. If you have an Arizona driver's license or a driver's license from a State that requires proof of citizenship or legal presence, you are automatically exempt from that. That is axiomatic at that point reasonably that you are legal. All we wanted to do in this bill is common sense.

Chairman SCHUMER. Right.

Mr. PEARCE. You know, we teach our officers to have common sense. You know, respond to reasonable suspicion. Not everybody—you know, you stop somebody, I do not want to hold a family up while I am asking all kinds of silly questions when there is no reason to ask those kinds of questions. This was based on reasonableness, Mr. Chairman.

Chairman SCHUMER. Well, I guess many would disagree with that——

Mr. PEARCE. I understand.

Chairman SCHUMER. [continuing]. Including some on the panel.

Let me ask you a question about minors. If a police officer stops a minor, what documentation is the minor supposed to show the police officer to prove that he or she is a U.S. citizen?

Mr. PEARCE. Mr. Chairman, it is a little different for minors, needless to say. They are not required—and if you are an adult, you are required under federal law to carry your indicia with you at all times, at all times under 8 U.S.C. 1304 and 1306. You know, so, again, reasonableness is the thing. If there is not a reason to ask, officers are not going to ask.

Chairman SCHUMER. Well let me ask you this: There is a car driving—there is an adult driving it. There are minors in the back seat. Now, the law allows the children to be checked, right?

Mr. PEARCE. Well, Mr. Chairman, at a certain age—and I am not recalling the age. At a certain age——

Chairman SCHUMER. No, there is no age. Just all the children can be checked and should be checked under the law and its regulations. What are the children supposed to show?

Mr. PEARCE. Mr. Chairman, if they do not have ID, they are not supposed to show anything. You are not required to have ID unless you are a driver or, you know, in Arizona we allow children to go down and get an Arizona ID at any age if they have a parent——

Chairman SCHUMER. So you think all—under this law, children, to prevent themselves from being sent to a detention center or whatever, would have to carry some kind of ID.

Mr. PEARCE. Mr. Chairman, that is not accurate.

Chairman SCHUMER. Well, that is——

Mr. PEARCE. Mr. Chairman, there is a reasonableness again inferred. You know, you are taking the extreme, and I understand trying to make your point, but, Mr. Chairman, it is just not accurate, it is just not so.

Chairman SCHUMER. Well, does the law say anywhere that children do not have to be checked when they are stopped in a car in the situation? I understand the law says the opposite.

Mr. PEARCE. Mr. Chairman, it gives—this law makes exceptions to law enforcement, you know, to make reasonable decisions based on the circumstances at the time. I suspect—and, again, I think it is demeaning to law enforcement to assume they do not know how to do their job in a respectful, proper——

Chairman SCHUMER. I want to go to "demeaning to law enforcement" because—I am just going to submit for the record Section 3B, and it does not list any exceptions at all.

[The information appears as a submission for the record.]

Mr. PEARCE. Mr. Chairman, it is modeled after federal law.

Chairman SCHUMER. Okay. Well, but there are no exceptions here. I do not believe federal law is based—I do not believe this is consonant with federal law.

Mr. PEARCE. Yes, sir.

Chairman SCHUMER. Let me go to——

Mr. PEARCE. It mirrors federal law, Mr. Chairman.

Chairman SCHUMER. Let us go to "demeaning police." Doesn't your law permit any citizen of Arizona to sue any police department or any individual police officer who refuses to ask for immigration documents during a stop?

Mr. PEARCE. Mr. Chairman, let me correct you. It does not allow them to sue any individual law enforcement officer when they use the discretion that we give them under this law and other laws. That discretion has allowed the officer—and if you read the bill carefully, you will see that discretion. In fact, we give the officers——

Chairman SCHUMER. But there is a right to sue.

Mr. PEARCE. Let me—I understand, Mr. Chairman.

Chairman SCHUMER. So just explain that right to sue to everybody.

Mr. PEARCE. Yes, sir, and I will. But law enforcement has qualified immunity under this bill because we knew that they would be sued whether they do or they don't. What the lawsuit has done—that phrase in our founding document, "We, the people"? In Arizona, we still believe in "We, the people." We gave we, the people, the ability to sue their agency, their government, if they will, if they fail—have a policy—have a policy that limits or restricts the enforcement of our immigration laws as required under federal law. So, yes, sir, we do give citizens a right of——

Chairman SCHUMER. It is up on the chart here. It says, "Any person who is a legal resident of this State may bring an action"—that is a judicial action—"an action in superior court to challenge any official or agency"—not just the agency but any official, that is the words of the statute—"of this State or county or city or town or other political subdivision of this State that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws."

Now, John Smith could decide that Officer Jones has adopted a policy of not stopping the right people in John Smith's mind and sue, and that would be an actionable case to see how the court would decide it. And I just want to ask you this: Is there any other statute in Arizona that you are aware of that allows citizens to sue police officers for not enforcing a particular law?

Mr. PEARCE. My understanding, there are a couple, but let me explain——

Chairman SCHUMER. I have not come across any, so you can submit them into the record. But I would state for the record I have not seen any. We checked that.

Mr. PEARCE. Okay. Mr. Chairman, again——

Chairman SCHUMER. So I would ask you—I am just going to ask you this and then let you respond at some length. Why was this law singled out to allow this action? Isn't that demeaning to police officers? And——

Mr. PEARCE. Mr. Chairman——

Chairman SCHUMER [continuing]. Just one other question, maybe the most important. Won't that push them to do things to protect themselves from a lawsuit that they believe they should not do? You can answer all of those.

Mr. PEARCE. And I am grateful for that chance to answer that. Law enforcement sat down with me to write that section, Mr. Chairman, and the "official" was interpreted as somebody in an official capacity to set policy, and that is why the qualified immunity is to the officer on the street where we give them the discretion to enforce this law.

You know, law enforcement and attorneys sat down as we decided and mulled over that language. That was their language put in by them, comfortable language that they felt gave the officers the protection they need to have discretion, at the same time language that was more compelling to the city to eliminate. Sanctuary policies are illegal, Mr. Chairman. It is illegal under 8 U.S.C. 1644 and 1373 to have a policy that limits or restricts the enforcement of these laws. Not only are States not preempted, they are preempted from having a policy that preempts them under federal law. That is what this is about, making sure they do their job, taking the handcuffs off them, as you have stated and quoted me, and that is exactly what this is doing. And we gave them qualified immunity while enforcing this law and gave the citizens the right to hold their government accountable.

Chairman SCHUMER. How does it square taking handcuffs off law enforcement and then allowing citizens to sue law enforcement because an average citizen with no experience in his or her judgment says they are not enforcing the law? It is sort of a contradiction, and I am just curious as to why on this particular law you wrote in that provision when it does not exist, I do not think, in any other Arizona statutes, but certainly not in the vast majority of law enforcement statutes? As somebody who has been a pretty pro-law and order, pro-police person in my career, the last thing police like is to be sued by citizens supplementing their own judgment.

Mr. PEARCE. Again, I do not want to, you know, take this into he said/she said back and forth, Mr. Chairman, but the truth is they helped write it. That was their comfort—that was language they were very, very comfortable with. They sat down with me. We sat with their attorneys and with the associations and wrote that language to make them comfortable. That is why—and, again, Mr. Chairman, you know, this whole thing—you know, when you talk about no other bill—I do not know of any other law that brings me to Washington, D.C., in Arizona State law that requires me to defend the rule of law. I have not been here to defend the tough DUI laws that we have. I have not been here to defend the human smuggling laws that we have. I have not been called to Washington, D.C., to defend anything else. So you see why we have to be very careful when we wrote this and put those provisions in there? Mr. Chairman, we knew that we would be challenged by everybody in town for simply trying to enforce our laws and protect our citizens and protect jobs for Americans.

Chairman SCHUMER. Okay. Well, thank you. I have one more area of questioning, but I do not see how it either protects police or protects you from being criticized to then allow citizens to sue

the police because in their judgment they did not enforce it. But let us go to documentation.

Mr. PEARCE. Could I just——

Chairman SCHUMER. Yes, please, you can answer that.

Mr. PEARCE. Mr. Chairman, that law is not—that piece has not been enjoined. Only four sections of SB 1070 have been enjoined. The other six are in place. That one is in place. We had not one lawsuit from the citizens. This runaway train that you are kind of painting a picture of, the citizens are going to jump up and look forward to suing their government, it has not happened. We do not have one lawsuit as of today because those policies have been eliminated in the State of Arizona.

Chairman SCHUMER. But that is because the rest of the law has been enjoined if it is——

Mr. PEARCE. No, it has not——

Chairman SCHUMER. If it goes back into effect, we will see citizens sue.

Mr. PEARCE. But, Mr. Chairman, that is not true. In the first part of SB 1070, it says you will not have a policy that limits or restricts the enforcement of these laws so the slightest degree—to the slightest degree. So there must be some compliance. Citizens are not running to the courts to sue.

Chairman SCHUMER. Let me go to one final area of questions, and I appreciate my colleague, Senator Durbin, being patient here. There is another chart I want to put up behind me. Do you know how many forms of identification exist today that can be shown to prove your lawful status in the United States by federal law?

Mr. PEARCE. I do not know the exact number.

Chairman SCHUMER. No, I did not either, so do not feel bad about that. But there are 53. The answer is that there are at least 53 documents that the Department of Homeland Security says will prove lawful status.

Now, again, I am going to show you—those are the 53. You do not have to read them all. There are a lot of them. That is the point.

Now I am going to show you your training manuals, the Arizona police training manuals, and it says the only documents are—much more limited, and I will read them: a U.S. passport, U.S. military DD214, U.S. military ID card, U.S. military dependent card, U.S. birth certificate, U.S. and State government employee ID cards, tribal ID cards, and driver's licenses. So there are just eight documents.

Now, according to the law, if a legal immigrant shows—this is a legal immigrant, not illegal—any of these 45 other valid documents to police—this is according to your law—they have to be taken to an ICE facility to have their immigration status determined by a Federal Government official or wait on the side of the road for an ICE official, a federal official, to come before they can be released. Is that correct? That is what the law says, right?

Mr. PEARCE. No, that is not quite correct, Mr. Chairman. There is a 24/7 hotline that ICE has set up and also 287(g) trained officers who are trained—or if they are cross-certified as federal agents can make determination for those purposes. It is usually a five-minute phone call on the phone to an ICE agent or a 287(g)

trained agent, and there are 200-something that are trained in Maricopa County alone, Maricopa County deputies. So it is a five-minute conversation on the telephone.

Chairman SCHUMER. Well, I just want to submit for the record a statute of the police training manual again, Arizona police: "If reasonable suspicion of unlawful presence exists and it is practicable (see below), call ICE, CBP, or a 287(g) officer to determine the immigration status of the person." So, in other words, you are not consonant with federal law. You are not helping federal law enforcement. In other words, if you are doing what you say you are doing in this statute, you would say these State police officers, if they saw any one of these 53 documents, should be able to say, okay, that is ID and go on your way. But instead what Arizona does—and it does it in a lot of senses; this is just one little example—is it restricts the federal law and substitutes its own judgment. Isn't that correct?

Mr. PEARCE. Mr. Chairman, no, that is not correct. And, again, they have a hotline—these are guidelines, as most policy——

Chairman SCHUMER. Yes, but——

Mr. PEARCE. These are guidelines for those officers, and then as you noticed, what you just read, then call. That is a 24/7 line.

Chairman SCHUMER. Why is it that the State police officer under your law can enforce some provisions that are allowed in federal law but not so many others? Isn't that—that is not helping the Federal Government enforce the law. That is supplanting your judgment and restricting the federal law.

Mr. PEARCE. Mr. Chairman, I respectfully disagree. That is not what it does at all.

Chairman SCHUMER. Okay.

Mr. PEARCE. It simply gives them guidelines of documents that are acceptable on their face, and any other questions you have, you simply call ICE or a 287(g) trained officer. Again, I will repeat myself, and I hate to be too redundant here, but it is a five-minute conversation. It happens every day of the week.

Chairman SCHUMER. Yes, but I am sure there are many other instances that are like the clip that Senator DeConcini showed where they have to be brought to a particular place, detained, and somebody else has to look at them. We will ask these other witnesses——

Mr. PEARCE. Mr. Chairman, we do that for——

Chairman SCHUMER [continuing]. If they are familiar——

Mr. PEARCE [continuing]. DUI guys, too, and some—you know, that is an officer discretion.

Chairman SCHUMER. Okay. Thanks.

I have a few more questions for the other witnesses, but I have kept Senator Durbin long enough, so I am going to call on him now to ask some questions, and then I will go back.

Senator DURBIN. Thank you, Mr. Chairman. I appreciate your line of questioning.

Let me start, if I might, with Senator Gallardo. There is an agency in Chicago. It is a charity. It is called Las Mujeres Latinas en Accion. It has been in business for over 20 years. It was established in the Hispanic neighborhoods of Chicago as a domestic violence shelter, primarily for new immigrants to this country and for the

undocumented, so that if women and children were the victims of violence, they had a safe place to go. They had someone who would listen to them, counsel them, and refer them to law enforcement in those circumstances where perhaps the husband has been abusive to the mother/the wife and even abusive to the child.

I have supported them throughout my time in office, because I do not believe any of us want to see that happen, and we want to do everything we can to stop those guilty of that type of crime.

You talked about the impact of this law, this Arizona immigration law, on people living in Arizona. Could you tell me your opinion as to whether or not this law makes it easier or harder for an undocumented mother to come forward and to report to law enforcement domestic violence or even the abuse of her children?

Mr. GALLARDO. Definitely, Mr. Chairman, Senator. Senate bill 1070 has not even been fully enforced. I mean, there are still portions of it that have not been acted on, and the portions dealing with local law enforcement trying to enforce immigration—or forcing them to enforce immigration law—and just a real quick comment in regards to Mr. Pearce's comments in regards to law enforcement. The first lawsuit filed against Senate bill 1070 was a Phoenix police officer. We are talking an officer on the street who came forward spending his own dollars to file a lawsuit against the bill because of exactly these types of situations. The wall that is placed between law enforcement and the Latino community is there, and the law—Senate bill 1070 has not even gone into effect, and there is already the wall there.

So you have situations like women who are in a domestic violence situation who are too fearful of going to law enforcement and reporting their abuser because of the fear of them getting deported and separated from their kids.

So, I mean, this law has not even been in effect, and we are already feeling the consequences. And it is unfortunate that you see women constantly—I work real closely with the Coalition Against Domestic Violence in the State of Arizona, and report after report of situations where women who are undocumented, who are in a relationship, are for the most part held hostage in their own home because of their fear of going to law enforcement. Senate bill 1070 has not even been put into effect, and we are already seeing this barrier.

You ask any law enforcement officer in the State of Arizona, they will tell you the number one way for them to solve any type of crime is working real closely with the community. It is community policing. That is how they resolve crime. It is having folks going to law enforcement and reporting these types of crimes when they are victims or when they witness crimes. Unfortunately, Senate bill 1070 puts a wall right between law enforcement and the Latino community, and particularly with women suffering from domestic violence, too fearful to go to police to ask for help because of their fear of, one, being deported and, even worse, being separated from their kids, and that is their big concern.

Senator DURBIN. Or being charged under this law.

Mr. GALLARDO. Exactly.

Senator DURBIN. Because of a reasonable suspicion that they are in this country in undocumented status. So here is a mother, a

wife, a victim of domestic violence, perhaps with a child who is a victim of child abuse or worse, who is fearful to come to the law to protect herself or her child because of this 1070.

Mr. GALLARDO. And, Mr. Chairman, Senator, we are pointing out an area in the law that—this is exactly why Governor Brewer denied the invitation. She cannot justify the very bill that she signed. It is these types of situations that if you ask her these questions, she cannot answer them, because it has put a very polarizing sense with law enforcement and the community. I mean, this wall that is placed in front of women or victims of crime that 1070 is really hurting these victims. And it is unfortunate, particularly in the cases of domestic violence where you have women who are just held hostage. They are in terrifying situations, and now we have a bill that has not even been fully enacted, and it is still already creating this huge wall.

Senator DURBIN. Thank you.

Mr. Pearce, you published something on, I believe it was, May 24th of 2011 entitled "Warning: The Nightmarish *DREAM Act* is back," and it was on the letterhead of BanAmnestyNow.com. It was a lengthy piece. "It Is Back, Help Us Stop the *DREAM Act*" was the title of it. And in one section of it, you suggested that the proponents of the *DREAM Act* talk about those who would be eligible as honor students and so forth. And you went on to say, "What the pro-amnesty interests never show are the tens of thousands of criminals, drug dealers, human traffickers, and gangsters who are caught and sent back over the border each year, only to return time and time again. Help me stop the *DREAM Act*."

Mr. Pearce, have you read the *DREAM Act*?

Mr. PEARCE. Mr. Chairman, which version?

Senator DURBIN. Well, that is a correct statement. It has changed. But there has been one consistent thing throughout. The one consistent thing is people with a serious criminal record will never be eligible for the *DREAM Act*. Never. There has never been a version of the bill that I have been sponsor of that would allow anyone guilty of being criminal, drug dealer, human trafficker, or gangster to be allowed into the United States under the *DREAM Act*. Do you disagree with that?

Mr. PEARCE. Yes, I do to some degree because not all those are convictions. Not all those are convictions, Mr. Chairman. We are only talking about convictions that would be prohibited from it.

Second, Arizona, the voters have voted 75 percent to not allow the *DREAM Act*——

Senator DURBIN. That does not answer my question, sir. I am asking you whether a person who has been convicted of drug dealing is eligible under the *DREAM Act*.

Mr. PEARCE. Convicted, Mr. Chairman, they probably would not be eligible under the *DREAM Act*. But the *DREAM Act* goes much farther, as you know. It is a form of amnesty within itself. You know, and, again, I do oppose the *DREAM Act*. I will make it very clear, Mr. Chairman. And, again, Mr. Durbin, these are always difficult issues, Mr. Durbin. All of us have a heart, and all of us have compassion. But laws that have no consequences are no laws at all.

Senator DURBIN. So let me ask you this: If you were speeding down the highway and had your infant in a car seat in the back

seat, and you were pulled over and charged with speeding, should that infant get the ticket, too?

Mr. PEARCE. Mr. Chairman, that is not—Mr. Durbin, I do not follow that analogy at all.

Senator DURBIN. No one should because——

Mr. PEARCE. It does not happen.

Senator DURBIN. Well, I will tell you how it happens. It happens when an infant is brought to the United States and the parents do not file the papers. The infant did nothing wrong. The infant has lived here its entire life and graduated high school and now wants a chance to earn its way into legal status, and you are saying because the parent did not file the papers, now the child must suffer.

Mr. PEARCE. Mr. Durbin, if I might respond. You know, again, you need to blame those responsible and not us for having it be a Nation of laws. I have met with these students at ASU. I have met with a bunch of them that are in that status. And we even shared some tears together. Some of those are wonderful kids. And I do not how you carve out—because the way this bill works, it is always a blanket to everybody. It does not carve out individually. It is a blanket amnesty for those folks.

There are exceptions that I think the law allows, certain exceptions of the law, but those ought to be carefully executed exceptions, Mr. Durbin.

Senator DURBIN. Mr. Pearce, Mr. Pearce, the *DREAM Act* is not blanket amnesty.

Mr. PEARCE. Yes——

Senator DURBIN. You have to earn your way into legal status.

Let me introduce you to another one of your neighbors from Arizona. I would like you to get to know him a little bit here while you are at this hearing. His name is Oscar Vasquez. He grew up in your home State, spent his high school years in junior ROTC. He entered a college-level robot competition sponsored by NASA. He was competing against students from MIT and other top universities. He won first place.

In 2009, Oscar graduated from Arizona State University with a degree in mechanical engineering. Not exactly a criminal, drug dealer, human trafficker, or gangster. He was one of the top three students in his class.

Let me tell you what happened after he graduated and realized he could not be licensed as an engineer because he is undocumented. His parents brought him here as a child. He has no legal status in this country. He went back to Mexico. And while he was in Mexico, the Obama administration granted Oscar a waiver to reenter the United States. Now, at any time before he left for Mexico, he could have been pulled over under your law, under Senate bill 1070, reasonable suspicion, maybe the way he dresses or the fact that he may have an accent. Without the waiver from the Obama administration, Oscar would have been barred from returning to the United States for at least 10 years and separated from his wife, Carla, and their two-year-old daughter, Samantha, who live in Arizona and are American citizens.

Well, the good news is he was given the waiver. He came back to the United States. He is an example of a *DREAM Act*-eligible person. Do you know what he did when he came back to the United

States, Mr. Pearce? I am about to tell you. He immediately enlisted in the United States Army. He completed basic training, and then he was sworn in as an American citizen. Today Oscar is serving our country and his country, the United States of America, in Afghanistan.

Now, you have criticized the *DREAM Act* as "some liberal dream of creating an American military staffed with foreign soldiers." Do you consider Oscar Vasquez a foreign soldier?

Mr. PEARCE. Mr. Durbin, you know, Oscar is a good story to use. The exception was made. That is exactly what I am talking about. Those exceptions ought to be carefully thought out and not just a blanket amnesty or support.

There is a cost to the American taxpayers for all this. You know, if you want to make exceptions, I am okay with the proper exceptions, and I think Oscar is probably one of those that met all the criteria that any American would be proud. And certainly I am proud that he would join the military, proud that he would defend the Nation he wants to be a part of. Those are good things, Mr. Durbin. Do not take——

Senator DURBIN. Be careful. It does look like you are getting close to the *DREAM Act* here.

Mr. PEARCE. That is right. I am not in favor of a blanket amnesty approach to the *DREAM Act* or anything else. There are costs of hundreds of millions of dollars.

Senator DURBIN. I have got to get you away from——

Mr. PEARCE. I am talking about the——

Senator DURBIN [continuing]. The cliches——

Mr. PEARCE [continuing]. Exceptions that are appropriate. We have them.

Senator DURBIN. Mr. Pearce, you were in the legislature. I have got to get you away from the cliches to actually read the bill.

Senator DeConcini, these stories about your fellow Arizona residents, you must know many yourself, families that are going through this. We are now reaching a point where these *DREAM Act* students are stepping up and self-identifying so people know who they are, what their dreams are, and what part they can play. You had the honor of representing the State of Arizona for so long. Can you put their stories in the context of your home State and this debate over Senate bill 1070?

Mr. DECONCINI. Well, Mr. Chairman, I will make an attempt to do that. Had I been here, I would have supported the so-called *DREAM Act*. I supported immigration reform that is orderly, safe, and legal, and thus creates a pathway—not amnesty—a pathway to citizenship. There are numerous examples here of people—I serve on the Arizona Border of Regents. We govern the three universities, composed of eight appointed members. We have constantly had the problem of students coming to their presidents and some of them petitioning members of the Board of Regents to grant them some kind of an exemption, some way to stay in school. And our legislature put forward legislation that says they have to pay out-of-State tuition if they are going to stay in our universities and yet they may be deported under Senate bill 1070. It has caused immense pain and suffering in the Latino community. I know many of students caught up in this crisis.

And, you know, as long as we are on the subject matter, my distinguished colleague, former Senator Pearce, will tell you this is not profiling. It is profiling. Police officers tell you it is profiling. They feel they have to profile. There are two county sheriffs— located on the border with Mexico, Santa Cruz and Pima Counties. These two sheriffs are opposed to this bill. These two sheriffs are against it because it infringes on federal law, and they are not trained to enforce federal immigration law. The Secure Communities program that DHS has put in place has helped train them, but they refer people over when there is a violation of the law.

So it is absolutely absurd to state that SB 1070 does not lead to profiling. This has become such a profiling issue in Arizona that two of our sheriffs, elected sheriffs, one in the largest county, is under investigation both criminally and civilly. The civil action is based on profiling. And that is the reality because people are being profiled.

And, you know, you can talk about, well, that was not the intent. Maybe it was not the intent. "Oh, I have got a heart, and we do not want to do that." But that is the fact. Imagine, two law enforcement officers duly elected enforcing this law are under investigation, one for criminal, one for criminal and civil, and the civil part is profiling, and the other one is misuse of the office. And I could tell you stories that would make your hair stand on end of public officials, including a superior court judge that was indicted because he opposed this particular sheriff, and two members of the Maricopa County supervisors who were indicted. That county attorney that indicted them with that sheriff has been disbarred in Arizona, and that sheriff is under investigation.

So, you know, it has gotten so political, and if you talk out against some of the law enforcement people, you get arrested in Arizona. If you are judge and you rule against them—he brought a criminal action against a judge. All these actions were thrown out. All were thrown out. Maricopa County just settled a $1 million settlement lawsuit by one of those supervisors who sued after the case had been dropped the action of that prosecutor and because of that sheriff.

Thank you, Mr. Chairman.

Senator DURBIN. Thank you, Senator. And I will just close. Thanks, Senator Schumer, for the extra time here.

I want to echo his words as we did at our hearing on racial profiling. I have the highest respect for our law enforcement officials. The men and women who get up every morning and put that badge on and risk their lives for me, my family, my community, my neighborhood, my State, and this country deserve our respect. We do not help them in their job when we create laws like this which put them in a position of calling people out because of their status, not because of the suspicion they have even committed a crime. And that is not fair to them. It does not make their job any easier.

Thank you, Mr. Chairman.

Chairman SCHUMER. Thank you, Senator Durbin.

I just have a few more questions, and these are to the other three witnesses.

First, all of you are Arizona citizens and residents, right? Can you point out ways that illegal immigrants, undocumented immi-

grants, dress differently than other people? What does it say about the Arizona police when they say that is one of the things to look for?

Mr. DECONCINI. Mr. Chairman, if I could just comment, as a former Senator, a former prosecutor, native Arizonan, a mother who was a native Arizonan, I am embarrassed for my State. I apologize for Arizona's actions toward our Latino community, legal or illegal. This is not a way to treat people. So many of the religious organizations in our State, they have outreach programs. They do not ask whether or not you are an illegal immigrant. As Senator Durbin pointed out, the violence, domestic violence—for any other kinds of crimes, they do not ask, because that is what America is all about. And the Federal Government has the responsibility to enforce immigration laws.

Thank you, Mr. Chairman.

Chairman SCHUMER. Either Senator Gallardo or Mr. Landfried in terms of my question?

Mr. GALLARDO. Thank you, Mr. Chairman. Senate bill 1070 has been the worst piece of legislation ever passed in the State of Arizona. If you look at Section 3B that you were mentioning before, where reasonable suspicion exists that a person is an alien and is unlawfully present in the United States, reasonably suspicious, the only way to determine this—it is not by clothing. It is by the color of their skin, end of discussion. There is no way to enforce Senate bill 1070 without using race as the determining factor if someone is here legally. I would propose that if Mr. Pearce or myself were walking down the street and you asked law enforcement to pick out the person who they suspect would be here undocumented, they are not going to be pointing at Mr. Pearce. They are going to be pointing at me. They have to use race in order to enforce Senate bill 1070. That is the unfortunate part.

And, Mr. Chairman, if Senate bill 1070 was so popular, why did the sponsor get recalled out of his own legislative district?

At the end of the day, this bill is bad public policy by the State of Arizona. It has put a black cloud over the State of Arizona. It has given us a negative image that it is going to take us years to get out from underneath. It is poor public policy, Mr. Chairman.

Chairman SCHUMER. The legislation, as you know, is before the Supreme Court tomorrow. We reached out to many Arizona officials. I will say this for Mr. Pearce. He was the only one who would come. If you believe in the law, if you voted for the law, if you are enforcing the law, why can't you come and defend it? But Mr. Pearce was the only one who would come. He has had his opportunity to make his case. Governor Brewer did not want to come. We reached out far and wide to incumbent officials who supported the law. No one would come—which says something, I think, about the law. But it also is to your credit, Mr. Pearce, that at least you have the integrity to come here.

I wanted to ask Senator DeConcini, the clip you showed, which was powerful and moving, I take it that happens frequently.

Mr. DECONCINI. Mr. Chairman, I do not have factual information to give you a number. I am told——

Chairman SCHUMER. But Mr. Pearce was sort of making it seem like it is an exception.

Mr. DECONCINI. I am told by law enforcement officials, the sheriff of Pima County has conveyed to me that, yes, that happens. And he feels that his deputies should not have to be put in a position of being liable if they should not ask somebody their immigration status.

Chairman SCHUMER. Mr. Gallardo, are you familiar with how the law is being—well, it has not had much time to be enforced because it was enjoined, but——

Mr. GALLARDO. And, Mr. Chairman, I think that is the critical——

Chairman SCHUMER. I think the clip was actually before the law was passed, right? Is that right?

Mr. DECONCINI. Mr. Chairman, it had passed both Houses, and the Governor signed it about three days later, but the intent was there, obviously, so law enforcement knew it was going to pass. The Governor had said she was going to sign it.

Chairman SCHUMER. Go ahead, Senator Gallardo.

Mr. GALLARDO. Thank you. Mr. Chairman, I think that is the critical part of Senate bill 1070. It has not even been fully enacted. Yes, we are still already seeing the consequences over the last two years. We had Julio Mora, who was arrested, detained, he was brought in, and he is a U.S. citizen. These are situations after situations after situations. Juan Varela, a United States citizen who gets in an argument just days after Governor Brewer signs the bill, and violence occurs and Mr. Varela is dead over Senate bill 1070. These are unintended consequences that come from legislation when the State tries to fix what is ultimately a federal immigration problem and then forces law enforcement to try to enforce it. And then there are penalties against any law enforcement officer who does not enforce it, and——

Chairman SCHUMER. Are you familiar with any other statute in Arizona, you or Senator DeConcini, where a private citizen can sue because the individual officer was not enforcing the law?

Mr. GALLARDO. Not one. Not one, Mr. Chairman.

Mr. DECONCINI. Mr. Chairman, I have not done the research, but I served as a county attorney there. I knew of no laws at that time—that was way back in the last century, I must say, and I have not read every law, but I talk to police officers all the time. I know of no other law. Perhaps there are some, but I do not know of any.

Chairman SCHUMER. We could not find one. There may be one or two, but it is certainly the exception to the rule.

Mr. DECONCINI. Mr. Chairman, it is the exception if there is.

Chairman SCHUMER. If there is, yes.

Mr. Pearce, you get the last word before I conclude here.

Mr. PEARCE. Okay. Thank you, Mr. Chairman. I get a little disappointed, you know, that we are the bad guys for enforcing the law. First of all, Proposition 200 passed in 2004 overwhelmingly by the citizens of the State of Arizona. That also has that right of action for citizens to sue their government if they are giving out benefits to those that are not eligible.

Chairman SCHUMER. What is that one, Mr. Pearce?

Mr. PEARCE. Proposition 200, known as——

Chairman SCHUMER. Is that an immigration law?

Mr. PEARCE. It deals with photo fraud, and the purpose was to have your ID at the polls and no benefits for those in the country illegally, and that right of action is in that bill.

Chairman SCHUMER. And did that allow law enforcement explicitly to be sued? I do not think so.

Mr. PEARCE. It was just the benefits. And, again, Mr. Chairman—and I do not mean to argue with you, but I will correct you again. Law enforcement helped write that section. It had nothing to do with suing law enforcement. They got qualified immunity in that bill, qualified immunity to enforce the law. It has to do with officials who are in the policy-setting position and agencies that set those policies.

Chairman SCHUMER. Okay.

Mr. PEARCE. But I am a little disappointed when folks talk about being embarrassed for the State of Arizona. Two to one across this country, we have a national crisis, and yet everybody wants to ignore that the cost of the damage, the crime, and if we can go through this—and if I had the time and Mr. Chairman would allow the time, I could give you a lot more information. Instead, these little anecdotal things that we pick out a victim that said, you know, because all of us are disappointed when inappropriate action is taken on anybody. This bill—and, again, illegal is a crime, not a race. It does not pick out any nationality. It just so happens 90 percent of those who violate our immigration laws come from across that southern border or are Hispanic. You know, this law does not pick those out. I mean, common sense, if I have got three young kids in the middle of Sun City at three o'clock in the morning, I do not care what color they are. They are going to get stopped and questioned. Kids do not live in Sun City. Three o'clock in the morning is another element. I mean, just a little common sense.

Mr. Chairman, we have a national crisis, and yet we continue to ignore it. There are some that run for office and talk about building a darn fence, but never hear it again once they are elected. I think Americans are a little tired of the drive-by statements by politicians instead of dealing with the issue at hand, enforce our laws, secure our border. It is not too much to ask, Mr. Chairman.

Chairman SCHUMER. We have made big progress in that direction, sir.

Let me conclude——

Mr. PEARCE. We have made some, Mr. Chairman.

Chairman SCHUMER [continuing]. By saying this. First, let me thank the witnesses. I am sure it did not escape notice that none of my colleagues on the other side of the aisle came to this hearing. That is not surprising. They are absent from this hearing just as they have been absent from every attempt we have made to negotiate a comprehensive solution to our immigration problem. We need people to sit down, people on both sides of the aisle in a bipartisan way, and solve this problem. We have been unable to find negotiating partners. And so the absence of people here today not only shows an unwillingness, both in Arizona and here in Washington, of them to defend this law or be associated with this law, but it shows an absence of an ability—it is broader. We do not have anyone sitting down and saying here is what we want to do to solve this immigration problem. We get a lot of rhetoric out there on the

campaign trail, but we do not get any action, even if they would disagree with the kind of proposal that I and my colleagues have made to do that. And so they are not here. It is not surprising. It has been typical in terms of being absent on the entire immigration debate except in terms of rhetoric, sometimes, unfortunately, very inflammatory.

With that, I am going to close this hearing and thank our witnesses. I just have to do a little housekeeping here. The record will remain open until Tuesday, May 1, 2012, for further testimony and questions. I would like to thank individuals and groups for submitting testimony for the record. Without objection, it will be added. That includes the U.S. Conference of Catholic Bishops, the American Immigration Council, the Rights Working Group, and the American Civil Liberties Union. I am asking unanimous consent these statements be inserted into the record, and my colleagues have until May 12th to put in statements as well.

[The information appears as a submission for the record.]

Chairman SCHUMER. I thank the witnesses again, and the hearing is adjourned.

[Whereupon, at 11:49 a.m., the Subcommittee was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

Witness List

Hearing before the
Senate Committee on the Judiciary
Subcommittee on Immigration, Refugees and Border Security

On

"Examining the Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law"

Tuesday, April 24, 2012
Dirksen Senate Office Building, Room G-50
10:00 a.m.

The Honorable Steve Gallardo
Senator
Arizona State Senate
Phoenix, AZ

Russell Pearce
President
BanAmnestyNow.com
Mesa, AZ

Dennis W. DeConcini
Partner
DeConcini, McDonald, Yetwin & Lacy P.C.
Tucson, AZ

Todd Landfried
Executive Director
Arizona Employers for Immigration Reform
Phoenix, AZ

PREPARED STATEMENT OF HON. DICK DURBIN

Opening Statement of Senator Dick Durbin
Immigration Subcommittee Hearing
"Examining the Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law"
April 24, 2012

Mr. Chairman, thank you for holding this hearing.

I am deeply concerned about SB 1070, the Arizona immigration law, and I hope that the Supreme Court finds it unconstitutional. Under our Constitution, states do not have the right to pass their own laws preempting federal laws on immigration.

It is wrong and counterproductive to criminalize people because of their immigration status. Law enforcement does not have the time or resources to prosecute and incarcerate every undocumented immigrant. The Arizona immigration law will simply deter undocumented immigrants from cooperating with law enforcement.

That is why the Arizona Association of Chiefs of Police opposes this law.

There is another troubling aspect of the Arizona immigration law. According to experts, the law encourages racial profiling. Last week, I held a hearing on racial profiling, the first hearing on this subject since before 9/11. We heard testimony about the provision in Arizona's immigration law that requires police officers to check the immigration status of any individual if they have "reasonable suspicion" that the person is an undocumented immigrant.

One of the witnesses at my racial profiling hearing was Ron Davis, the Chief of Police of East Palo Alto, California. Chief Davis, along with 16 other chief law enforcement officers, and the Major Cities Chiefs of Police Association, filed a brief in the Arizona case. In their brief, the police chiefs say, "The statutory standard of 'reasonable suspicion' of unlawful presence in the United States will as a practical matter produce a focus on minorities, and specifically Latinos."

Instead of measures that harm law enforcement and promote racial profiling, like SB 1070, we need practical solutions to fix our broken immigration system. The first step we should take is passing the DREAM Act, legislation that would allow a select group of immigrant students who grew up in this country to earn citizenship by attending college or serving in the military.

The best way to understand the need for the DREAM Act is to hear the stories of the young people who would qualify for this legislation. They call themselves Dreamers. Under the Arizona law, these young people would be targets for prosecution and incarceration. Under the DREAM Act, they would be future citizens who make our country stronger.

Dulce Matuz graduated from Arizona State University with a bachelor's degree in Electrical Engineering. She co-founded the Arizona DREAM Act Coalition, an organization of more than 200 DREAM Act students. Last week, she was named one of the 100 most influential people in the world by Time Magazine.

Mayra Garcia was the President of the Cottonwood Youth Advisory Commission in her hometown of Cottonwood Arizona. She graduated from high school in 2010 with a 3.98 GPA. She is now a sophomore at a prestigious university in California.

In high school, Juan Rios was a leader in the Air Force Junior R.O.T.C. In 2010, he graduated from Arizona State University with a degree in aeronautical engineering. Since graduation, Juan has put his life on hold. He can't enlist in the military and he can't work in the aerospace industry.

Jose Magana graduated as the valedictorian of his high school. At Arizona State University, he joined the speech and debate team, where he ranked 5th in the nation. In 2008, he graduated summa cum laude with a major in business management. Later this year, Jose will graduate from Baylor University Law School in Waco, Texas.

In high school, Angelica Hernandez served in Junior R.O.T.C. and was President of the National Honors Society. Last year, she graduated from Arizona State University as the outstanding senior in the Mechanical Engineering Department.

Unlike the Arizona immigration law, the DREAM Act is a practical solution to a serious problem with our broken immigration system. SB 1070 would harm law enforcement and encourage racial profiling, while the DREAM Act would make our country stronger.

PREPARED STATEMENT OF RANKING MEMBER CHUCK GRASSLEY

Statement of Senator Charles E. Grassley
"Examining the Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law"
Senate Judiciary Committee
Subcommittee on Immigration, Refugees and Border Security
April 24, 2012

When I go home to Iowa, I often get questions about why Congress seems disconnected from the concerns of average Americans. I'm asked why we waste so much time on irrelevant subjects instead of working in a bipartisan manner to solve today's problems. Unfortunately, today's hearing only raises more questions about why we're spending time, money and energy on an issue that will be decided by the Supreme Court.

Despite the title of today's hearing, the witnesses called by the Majority will focus on the immigration law passed by Arizona. Arizona took responsibility when they saw first-hand the results of ineffective leadership from Washington. The federal government hadn't done its part to protect the border or to enforce the immigration laws on the books. In response, elected leaders in Arizona took action to protect their state and their citizens.

Other states like Arizona have taken on the burden of protecting their citizens in large part because this administration has failed to do so. This administration has sent a message through its policies that the rule of law is just a phrase to be kicked around and not to be taken seriously. Its policies have led the

American people to believe that the laws on the books mean very little. Unfortunately, there are people suffering because of this administration's inaction and amnesty-minded policies.

Dennis McCann of Chicago was hit and killed by a drunk driving illegal immigrant who was released by Cook County, a local jurisdiction that refuses to cooperate with the federal government on immigration matters. That illegal immigrant defied his order to appear in court, and could very well be drinking and behind the wheel of another car somewhere in the United States. Cook County also released an illegal immigrant who is an alleged child rapist. The illegal immigrant absconded, is nowhere to be found, and could very well be preying on innocent children in other parts of the country.

Other jurisdictions, like New York City, Santa Clara County and San Francisco County, are also defying federal law and posing a serious problem for immigration enforcement officers who aim to do their job of protecting the homeland.

It's unfortunate that today's hearing does not also focus on these jurisdictions, the problems they are creating for our homeland security efforts and the untold number of victims that have had to suffer because of their refusal to help enforce the immigration law.

It's also unfortunate that the Obama administration has done very little to rectify the situation in these jurisdictions. It's disappointing that it has decided to turn a blind eye to sanctuary city policies, and continue to implement policies that reward individuals who are in this country illegally. Finally, it's regrettable that the majority party has chosen to use this time to discuss and influence a case that only the Supreme Court will decide.

It's time for Congress to focus on strengthening our border security, boosting employment verification procedures, and enhancing existing legal avenues for people who want to live, study, and work in this country. It's time for real reform, not another dog and pony show.

PREPARED STATEMENT OF RUSSELL PEARCE, PRESIDENT, BANAMNESTYNOW.COM, MESA, ARIZONA

Testimony from Senator Russell Pearce
before the United States Senate Judiciary Subcommittee
on Immigration, Refugees and Border Security

April 24, 2012

Good Morning. I'm Russell Pearce, the author of, and driving force behind, the Support Our Law Enforcement and Safe Neighborhoods Act, known as "SB 1070," which is overwhelmingly supported by citizens across the nation.

Thank you, Chairman Schumer, for inviting me here today. It is an honor for me to appear before this Committee. As you well know, the illegal alien problem is a critical issue, not only in Arizona, but across the country. The adverse effects of illegal immigration ripple throughout our society.

In addressing this problem, we must begin by remembering that we are a nation of laws. We must have the courage - the fortitude - to enforce, with compassion but without apology, those laws that protect the integrity of our borders and the rights of our citizens from those who break our laws.

SB1070, in full accordance with federal law, removes the political handcuffs from state and local law enforcement. All law enforcement agencies have the legal authority, and a moral obligation, to uphold our laws, such as Sheriff Joe Arpaio, who is keeping his Oath and doing the job he was hired to do. His deputies were trained by ICE on how they want federal law enforced. And yet the Obama Justice Department continues to attack and threaten him.

The invasion of illegal aliens we face today – convicted felons, drug cartels, gang members, human traffickers and even terrorists – pose one of the greatest threats to our nation in terms of political, economic and national security. During the debate of SB1070, a rancher friend of mine, Rob Krentz, was murdered on the border by an illegal alien. I have attended

funerals of many citizens and law enforcement officers murdered by illegal aliens. My own son, a Deputy Sheriff, was critically wounded in a gun battle with an illegal alien while serving a warrant. I have been in public service most of my life and I have seen the real costs and damage caused by the presence of illegal aliens in our country.

In Arizona alone, the annual cost of illegal immigration is approximately $2.6 billion and that is just to educate, medicate and incarcerate illegal aliens in Arizona. Nationally, the cost is in the tens of billions of dollars and the taxpayers foot the bill. And those numbers do not reflect the costs of crimes committed by those here illegally, or the jobs lost by legal residents. Government's failure to enforce our laws and secure our border is unforgivable and the total cost is staggering.

Had law enforcement enforced our immigration laws we would have averted 9/11. The terrorist attacks of September 11, 2001 underscored for all Americans the link between immigration law enforcement and terrorism. Four of the five leaders of the 9/11 attack were in violation of our immigration laws and had contact with law enforcement but were not arrested. Nineteen alien terrorists had been able to violate our immigration laws, overstay their visas or violate their Immigration statuses with impunity, and move freely within the Country without significant interference from federal or local law enforcement. The abuse of U.S. Immigration laws was instrumental in the deaths of nearly 3,000 people on that tragic day in America.

Yet, instead of addressing enforcing the law, the Obama administration does the opposite, by encouraging further law breaking. Under federal law[1], "Sanctuary Policies" plainly are illegal. But the Obama administration does not sue those cities that are openly in violation of federal law for having these illegal sanctuary policies. Instead, it chooses to sue Arizona for

[1] *See* 8 U.S.C. §1644 and 8 U.S.C. § 1373.

enforcing the law, *protecting* our citizens, *protecting* jobs for lawful residents, and *protecting* the taxpayers and the citizens of this Republic in attempting to secure our borders.

Contrary to the view of the Obama Justice Department, not every state action related to illegal aliens is preempted by federal law. America has a system of dual sovereignty. Only state laws that regulate immigration are preempted by federal law.

Almost 40 years ago, the Supreme Court made it clear that the mere fact aliens are the subject of a state statute does not render it a regulation of immigration.[2] Only the determination of who should or should not be admitted into the country, and the conditions under which that person may remain, is the *regulation* of immigration.

During my eleven years in the Arizona State Legislature, I authored numerous legislative initiatives designed to protect the State of Arizona from the adverse effects of illegal immigration and most importantly, to uphold the rule of law. They include:

- Proposition 200 in 2004, which requires individuals to show identification at the polls prior to voting (passed by 57% of the voters);

- Proposition 100 in 2006, a State constitutional amendment to deny bond to any person unlawfully present in the United States who commits a serious crime in Arizona (passed by 78% of the voters, including 60% of Hispanics);

- Proposition 102, 2006, which states that a person unlawfully present in the United States who sues an American citizen cannot receive punitive damages (passed by 75% of the voters);

- In 2007, The "Legal Arizona Workers Act," prohibiting employers from hiring unauthorized workers and requiring use of federal E-Verify system to confirm employee eligibility (upheld by the Supreme Court in 2011 by a 5 to 3 vote).

I am also proud to say that each of these initiatives has become law and survived various legal challenges. In fact, the last time that I was in Washington, the Supreme Court upheld the

[2] *De Canas v. Bica*, 424 U.S. 351 (1976)

Legal Arizona Workers Act against what I consider an unpatriotic challenge by the Chamber of Commerce and anti-rule of law challenge/attack by the Obama administration.

Because of these accomplishments, the citizens of Arizona are safer. According to the Phoenix Law Enforcement Association, the organization that represents the rank-and-file police officers in Phoenix:

> Since SB1070, Phoenix has experienced a 30-year low crime rate. 600 police vacancies, budget cuts, and old policing strategies didn't bring about these falling crime rates. SB1070 did. When hard-working rank-and-file Phoenix Police Officers were given access to the tool of SB1070, the deterrence factor this legislation brought about was clearly instrumental in our unprecedented drop in crime. And all of this without a single civil rights, racial profiling, or biased policing complaint. To ignore the positive impact of SB1070 in the City of Phoenix is to ignore the huge elephant in the middle of the room.

In other words, although city hall will not acknowledge the effect of my legislative initiatives on crime rates, the Phoenix Law Enforcement Association has no doubts: the various law enforcement provisions enacted by the Arizona State Legislature have worked.

Therefore, I am pleased to be here today to highlight for this Committee the importance of SB 1070 in combating rampant illegal immigration and upholding the rule of law.

Let me take a moment to reiterate why we are here today. We are here because the federal government has decided not to enforce the law. When I was at the Supreme Court in December 2010 listening to the oral arguments in the legal challenge to my E-Verify law, Justice Scalia commented that "nobody would [have thought] that . . . the Federal Government would not enforce [immigration laws]. Of course, no one would have expected that." States, such as Arizona, have no choice but to take action to address the adverse effects of the federal government's failure to enforce the law.

Everyone knows that proactive state laws work. It is clear in Arizona. Neither the federal government nor the interest groups challenging the various laws around the country claim

that these laws do not protect the public from additional lawlessness. Yet, they have taken unprecedented steps to prevent enforcement of state laws. Therefore, the only issue is whether a specific state law is "preempted" by some federal law.

And, importantly, as the Supreme Court has held, only the determination of who should or should not be admitted into the country, and the conditions under which that person may remain, is the regulation of immigration. Therefore, as long as states do not interfere with the federal government's enforcement activity, states indisputably have the authority to legislate in areas touching on immigration.

Again, let me be clear, SB 1070 does not regulate immigration. Instead, it utilizes Arizona's inherent "police powers" and regulates unlawfully present aliens consistent with the objectives of federal law. SB 1070 specifically authorizes and directs Arizona law enforcement officers to cooperate and communicate with federal officials regarding the enforcement of federal immigration law and imposes penalties under Arizona law for non-compliance with federal law. In other words, SB 1070 mirrors federal objectives while furthering entirely legitimate state goals.

A brief review of the actual provisions of SB 1070 at issue before the Supreme Court tomorrow demonstrates this point[3]:

Section 2 of the law simply provides Arizona police officers with additional guidance as to how to interact with individuals who may not be lawfully present. It does nothing more than define a police officer's available discretion consistent with existing federal law to inquire about a person's immigration status. In addition, for Section 2 to even apply there must be a lawful stop, detention, or arrest and there must be reasonable suspicion that a person is an alien and is

[3] A more extensive analysis of SB 1070 is presented in the amicus curiae brief I have submitted to the Supreme Court, and a copy is appended to this testimony.

not lawfully present in the United States.

Section 3 simply reinforces federal law as it essentially makes it a state crime for unlawfully present aliens in Arizona to violate federal registration laws. Under federal law, every alien who has been issued a registration document is required to carry that document on his or her person at all times. Therefore, Section 3 only creates state law penalties for failing to comply with federal law. Such a practice is common in other areas that the federal government regulates. In other words, an unlawfully present alien only violates Section 3 if he violates federal law.

Section 5 also reinforces federal law. Under federal law, it is unlawful to knowingly hire an illegal alien for employment. To assist employers in complying with this federal law, Section 5 was carefully crafted to ensure that only those who may lawfully work would apply for jobs. In other words, this provision does no more than protect the jobs of those who may lawfully work from those who are not eligible to work under federal law. And, with unemployment still at record levels, it is a critical function of state governments to protect available jobs for all legal workers.

And finally, Section 6 defines the existing warrantless arrest authority of Arizona law enforcement officers and is not preempted. It is undisputed under that law that state and local law enforcement officers have authority to enforce criminal provisions of federal immigration laws. Therefore, Section 6 simply makes clear that Arizona law enforcement officers have authority to arrest without a warrant individuals who have willfully failed or refused to depart after having been ordered to be removed by a federal immigration judge.

Contrary to what is reported in the press, it is only these simple and clear law enforcement measures that are before the Supreme Court tomorrow. This common sense law is

fully within the authority of Arizona – and any other state – as it protects Arizona citizens from the effects of illegal immigration and upholds the rule of law. And protecting our citizens, I believe, is the highest duty of any public official.

Thank you and God bless you and may God continue to bless this Republic.

ADDENDUM

No. 11-182

IN THE
Supreme Court of the United States

STATE OF ARIZONA, *ET AL.*,
Petitioners,

v.

UNITED STATES OF AMERICA
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF STATE SENATOR RUSSELL PEARCE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

The question presented is whether the federal immigration laws displace Arizona's plenary police powers and impliedly preempt on their face the four provisions of the SB 1070 enjoined by the courts below.

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INTEREST OF THE *AMICUS CURIAE*[1]

State Senator Russell Pearce is the author of, and driving force behind, the Support Our Law Enforcement and Safe Neighborhoods Act, known as "SB 1070."

As the author of SB 1070, Senator Pearce submits this brief in support of Petitioners and offers his unique perspective on the meaning of the provisions of SB 1070. Because the Ninth Circuit upheld a facial challenge to SB 1070, there are no facts in the record to illuminate how the enjoined provisions might have been applied by Arizona law enforcement officials. Therefore, Senator Pearce is best positioned to speak as to how the enforcement of SB 1070 was envisioned.

During his years in the Arizona State Legislature,[2] Senator Pearce authored numerous historic legislative initiatives designed to protect the State of Arizona from the adverse effects of unlawfully present aliens and, most importantly, to uphold the rule of law. These include: Proposition 100, a State constitutional amendment to deny bond to any person unlawfully present in the United States who commits a serious crime in Arizona;

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[1] Pursuant to Supreme Court Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part; and that no person or entity, other than *amicus* and his counsel, made a monetary contribution intended to fund the preparation and submission of this brief. All parties have consented to the filing of this brief; letters reflecting this blanket consent have been lodged with the Clerk.

[2] Senator Pearce was a member of the Legislature for eleven years, including serving as Senate President.

Proposition 102, which states that a person unlawfully present in the United States who sues an American citizen cannot receive punitive damages; Proposition 200, which requires individuals to produce proof of citizenship before they may register to vote; and the "Legal Arizona Workers Act," upheld by this Court last Term in *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011) (prohibiting employers from hiring unauthorized workers and requiring use of federal E-Verify system to confirm employee eligibility). Senator Pearce's initiatives have served as models for similar legislation in numerous other States across the nation.

Even though only certain provisions of SB 1070 have thus far been implemented, they have been credited with a significant effect on the crime rate in Arizona.[3] According to the Phoenix Law Enforcement Association ("PLEA"), an association representing rank-and-file police officers in the City of Phoenix:

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[3] SB 1070 has been endorsed by, among others, the following law enforcement groups and officials: Arizona Police Ass'n (representing over 9,000 police officers); Maricopa County Sheriff Arpaio; Pinal County Sheriff Babeu; Mohave County Sheriff Sheahan; Yavapai County Sheriff Waugh; Cochise County Sheriff Dever; Gila County Sheriff Armer; Navajo County Sheriff Clark; Graham County Sheriff Allred; Greenlee County Sheriff Tucker; Arizona Fraternal Order of Police (FOP); Phoenix Law Enforcement Ass'n (2,600 members); Maricopa Deputy's Law Enforcement Ass'n (representing 800 officers); Maricopa County Detention Officers Ass'n; Glendale Police Officers Ass'n; Mesa Police Officers Ass'n; Chandler County Police Officers Ass'n; Border Patrol Officers Ass'n; Arizona Highway Patrol Ass'n.

> Since SB 1070, Phoenix has experienced a 30-year low crime rate. Six hundred police vacancies, budget cuts, and old policing strategies didn't bring about these falling crime rates. SB 1070 did. When hard-working rank-and-file Phoenix Police Officers were given access to the tool of SB 1070, the deterrence factor this legislation brought about was clearly instrumental in our unprecedented drop in crime. And all of this without a single civil rights, racial profiling, or biased policing complaint. To ignore the positive impact of SB 1070 in the City of Phoenix is to ignore the huge elephant in the middle of the room.

Statement of PLEA President Mark Spencer (Sept. 2011).

The employment-related provision of SB 1070 at issue here (Section 5) is a complement to the Legal Arizona Workers Act, upheld in *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968. In Senator Pearce's view, this provision is an essential component to holding employers responsible for hiring unauthorized workers. These scofflaw employers, who put profits over patriotism by hiring unlawfully present aliens, should be denied the substantial benefit they receive by paying sub-standard wages and failing to comply with applicable laws relating to social security,

unemployment, Medicare, and occupational health and safety standards.

As author of SB 1070, Senator Pearce has a direct interest in this matter and unique perspective, and therefore, respectfully submits this *amicus curiae* brief.

SUMMARY OF ARGUMENT

The provisions of SB 1070 put on hold by the courts below are not preempted by federal law, as they utilize Arizona's well-established police powers to address the effects of unlawfully present aliens. The provisions would significantly assist Arizona's effort to protect its citizens from the adverse effects of illegal immigration as they:

- Provide additional guidance to Arizona law enforcement officers as to how to interact with individuals who may not be lawfully present. Section 2(B).

- Invoke ordinary state police powers to create state criminal penalties for the failure to comply with federal law. Section 3.

- Utilize Arizona's broad authority to regulate employment under its police powers to protect its economy and lawfully resident labor force from the harmful effects resulting from the employment of unlawfully present aliens. Section 5(C).

- Re-emphasize Arizona law enforcement officers' pre-existing warrantless arrest authority by authorizing a warrantless arrest of an individual who has already been determined to have committed a public offense that makes him removable. Section 6.

Senator Pearce carefully crafted these provisions, relying on the State's plenary police power to further legitimate state goals. To reaffirm that Arizona retains the authority to enact such measures, this Court should reverse the decision below.

ARGUMENT

Contrary to the view of the United States, not every state action related to aliens is preempted by federal law. This nation has a system of dual sovereignty and only state laws that regulate immigration are preempted by federal law. Almost 40 years ago, this Court made it clear that the mere fact that aliens are the subject of a state statute does not render the statute a regulation of immigration. *De Canas v. Bica*, 424 U.S. 351, 356 (1976). Only the determination of who should or should not be admitted into the country, and the conditions under which that person may remain, constitutes the regulation of immigration. *Id.* Accordingly, Senator Pearce crafted SB 1070 in reliance on the principle that Arizona has authority to utilize its police powers in areas concerning immigration as long as it did not "regulate" immigration.

The provisions of SB 1070 at issue do not regulate immigration, as they do not impose new restrictions on the manner in which an alien enters or remains in the country. Instead, the provisions utilize Arizona's police powers and regulate unlawfully present aliens consistent with federal objectives. The provisions authorize and direct Arizona law enforcement officers to cooperate and communicate with federal officials regarding the enforcement of federal immigration law and impose penalties under Arizona law for non-compliance with federal law. Hence, these provisions mirror federal objectives while furthering legitimate state goals.

I. Section 2(B) Provides Guidance to Law Enforcement Officers.

There is no dispute that state and local law enforcement officers have authority to enforce the criminal provisions of federal immigration laws. *See, e.g., United States v. Villa-Velasquez*, 282 F.3d 553, 555-56 (8th Cir. 2002). Implicit in this power is the authority to investigate possible violations of the criminal provisions of federal immigration laws, including the authority to inquire about a person's immigration status. The United States has conceded the "existing discretion" of state and local law enforcement officers to verify a person's immigration status during the course of a lawful stop, detention, or arrest. *United States v. Arizona*, 703 F. Supp. 2d 980, 998 n.12 (D. Ariz. 2010); *see also Muehler v. Mena*, 544 U.S. 93, 100 (2005). Thus, even prior to the enactment of Section 2(B), Arizona law

enforcement officers had authority to inquire about a person's immigration status.

Facing severe adverse effects of illegal immigration (*see* Brief for Petitioners at pp. 1–8), Senator Pearce sought to provide Arizona law enforcement officers with additional guidance as to how to interact with individuals who may not be lawfully present. Cognizant of the existing authority of Arizona law enforcement officers, Senator Pearce undertook to define their available discretion consistent with federal law and create a unitary framework.

Pursuant to Section 2(B), Arizona law enforcement officers must make a reasonable attempt to determine a person's immigration status, if, during the course of a lawful stop, detention, or arrest, an officer develops reasonable suspicion that the person is an alien and is not lawfully present in the United States. A.R.S. § 11-1051(B). An officer need not make an inquiry if doing so is not practicable or may otherwise hinder or obstruct an investigation. *Id.*

As evident from the plain language of the provision, Senator Pearce carefully crafted Section 2(B) so that it did not authorize Arizona law enforcement officers to stop persons solely to inquire about their immigration status. Officers are not free to ask all persons whom they stop, detain, or arrest about their immigration status. For Section 2(B) to apply, there must be a lawful stop, detention, or arrest *and* there must be reasonable suspicion that a

person is an alien *and* is not lawfully present in the United States.

When a lawful stop, detention, or arrest has been effected *and* an Arizona law enforcement officer has reasonable suspicion that a person is an alien *and* is not lawfully present in the United States, the law enforcement officer still has considerable discretion about when and how to inquire about the person's immigration status. The law enforcement officer only needs to inquire about the person's immigration status if the officer believes it is "practicable" to do so and that it will not otherwise hinder or obstruct an investigation. Moreover, the officer need only make a "reasonable attempt" to determine the person's immigration status. A reasonable attempt may consist of nothing more than a simple question and an oral response.

In addition, Section 2(B) contains a presumption of legal presence if the suspected unlawfully present alien presents a valid Arizona driver license, or other similar, government-issued identification. If an Arizona law enforcement officer determines that further inquiry is necessary, the officer may find it appropriate to contact the federal government's Law Enforcement Support Center ("LESC") to inquire about the immigration status of a suspected unlawfully present alien. What is practicable and reasonable is left up to the law enforcement officer's discretion and obviously will depend on the unique circumstances of each particular stop, detention, or arrest.

To illustrate how Senator Pearce envisioned Section 2(B)'s enforcement, this Court can look to the factual circumstances of *Muehler v. Mena*, 544 U.S. 93 (2005). In *Mena*, the Court considered the questioning of a woman who had been detained by local, California law enforcement officers during the execution of a search warrant. *Id.* at 96. The officers asked the woman her "name, date of birth, place of birth, and immigration status." *Id.* The woman, who was a lawful permanent resident alien, later claimed in a section 1983 lawsuit that the officers violated her Fourth Amendment rights by questioning her about her immigration status without independent reasonable suspicion. *Id.* at 100-101. The Ninth Circuit agreed, but this Court reversed: "This holding, it appears, was premised on the assumption that the officers were required to have independent reasonable suspicion in order to question Mena about her immigration status . . . but the premise is faulty." *Mena*, 544 U.S. at 100-01. Under Section 2(B), Arizona law enforcement officers would not have been *required* to ask Mena about her immigration status because there was no reasonable suspicion to make such an inquiry, but the Court's holding in *Mena* shows that such an inquiry under these facts would not have exceeded the law enforcement officers' authority even prior to SB 1070's enactment.

Hence, under Section 2(B) Arizona law enforcement officers retain complete discretion to determine the scope of any inquiry or even to *decline* to conduct an inquiry if it is not practicable or will hinder or obstruct an investigation. Again, an

inquiry under Section 2(B) may be satisfied by a simple question and oral response. It also may be satisfied by the production of a valid Arizona driver license or other government identification.

Section 2(B) is well within the plenary police powers of the State, as it simply defines an officer's available discretion consistent with existing federal law.

II. Section 3 Utilizes Arizona's Police Powers to Create Penalties for Violating the Federal Registration Scheme.

Section 3 provides that a "person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 United States Code section 1304(e) or 1306(a)." A.R.S. § 13-1509. Section 3 simply codifies federal law as it essentially makes it a state crime for unlawfully present aliens in Arizona to violate federal registration laws. *See United States v. Arizona*, 641 F.3d 339, 355 (9th Cir. 2011).

This provision exercises the State's plenary police power to penalize individuals who have failed to comply with federal alien registration laws. The provision in no way enacts a state-based registration scheme, such as the one this Court disallowed in *Hines v. Davidowitz*, 312 U.S. 52 (1941). It only creates state penalties for failing to comply with federal law, as is common practice in other areas

that are exclusively federal powers. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 495 (1996).

Senator Pearce carefully crafted Section 3 so that, unlike the state registration scheme in *Hines*, Section 3 did not provide for any additional conditions under which a lawfully present alien may remain in the United States. In fact, the provision includes special safeguards for lawfully present aliens. To avoid running afoul of Section 3, a lawfully present alien simply has to do what he already is required to do – apply for registration with the federal government as provided for in 8 U.S.C. § 1306(a) and "at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him" as required by 8 § U.S.C. 1304(e). Even that minimal requirement has a caveat: Section 3 also states that it "does not apply to a person who maintains authorization from the federal government to remain in the United States." A.R.S. § 13-1509. Therefore, if a lawfully present alien forgets his federal registration documentation at home, he is not required to obtain federal registration documentation, or otherwise has authorization from the federal government to remain in the United States, that lawfully present alien would not be in violation of Section 3. Hence, Section 3 creates no additional conditions upon which a lawfully present alien may remain in the country and is an entirely proper use of the State's police powers.

III. Section 5 Regulates Employment Under Arizona's Police Powers.

Section 5 provides that "it is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor" in Arizona. A.R.S. § 13-2928(C).

Section 5 simply reinforces federal law. Under federal law, 8 U.S.C. § 1324a, it is unlawful to knowingly hire an illegal alien for employment. To assist employers in complying with this federal law, Senator Pearce carefully crafted Section 5 to ensure that only those who may lawfully work would apply for jobs.

Moreover, the provision embraces the well-established principle that "States possess broad authority under their police powers to regulate employment to protect workers within the state." *De Canas v. Bica*, 424 U.S. 315, 356 (1976). Section 5 therefore does no more than protect the jobs of those who may lawfully work from those who cannot lawfully work under federal law.

IV. Section 6 Defines Officers' Existing Warrantless Arrest Authority.

Section 6 amends an existing Arizona statute to specifically authorize a law enforcement officer to

arrest an individual without a warrant if the officer has probable cause to believe that "[t]he person to be arrested has committed any public offense that makes the person removable from the United States." A.R.S. § 13-3883(A)(5). Section 6 also mirrors federal objectives and furthers a legitimate state goal.

As noted above, it is undisputed that state and local law enforcement officers have authority to enforce criminal provisions of federal immigration laws. Therefore, Section 6 is crafted to do no more than make clear that Arizona law enforcement officers have the specific authority to make a warrantless arrest of individuals who have committed a felony under federal law.

Senator Pearce also recognized that Arizona law enforcement officers cannot make a determination about what type of offense might make a person removable or otherwise engage in an analysis of removability. Therefore, Section 6 only permits Arizona law enforcement officers the authority to arrest individuals who have willfully failed or refused to depart after having been ordered to be removed by a federal immigration judge.

Section 6 applies, for example, when an Arizona law enforcement officer runs an individual's name through the National Crime Information Center database and the response that the Arizona law enforcement officer receives from the federal government is that the individual is an "immigration absconder." In other words, the federal government

would have informed the Arizona law enforcement officer that the individual had previously been found to be removable and had been ordered removed, but had absconded on the removal orders. *Id.* Under federal law, that individual would have committed a felony. 8 U.S.C. § 1253(a) ("it is a felony for an individual 'against whom a final order of removal is outstanding' to 'willfully fail[] or refuse[] to depart.'"). Therefore, Section 6 simply makes clear that Arizona law enforcement officers have authority to arrest without a warrant individuals who have willfully failed or refused to depart after having been ordered to be removed by a federal immigration judge.

Finally, it is important to note that Ninth Circuit's interpretation of Section 6 is entirely erroneous and without any basis in the text. According to the Ninth Circuit, Section 6 "provides for the warrantless arrest of a person where there is probable cause to believe the person *committed a crime in another state* that would be a crime if it had been committed in Arizona and that would subject the person to removal from the United States." 641 F.3d at 361 (quoting *United States v. Arizona*, 703 F. Supp. 2d at 1005) (emphasis in original). The panel majority, like the district court, inserted the words "committed a crime in another state" into the statute. As explained above, Section 6 defines the already existing warrantless authority of officers to arrest persons who have committed felonies *under federal law.* The panel majority's tortured construction of the statute was not necessary or

correct, as those words simply do not appear in Section 6.

Section 6 defines the existing warrantless arrest of an Arizona law enforcement officer and is not preempted.

CONCLUSION

For the foregoing reasons, Senator Pearce respectfully requests that this Court reverse the Ninth Circuit's decision and hold that SB 1070 is not preempted by federal law.

Respectfully submitted,

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February 13, 2012

PREPARED STATEMENT OF DENNIS W. DECONCINI, PARTNER, DECONCINI, MCDONALD, YETWIN & LACY, P.C., TUCSON, ARIZONA

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 tenable 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 it 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.

PREPARED STATEMENT OF HON. STEVE M. GALLARDO, ARIZONA STATE SENATOR, PHOENIX, ARIZONA

Arizona State Senate

Testimony of Arizona State Senator Steve M. Gallardo to the Senate Judiciary Subcommittee on Immigration, Refugees and Border Security

Delivered Tuesday April 24, 2012

"Mr. Chairman, Members, for the record my name is Steve Gallardo. I am a State Senator from Arizona representing District 13. It is a privilege to have the opportunity to give my perspective and experience regarding Arizona's SB 1070.

As a state elected official, I take no pride in the negative image Arizona has earned from its rabid preoccupation with immigrants, immigration enforcement and the negative by products that have followed SB 1070.

Mr. Chairman and members, The concerns that I bring before you today are based on numerous accounts of the mistreatment many of my constituents have been subjected to at the hands of local law enforcement, as well as racial divisiveness in our communities.

Mr. Chairman and members, SB 1070 has perpetuated a climate of fear and division. Without any doubt, Senate Bill 1070 has done Arizona and her people a great disservice and has done nothing to secure our borders.

Arizona's law has unfairly subjected Latino citizens to racial profiling and harassment.

The following situations will illustrate how SB 1070 has negatively affected the lives of many Latinos.

SB1070 has created racial tension and distrust between Latinos and law enforcement, as well as Latinos and their non-Latino neighbors.

The tragic death of Juan Varela a United States citizen who was murdered in front of his home by his neighbor Gary Kelley just 13 days after Governor Brewer signed SB 1070 into law. Gary Kelley yelled racial slurs, "Go back to Mexico. If you don't go back to Mexico you're going to die." Before long, Gary Kelley pointed his .38 revolver at Juan Varela and shot him in the face. Mr. Varela had a wife and 13-year-old daughter.

SB 1070 has made Latinos the target of criminals because Latinos will be less likely to report crimes to local law enforcement for fear of having themselves or a loved one deported.

Many Latina women face a horrific situation if they are the victim of domestic violence because SB 1070 may put these women in the position where they cannot report their abuser. In some cases, these women are held hostage in their own home. No woman regardless of there immigration status should ever be placed in harm's way.

SB 1070 has shifted the priorities of law enforcement. The focus is away from criminal investigations and placed squarely on local immigration enforcement. This comes at the expense of rape, assault and murder victims.

Recently the Maricopa County Sheriffs Office has come under fire for their failure to investigate approximately 400 sexual-assault cases, many of these cases involves children.

SB 1070 and laws like it has fostered and legitimized a vigilante movement responsible for violent, sometimes lethal, attacks on Latinos.

The case of the murder of nine-year-old Brisenia Flores and her father Raul at the hands of, Shawna Forde, Jason Bush, and Albert Gaxiola - all members of Minutemen American Defense – the Flores were murdered in their own home as these three tried to rob them.

If SB 1070 has been successful in anything, it has been in breaking up families by separating hard working immigrant parents from their children and limiting the success of Latino students.

These parents and children, live in fear of being separated from each other. It is a common practice of parents to teach their children a phone number of a trusted family friend in the event that the parents are swept up by Sheriff Joe Arpaio in raids and need a place to live.

For example, nine-year-old Katherine Figueroa, a United States citizen, saw her parents arrested in a raid that was televised at the local car wash where they worked before they were deported.

A ballot initiative that preceded SB 1070 requires undocumented college students to pay out of state tuition. The DREAM Act has become exactly that, a dream necessary for them to fulfill their aspirations and contribute to our society. The Carl Hayden High School Robotics Team a source of pride in my legislative district has beaten teams from all over the world, including the Massachusetts

Institute of Technology. Were it not for their immigration status these students would have unlimited promise.

Unfortunately, laws like SB 1070 pander to the climate of fear and division that runs rampant through Arizona. This fear was created with a purpose.

Mr. Chairman and members, I would submit to you, SB1070's true intention, its primary objective was to make second-class citizens of U.S. Latinos. To discourage them from voting, from going to school, seeking employment and realizing the American Dream.

Immigration enforcement is only a secondary objective and by their own admission, the authors and supporters of SB 1070, intended to harass immigrants, to create a hostile and miserable environment so that immigrants would rather choose to "self-deport", and have shown no regard for the civil rights abuses of Latino citizens.

This by its very nature defines this strategy is reckless and abusive. SB1070 is neither an immigration policy, nor a legal position but rather a campaign of harassment and intimidation directed solely according to the person's complexion.

Finally, the prime sponsor of SB 1070 will attempt to give some rational for the chaos of this legislation. However, I would submit to you that any efforts that justify the profiling, harassment and or oppression of anyone are un-American, illegal and unconstitutional on their face.

Mr. Chairman and members, I pray you will see the wisdom of passing legislation preempting states from addressing/enforcing immigration enforcement, and especially make a priority of passing the DREAM Act.

Mr. Chairman and members, those are my comments respectfully submitted.

PREPARED STATEMENT OF TODD LANDFRIED, EXECUTIVE DIRECTOR, ARIZONA EMPLOYERS FOR IMMIGRATION REFORM, PHOENIX, ARIZONA

April 24, 2012

Senate Committee on the Judiciary
Subcommittee on Immigration Refugees and Border Security

Testimony of Todd Landfried
Executive Director, Arizona Employers for Immigration Reform

> "A salient characteristic of the current debate on U.S. immigration policy is the high ratio of hot air to data."
>
> Dr. Douglas Massey
> Co-director, Mexican Migration Project

Thank you Mr. Chairman and members of the Committee for inviting me to speak today.

For the record, my name is Todd Landfried, and I am the Executive Director of Arizona Employers for Immigration Reform (AZEIR). AZEIR is a 501(c)(4) organization with approximately 350 small, medium and large member businesses who want to see sensible immigration reform passed at the federal level. It was formed in response to the introduction of Arizona's Employer Sanctions law and has been active in the state ever since. We were the only business organization actively opposing SB1070 in 2010 and have been a persistent voice for reasoned solutions to the immigration problem. We have filed an amicus brief opposing SB1070 to the U.S. Supreme Court, which will hear the case tomorrow.

I'm going to focus my remarks not on whether there is problem with our country's immigration laws (there is), or whether states have any inherent authority to inject themselves into federal immigration enforcement (they don't), or whether we support SB1070 (we don't). Rather, I'll focus on whether laws like Arizona's SB1070, Georgia's HB87 or Alabama's HB56 and others are good public policy and something that should be copied in other states or as a federal solution.

By "good public policy," I mean what are the outcomes? What are the results of these laws? Do they have the intended consequences? Do they secure the border? Do they open up jobs and reduce state expenses? Do they fulfill any of the numerous promises their proponents make?

It's a legitimate question that more and more people are starting to ask, because they say the definition of insanity is doing the same thing over and over, expecting different results and at a time when government programs fall under increased scrutiny, it's only fair that state-level laws are examined using the same microscope.

The members of this committee may not be aware of it, but the "SB1070" approach has been tried before.

2006 – Farmer's Branch, TX
2006 – Hazelton, PA
2007 – Oklahoma HB1804
2008 – Prince William County, VA
2010 – Arizona SB1070
2011 – Georgia HB87
2011 – Alabama HB56
2011 – South Carolina Act 69
2011 – Indiana SB590

So, this idea of "attrition through enforcement" has been tried before at each and every level of government: local, county and state. At each of these levels, the same groups have been behind it: the Federation for American Immigration Reform (FAIR) and their Immigration Reform Law Institute (IRLI). At each of these levels, the only research used to justify the action came from FAIR, FAIR-sponsored, the Center for Immigration Studies (CIS) or Numbers USA. To my knowledge, at no time has any other group approached any governmental jurisdiction with the same issue. None. Most importantly, at every level of government where this strategy has been tried, it has failed. Let me repeat that statement: at every level of government where this strategy has been tried, it has failed.

Failed as in doesn't work. Failed as in causes more harm than good. Failed as in killed jobs, businesses, markets, trade relationships, real estate markets, tourism, stifled cooperation with law enforcement, damaged reputations and the ability to attract high-skill workers to the state.

For any serious practitioner of public policy, this should raise a red flag and I'm happy to say it has. You heard earlier that SB1070 is wildly popular and that 35-odd states have introduced versions of it. But as elected officials, each of you knows there is a huge difference between a bill that is introduced and one that becomes law. Let's look at SB1070's record in state legislatures.

According to the National Conference of State Legislatures (NCSL), 30 states introduced SB1070 copycat bills in 2011.[i] Not 34 or 35, 30. Of those 30 states, direct copycat legislation was passed in four. Now I'm not a lawyer or a politician, but simple math tells me that four in 30 are not good results. Put another way, nearly 87% of the states -- rejected—Arizona's approach. In the business community, an 87% failure rate is hardly indicative of success and any product with an 87% failure rate won't be on the market very long.

In fact, if you look at all 1,592 all immigration bills introduced in 2011, only 162 passed, which is a 90% failure rate. So what caused 87% of the states to reject SB1070 copycat and 90% of all immigration bills? They failed because legislatures were shown the simple fact that these bills never work as planned. Here are just a few examples and data points. There are many more.

Oklahoma Taxpayer & Citizen Protection Act

1. After Oklahoma passed HB1804 in 2007, the Oklahoma Bankers Association commissioned a study that found the loss of 90,000 unauthorized workers and their families resulted in a $1.9B loss to the state's Gross State Product.[ii]
2. A study by the Urban Institute and the Migration Policy Institute found negligible impact on savings on public services from departure of the undocumented because *by law* they're *ineligible for those benefits anyway*.[iii]

Georgia – HB 87

1. According to a Georgia Restaurant Association survey in November 2011, 71% their members were experiencing labor shortages and 88% were concerned they would experience labor shortages in the future. They estimate the average monthly sales loss due to the labor shortage was $21,000.[iv]
2. Georgia farmers told Governor Deal in a Georgia Department of Agriculture survey they needed 11,080 workers to bring in that spring's spring fruit crop or they faced the loss of $330M due to the labor shortage.[vvi] Governor Deal offered up probationers as a solution and on the first day, 11 showed up. That's .001 percent of the number needed. According to news reports, two remained a week later. The resulting losses to farmers were significant, with one small grower losing $250,000 due to the labor shortage and an estimated total state loss of $391M.[vii]
3. One aspect of using probationers or prison labor is the increased liability insurance costs to adequately protect business owners from any problems caused by these workers. This is an additional unintended consequence of such suggested solutions and programs.
4. Fourteen days after the bill was signed into law and after the complaints started rolling in, Governor Deal asks for an economic impact study. Shouldn't that have been done –before—the bill was passed?[viii]

Alabama HB 56

1. An analysis by the University of Alabama[ix] cites a number of troubling impacts to their economy. Each one was easily predictable if they would have examined what happened in other states
    a. Reduction of 70,000 – 140,000 related jobs, causing a loss of up to %5.8B in earnings
    b. $2.3 M- $10B loss in state GDP
    c. $56.7M- $264.5M loss in state income and sales tax collections
    d. $20M - $93.1M in lost local sales tax collections
2. Business and dog owners have been caught up in Alabama's law by being required to prove their U.S. citizenship to renew their business license or to register their dog. Mobile County reportedly spent over $150,000 just on equipment to enforce the citizenship provisions of HB56. The county even gave back $30,000 in fines collected because business owners needed more time to prove their citizenship before their licenses were renewed.[x]

Arizona – SB 1070

1. Immediate impact on the tourism industry:

   a. Losses from conventions already cancelled: $490M and 2,761 jobs
   b. Potential losses from future convention booking declines: $262M and 1,475 jobs
   c. Total losses from cancellations and booking declines: $752M and 4,236 jobs
   d. Companies paid Arizona convention centers up to $60,000 to break their contracts.[xi]
2. Loss of an estimated 150,000 consumers from the Arizona economy at an estimated decline in Gross State Product of $24.4B (9.6%), a loss of 291,000 direct and indirect jobs and resulting loss in tax revenues of $2.1B in tax revenues [xii]
3. Farmers are letting planting less acreage and letting some land go fallow not due to market conditions, but labor shortages.
4. Construction firms are concerned they will not be able to find enough workers to fill job openings, putting projects and contracts at risk.

Prince William County, VA

1. $14.1M to fund police staffing, training and overtime, evaluation, public education and ADC farmouts directly related to PWC ordinance[xiii]
2. $3.2M to fund cameras in all PWC police cruisers[xiv]
3. $750,000 per year to
4. County foreclosure rate 3X regional rate and contributed to falling property values
5. Violent crime increased 10.9% in 2009[xv]
6. Contributed to extending the recession's impacts in PWC.

In March of 2011, when it was learned five more SB 1070-related immigration bills were being introduced in the Arizona legislature, 60 Arizona CEOs wrote a letter to former Senator Pearce asking him to refrain from moving the bills. They sent the letter knowing the negative impacts SB1070 and the boycotts had on the state's convention and tourism, agriculture and construction industries and rightly feared the passage these five bills would further harm Arizona's economy at the worst possible time. Fortunately, thanks to the letter and a galvanized business community, none of those bills got out of the Senate.

In July of 2011, the leaders of 64 agriculture associations wrote Rep. Lamar Smith of Texas asking him to not hear H.R. 2164 stating it threatened $5B to $9B in annual agriculture production and hundreds of thousands of upstream and downstream jobs. Given the experiences of the other jurisdictions who have had to live with these laws, they were rightly concerned.

Reports and findings like these are the tip of the proverbial iceberg. Study after study on jurisdiction after jurisdiction; year after year, whenever and wherever these laws are tried, the results are always the same and they're always bad. Mr. Chairman, I am not aware of a single study in the public domain that indicates any one of these jurisdictions have experienced any positive economic impact. Not one.

To be fair, there are studies that show these laws are successful in one aspect: they cause undocumented immigrants to move. Whether they move within the state, out of state, or back home is a difficult question to answer. But what tends to happen to those who remain

is we push them deeper into the underground economy, where these workers suddenly become entrepreneurs and open cash businesses, thereby taking even more money out the economy that we would be better off having in it. [xvi]

This begs the question of if these laws are so good for us, how can the impacts be so universally bad? The answer, Mr. Chairman, is simple: you have bad outcomes because you have bad inputs. The claims used to justify these laws are largely wrong or distorted.

How Can Good Laws Create Bad Results?

You heard in earlier testimony about the supposed $2.5B it costs Arizona each to "educate, medicate and incarcerate" illegal aliens. You heard that 17 percent of the inmates in Arizona's prisons are illegal aliens. You heard that crime in Arizona is at a 30-year low as a result of SB 1070. You heard that 9,000 Americans are killed each year by illegal aliens and you heard that Arizona is now saving $500M a year by the departure of the children of illegal immigrants from the school systems. The casual listener would hear these statements and be concerned. But the problem is, not a single one of these statements is true. In fact, nearly every statement made to justify SB 1070 has serious factual problems with it, with many being completely unfounded.

Inflating and Misleading Data Is The Norm

The $2.5B cost number comes from a 2004 Federation For American Immigration Reform (FAIR) study that uses data from 1994 to draw their conclusions on the costs of undocumented immigrants to the state.[xvii] This report's most significant flaws include using decade old data and purposefully overestimating costs while ignoring revenues. As members of Congress, you know there are two sides to the fiscal ledger (at least we hope you do) and you can't choose to ignore where the tax dollars come from.

In Arizona, education is funded primarily through sales and property taxes. If there are taxes we know everyone pays it's sales and property taxes. Just like everyone else, immigrants pay sales taxes when they buy clothes, cars, furniture, tickets, etc. Just like everyone else, they pay property taxes either directly or indirectly through their mortgage or their rent. There is also significant evidence that many of these workers pay income taxes, which flow into the state's General Fund and other accounts, which pay for other government services such as health care and law enforcement.

Studies by the University of Arizona that looked at revenues and spending in 2004 found that the costs to the state were $1.4B and the revenues were $2.4B, creating an annual *net benefit* of nearly $1B.[xviii] Other studies, such as ones by New York's Fiscal Policy Institute[xix] and the Cato Institute[xx] have examined this "they don't pay their way" argument and found they do. Is it no wonder then that when they, as consumers, are pushed out, the impacts such as those discussed earlier are felt throughout the economy.

The flip side of this coin is asking how much better off we would be if we brought all of these people above board and made them active contributors to our economy. Most

economists would and do argue the benefits would be significant. In the case of Arizona the IPC study says it would add 261,000 jobs and increase tax revenues by $1.68B.[xxi] Our state could sure use those dollars.

Misleading Crime Claims

There is no report available from Arizona Department of Corrections (AZDC) that indicates the "criminal alien" population has ever been 17%.[xxii] Currently, the "criminal aliens" population makes up just over 13% of all inmates in Arizona prisons. But exaggerating the numbers isn't the only problem with this statement.

Another problem is its purposeful and misleading use of the term "criminal alien." As any law enforcement official should know, "criminal aliens" are not just those here illegally. They include visa and green card holders. Permanent legal residents who are in the nation's prison system are classified as "criminal aliens." Add on to this the fact no law enforcement agency collects or reports crime statistics according to immigration status., and you'll see the problem. Therefore, anyone or any statistic that represents "criminal aliens" as synonymous with "illegal immigrants" is over-exaggerating the data in order to make the problem appear worse than it is.

SB1070 Is Not Responsible For Crime Rate Reduction

It has been suggested that SB1070 is the reason for largest drop in crime in Phoenix in 30 years. Unfortunately, there are no data from the Phoenix Police Department, the Arizona Department of Public Safety, the FBI or anyone else to substantiate or use as a basis for justifying in any manner whatsoever this claim. None.

Crime rates in Arizona and Maricopa County have been dropping for several years and to suggest that the results of the largest decline in 30 years happened since 2010 (it hasn't) and are because of SB1070 is reckless at worst and misleading at best. To further substantiate this point, the Arizona Department of Corrections FY 2011 annual report listed several reasons for the reduction in the number of prison inmates and the six characters missing from any of those reasons are "S-B-1-0-7-0."[xxiii]

Contrary to the rhetoric, crime studies have found that undocumented immigrants are actually *less likely* to commit crimes than their domestic counterparts. A 2006 Migration Policy Institute study found that non-citizens are five (5) times less likely to be incarcerated than non-immigrants.[xxiv] The reason for this is if they are caught, they will be likely, and appropriately, deported. The reality is they commit crimes in percentages equal to their numbers in the population, which any statistician will tell you is what we should expect.

One of the more outlandish claims is 9,000 Americans are murdered each year in the U.S. from unauthorized immigrants. While no disputes its unfortunate occurrence, were this claim to be true, it would mean that according to FBI statistics, undocumented immigrants

are committing 63% of the crime in the U.S. There is simply no evidence whatsoever to justify taking this statement seriously. [xxv]

Immigrations Claim Are Wrong 9-out-of-10 Times

> ""The greatest threat to democracy is having a public that thinks it is fully informed, but really isn't very well informed at all."
>
> Linda Foley

Major news organizations are also finding fault with these claims. Using just two of the major news organizations "Fact Check" services, "PolitiFact" by the Tampa Bay Times[xxvi] and "AZ Fact Check' by the Arizona Republic[xxvii], have both found that when the topic turns to immigration, more often than not, false.

PolitiFact Immigration Statements (3/14/12)

Pants On Fire	FALSE	Mostly False	Half True	Mostly True	TRUE
19	56	33	41	31	23
9.4%	27.6%	16.3%	20.25	15.3%	11.3%
Wrong 88.7%					11.3%

I know there are a lot of lawyers in the room and I will presume that many of you have either been to trial or had witnesses swear an oath to tell the truth when they give sworn testimony. Even on TV, we hear that familiar oath spoken by witnesses as they take the stand. I have yet to hear of any instance when a witness is sworn to "Tell the truth, mostly the truth, or half of the truth." Yet based on the independent analyses of these news organizations, 88.7% of the statements examined by PolitiFact and 91.8% of those checked by AZ Fact Check fail to meet the standard for truth used in our judicial system.

AZ Fact Check (3/14/12)

FALSE	Mostly False	Somewhat False Somewhat True	Mostly True	TRUE
29	4	8	4	4
59.2%	8.2%	16.3%	8.2%	**8.2%**
Wrong 91.8%				8.2%

Bad Data Equals Bad Public Policy

These data help make my final point. The reason every political jurisdiction experiences significant negative impacts from the passage of local, county or state immigration enforcement laws is because elected officials and the public are being fed bad data from which they make bad decisions. As the quote at the beginning of my remarks states, the significant characteristic of the immigration debate is the high ratio of hot air to data. Given what we know from prior experiences, why are we surprised when these policies fail?

We spend way too much time asking the question "Are you for or against SB1070?" We should be asking, "Does SB1070 work and if it does not, then what should we do next?" With all of the proof that "attrition through enforcement" had plenty of negative and unacceptable impacts, it should concern everyone that SB1070 was apparently the best idea anyone could come up with. We should have known better.

Because we are distracted with SB1070, we have not spent enough time looking for alternative solutions. We have not listened to the many informed and insightful idea that have been proposed by business, law enforcement, faith and community leaders. There are very good ideas and you would be amazed how close people from the political right and the left end up when they talk about how to solve the problem—and none of them include amnesty, open borders or anarchy.

On May 1 in the Rayburn Office Building Gold Room, AZEIR, Texans for Sensible Immigration Policy (TxSIP), the Competitive Enterprise Institute and the National Immigration Forum are sponsoring a conference we're calling "The Congressional Immigration Solutions Conference. At this event, we will present information and solutions those of us who live, run businesses, conduct research and enforce the laws near the border feel are worthy of Congressional consideration. It will likely be the best three hours you or your staff could spend as you consider how to solve this vexing problem. All of your offices have received invitations.

Thank you Mr. Chairman and members of the subcommittee for your time and attention. I am prepared to answer any question you may have for me.

Todd Landfried
Executive Director
Arizona Employers for Immigration Reform

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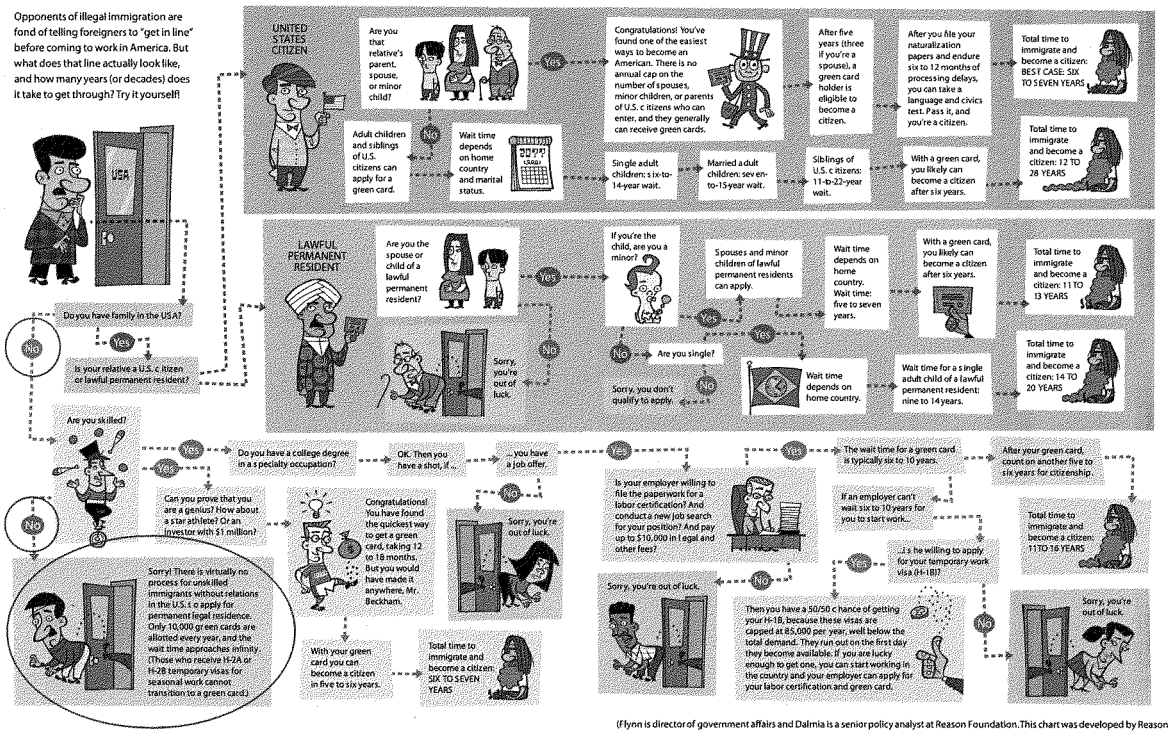
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What Part of Legal Immigration Don't You Understand?

Mike Flynn and Shikha Dalmia Illustrated by Terry Colon

Opponents of illegal immigration are fond of telling foreigners to "get in line" before coming to work in America. But what does that line actually look like, and how many years (or decades) does it take to get through? Try it yourself!



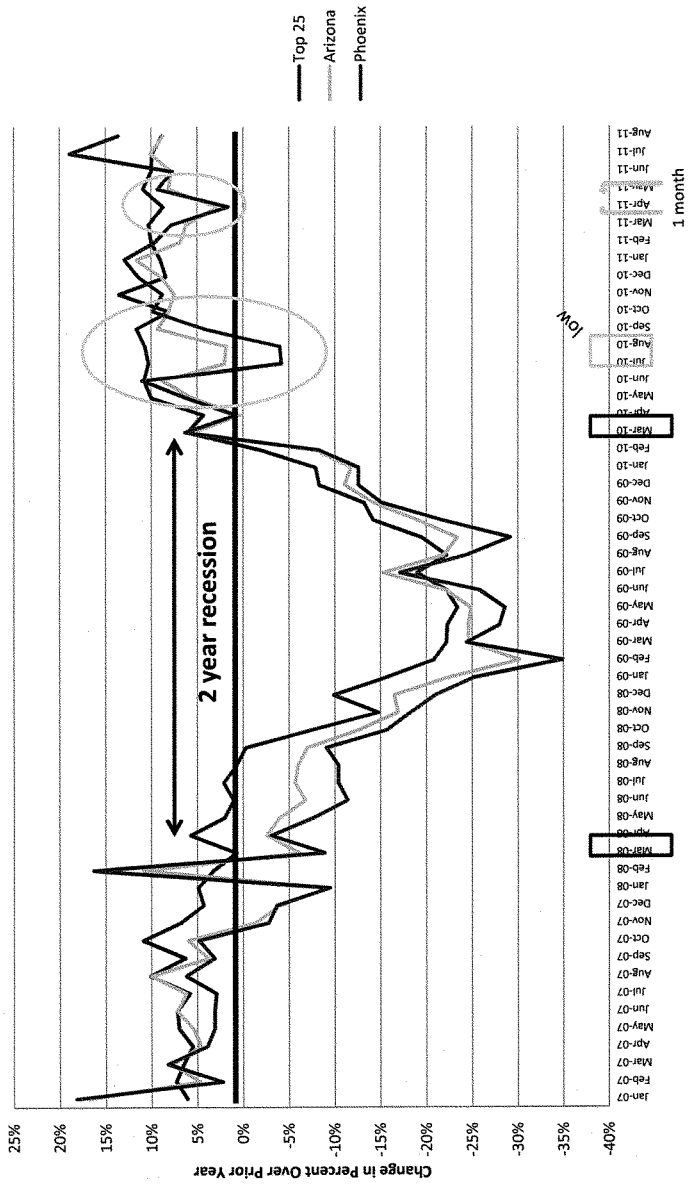
(Flynn is director of government affairs and Dalmia is a senior policy analyst at Reason Foundation. This chart was developed by Reason Foundation in collaboration with the National Foundation for American Policy.)

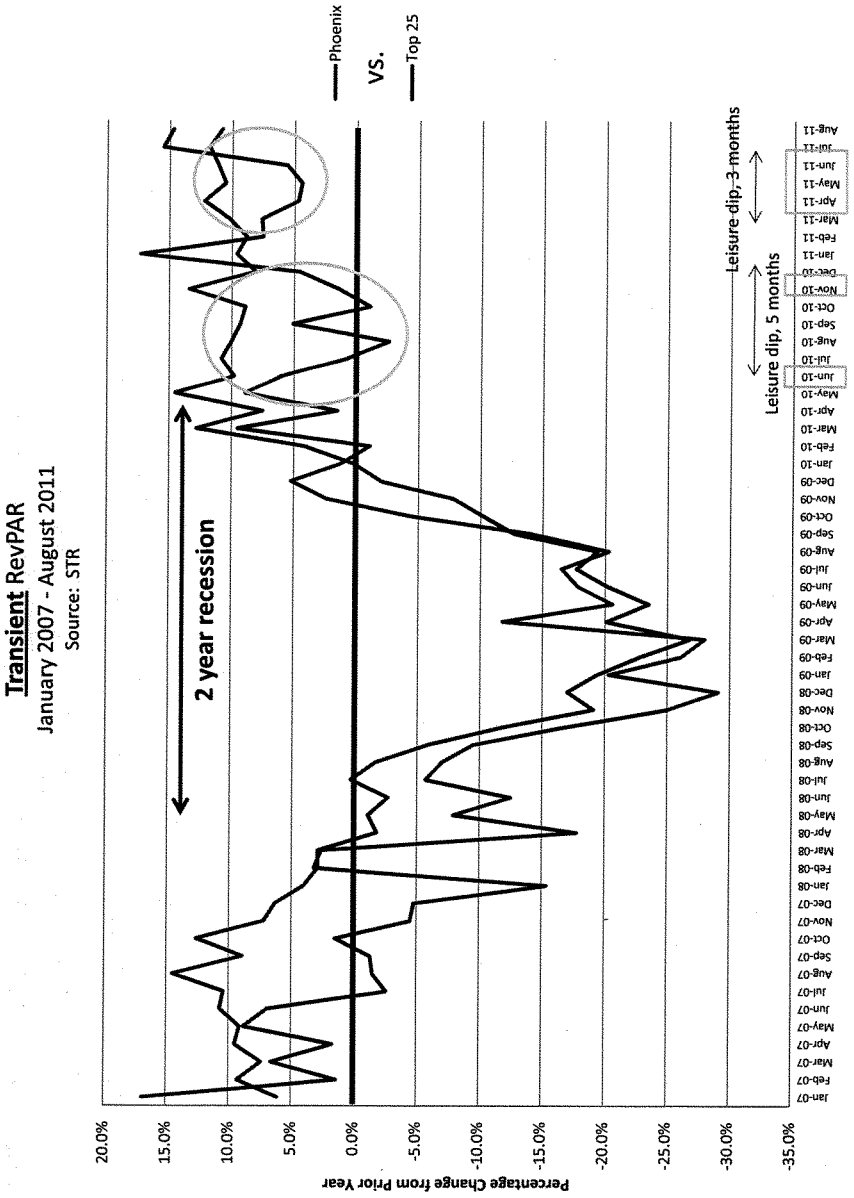
Total RevPAR Analysis

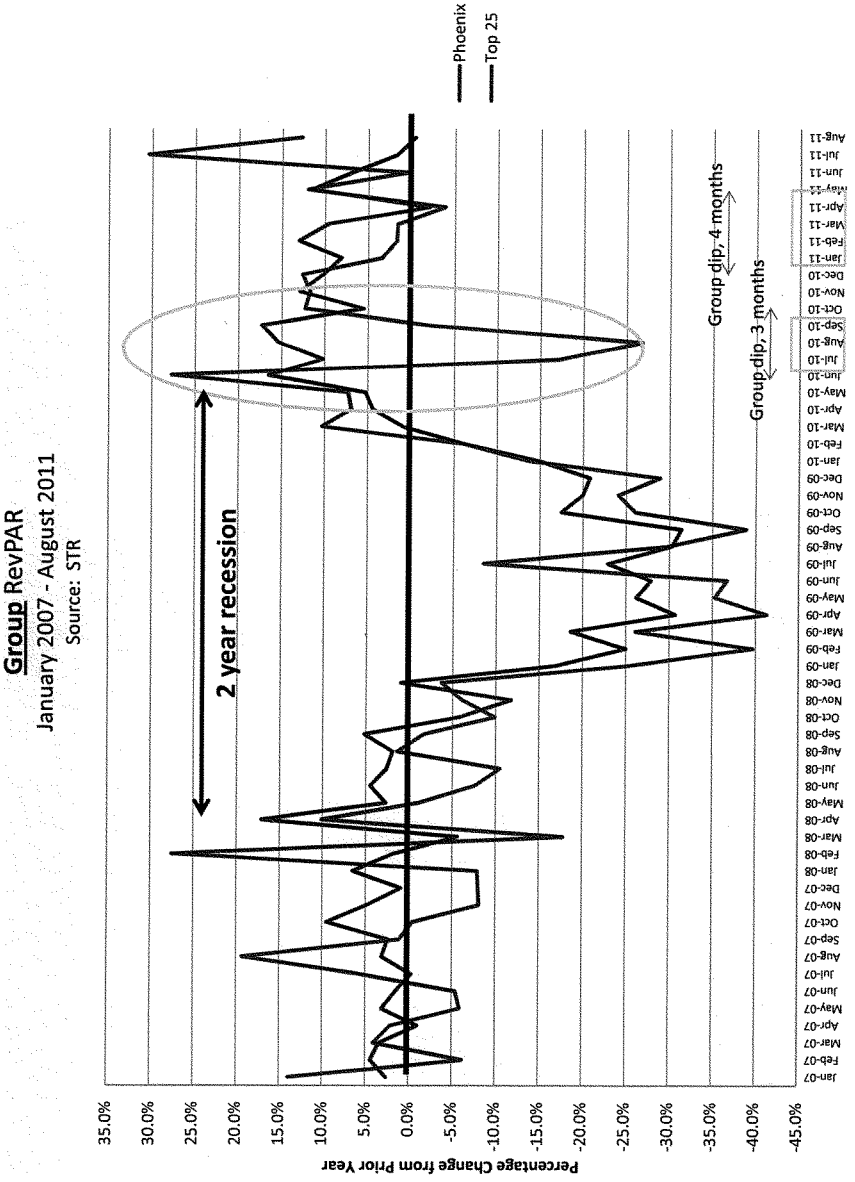
Metro Phoenix, Arizona, Top 25 Markets, Mountain Region and Total U.S.

January 2007 - August 2011

Source: Smith Travel Research Monthly Lodging Review Reports




Transient RevPAR
January 2007 - August 2011
Source: STR
Phoenix
VS.
Top 25
2 year recession
Leisure dip, 3 months
Leisure dip, 5 months
Percentage Change from Prior Year
20.0%
15.0%
10.0%
5.0%
0.0%
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Group RevPAR
January 2007 - August 2011
Source: STR
Phoenix
Top 25
2 year recession
Group dip, 4 months
Group dip, 3 months
Percentage Change from Prior Year
35.0%
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MISCELLANEOUS ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD



WRITTEN STATEMENT OF
THE AMERICAN CIVIL LIBERTIES UNION

For a Hearing on

"Examining the Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law"

Submitted to the Senate Judiciary Subcommittee on Immigration, Refugees and Border Security

April 24, 2012

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I. Introduction

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of more than a half-million members, countless additional activists and supporters, and 53 affiliates nationwide dedicated to enforcing the fundamental rights of the Constitution and laws of the United States. The Immigrants' Rights Project (IRP) of the ACLU engages in a nationwide program of litigation, advocacy, and public education to enforce and protect the constitutional and civil rights of immigrants. In Arizona and each of the five states that passed immigration enforcement laws similar to S.B. 1070 – Alabama, Georgia, Indiana, South Carolina, and Utah – the ACLU has filed suit in federal court as part of broad-based civil rights coalitions. The ACLU has also challenged local efforts to restrict immigrant housing and employment in Nebraska, Pennsylvania, Texas, and elsewhere. The ACLU's Washington Legislative Office (WLO) conducts legislative and administrative advocacy to advance the organization's goal to stop state and local involvement in immigration enforcement.

The ACLU submits this statement to the Senate Judiciary Subcommittee on Immigration, Refugees and Border Security on the occasion of its hearing addressing the "Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law." Our statement aims to provide an overview of the constitutional and public policy failings of these laws, including why they are preempted by federal law; how they are motivated by discriminatory animus; and why they inevitably rely on racial profiling. Moreover, these laws compound civil rights violations by ensnaring U.S. citizens and lawful residents; are demonstrably injurious to state and local economies; and corrode the valuable trust in law enforcement that underpins successful community policing. Although the tide appears to be turning against these laws within state legislatures, there remains much for Congress to do: From terminating federal immigration enforcement programs like Secure Communities and 287(g) that further impermissible state objectives, to passing the End Racial Profiling Act,[1] and encouraging, with appropriate funding, comprehensive oversight by DOJ's Civil Rights Division and the Department of Education, Congress must act to preserve its own prerogatives in America's federal system and to ensure vigorous protection of all residents' constitutional rights.

As a legal matter, the ACLU agrees with the Department of Justice (DOJ) that federal law preempts these state laws. In bringing actions to overturn independent state immigration regimes, DOJ protects Congress' legislative choices in the field of immigration and nationality law, which the Constitution designates to be exclusively a federal responsibility. States may not exercise a veto over decisions taken by Congress about immigration regulation, or interfere in the implementation of federal immigration laws by the Executive Branch. These state laws are preempted because they are at odds with the clear congressional mandate creating a uniform federal immigration system, including both substantive rules and enforcement of those rules. If every state were allowed to enact its own immigration laws, a patchwork of chaos and confusion would result and Congress' ability to create national laws accounting for the entire country's interests would be fatally undermined.

Contrary to their proponents' view, the state laws do not "help" or further "cooperation" with the federal government. Two amicus briefs filed by 18 foreign nations and a group of former U.S. State Department and military officials led by former Secretary of State Madeleine Albright stress the damage to American interests abroad caused by these laws.[2] In fact, Arizona and its imitators passed these laws precisely because they *disagree* with the choices that Congress has made in developing the federal immigration system. Laws enacted by Congress have created agencies, rules, and procedures for determining when non-citizens are in the United States without authorization, imposing consequences for immigration violations, and deciding when immigrants deserve to have forms of relief such as asylum.

Arizona and other states would like to bypass Congress' enacted laws and aggressively arrest and detain anyone police deem to be an "illegal alien" based on stereotypes of who looks or sounds "foreign." That would vitiate Congress' efforts to provide meaningful protection to domestic violence victims, asylum-seekers, and other

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[1] See Anthony D. Romero, Statement for the Senate Judiciary Constitution Subcommittee Hearing on "Ending Racial Profiling in America" (Apr. 17, 2012), available at http://www.aclu.org/racial-justice/statement-anthony-d-romero-submitted-senate-judiciary-subcommittee-hearing-hearing

[2] Available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcufmrgovofficials.pdf (Albright et al.); and http://www.nilc.org/USvAZamici.html (Mexico et al.).

categories of non-citizens designated by Congress for potential relief, even if they lack lawful immigration status at the time they are stopped by local police. And it would overwhelm federal agencies, diverting their resources from focusing on highest-priority cases, such as individuals who pose a danger to public safety.

In addition to preemption claims, which are grounded in the Constitution's Supremacy Clause, the ACLU's separate lawsuits against S.B. 1070 and the five other state laws that it inspired include additional constitutional claims not raised by DOJ, including arguments based on the First Amendment's protection of expressive activity, the Fourth Amendment's bar on unreasonable searches and seizures, and the Fourteenth Amendment's prohibition of discrimination on the basis of race, ethnicity, alienage and national origin. These claims will not be affected by the Supreme Court's upcoming ruling in case brought by DOJ.

In public policy terms, anti-immigrant state laws have been abject failures. They have caused vast economic harm and, in the case of Alabama, an ongoing humanitarian and civil rights crisis. The most valuable currency of law enforcement, community trust, has been badly devalued in these jurisdictions as residents of all statuses – U.S. citizens, documented immigrants, and undocumented persons – react to the reality that these laws effectively mandate racial profiling by police. Many law enforcement leaders oppose the laws as harming public safety by making their jobs harder; as police associations and individual chiefs told the Supreme Court, "our police cannot protect their communities without fostering cooperation and trust from all classes of people in each community. But the Arizona law would poison any culture of cooperation in communities most afflicted with crime."[3]

These laws are efforts by states, several of which have terrible legacies of civil rights abuses, to employ a mechanism subject to racial bias to regulate who lives within their borders, which people they will drive out, and whose communities – which churches, schools, and small businesses – are worth protecting and destroying. This is an ugly, divisive vision, where a governing majority picks on minorities. The laws also unleash personal bigotry running far beyond the law's formal dictates. In the words of U.W. Clemon, the first African American federal judge appointed in Alabama, the effect of these state laws is to make "the Hispanic man . . . the new Negro."[4] The federal government rightly rejects these laws as hurting America in the guise of help.

State legislatures are increasingly recognizing that such laws are bad for their economies, public safety, and civil rights.[5] After the first wave of six laws, more recent consideration by legislatures has led to the rejection of similar proposals. As Mississippi's agricultural associations urged their elected officials, "[w]e should learn from Alabama's mistakes and avoid them."[6] Legislators are realizing that a wide range of their constituents, businesses, and law enforcement agencies are negatively affected by these laws. Approximately 200,000 U.S. citizens in Mississippi, for example, lack ready access to documents proving citizenship, and would face new obstacles both in daily activities subject to law enforcement stops, and in obtaining licenses, loans, grants, credits, or entering other business transactions with state or local governments that would require proof of lawful status.[7] Legislators are viewing these laws as a failed experiment which resulted in children staying home from school, crops rotting in the fields and seeds unplanted for next year's harvest, as well as thinly-veiled targeting of Hispanic and Latino minorities that echoes the nation's segregationist past.

II. Autonomous State and Local Immigration Enforcement is Unconstitutional and Motivated by Animus.

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[3] (Mar. 2012), 9, available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcustate-locallawenforcementofficials.authcheckdam.pdf

[4] Jose Antonio Vargas, "Judge Who Ruled on Alabama's Law Was 'Mistaken.'" *Define American* (Oct. 17, 2011), available at http://www.defineamerican.com/blog/post/judge-who-ruled-on-alabamas-law-was-mistaken

[5] See generally A. Elena Lacayo, *The Wrong Approach: State Anti-Immigration Legislation in 2011.* (2012), available at http://www.nclr.org/images/uploads/publications/The_Wrong_Approach_Anti-ImmigrationLeg.pdf

[6] Letter from Mississippi Poultry Association et al. (Mar. 26, 2012).

[7] The number of Mississippi citizens without documentary proof of citizenship is based on the 2010 Census data and Brennan Center for Justice at NYU School of Law, *Citizens Without Proof* (Nov. 2006), *available at* http://www.brennancenter.org/page/-/d/download_file_39242.pdf, which found that approximately 7 percent of U.S. citizens do not have ready access to documents proving their citizenship status.

State and local immigration enforcement laws offend the Constitution in myriad ways. Two principal problems are explored here. First, these laws impermissibly intrude onto the exclusively federal terrain of immigration law, thereby violating the Constitution's Supremacy Clause. Second, these laws, which are motivated by expressed animus toward Hispanics, Latinos, and other people of color, guarantee an increase in unconstitutional racial profiling, thereby violating the Fourth and Fourteenth Amendments.

a. Preemption

State and local immigration enforcement is unconstitutional because it is preempted by federal law. Preemption occurs because these laws impermissibly attempt to regulate immigration, intrude in areas that Congress has occupied exclusively through the federal Immigration and Nationality Act (INA), and directly conflict with provisions in the INA. In the Arizona case pending before the Supreme Court, DOJ correctly argues that Arizona's law is invalid because it allows the state to make key decisions about immigration enforcement, wholly separate from any federal supervision, authorization, or control. For example, Arizona attempts to criminalize immigration-related conduct that is not a federal crime and makes enforcement action mandatory in cases over which the federal government wishes to exercise discretion.

Congress, in contrast, has created a system in which the *federal* government balances and prioritizes important national objectives in enforcing the immigration laws, weighing removal or detention of an alien against countervailing interests, including special individualized circumstances (as the faith community's amicus brief to the Supreme Court, led by the United States Conference of Catholic Bishops and the Evangelical Lutheran Church in America, expounds comprehensively).[8] The ACLU refers readers to its legal briefs in the six pending cases (summarized in the attached appendix) for a full exposition of preemption problems with the state laws, and will limit this preemption section to a discussion of why the enforcement provisions they contain are unconstitutionally in conflict with federal law.

Congress has carefully delineated specific, narrow circumstances under which state and local police can become involved in federal immigration enforcement. Congress' enactments reflect its belief that police have no general authority to enforce immigration law. Indeed, past Congresses debated extensively about whether to add such authority even as to reentered deported felons, and drew careful lines to restrict when state and local involvement in immigration enforcement is permitted. Congress has specifically addressed whether and when, under the complex immigration scheme it has established, state and local officers may have authority to perform the functions of an immigration officer, including specifically interrogation, arrest, and detention for immigration purposes:

First, 8 U.S.C. § 1324(c) authorizes state and local officers to make arrests for the federal immigration crimes of transporting, smuggling, or harboring certain aliens. *Second*, under 8 U.S.C. § 1252c, "State and local law enforcement officials" may arrest and detain a noncitizen for the federal crime of illegal reentry into the United States by a deported felon, but only if the federal government provides "appropriate confirmation" of the suspect's status, and if the detention is limited to such time as may be required for the federal government to take the individual into custody.

Third, pursuant to 8 U.S.C. § 1103(a)(10), the Attorney General may authorize "any State or local enforcement officer" to enforce immigration laws upon certification of "an actual or imminent mass influx of aliens." Unlike §§ 1324(c) and 1252c, this provision allows the Attorney General to confer upon local officials the powers granted to federal immigration officers, but only in an extremely narrow circumstance that has never been invoked in American history. *Fourth*, the detailed provisions of 8 U.S.C. § 1357(g), entitled "Performance of immigration officer functions by State officers and employees," permit state officers to perform certain functions of immigration officers if the Attorney General enters into a written agreement with the state or local government that satisfies specific conditions. Under § 1357(g) the state officers "shall be subject to the direction and supervision of the Attorney General" when performing these immigration officer functions pursuant to written agreement.

The legislative history of 8 U.S.C. §§ 1252c and 1357(g) confirms what is clear in their plain terms: Congress was not enacting a sweeping authorization for state and local enforcement of immigration laws. Instead,

[8] Available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcutheconferenceetal.pdf

Congress surgically authorized state and local officers – who otherwise would not have authority to investigate or apprehend noncitizens, or to enforce the immigration laws – to do so only in the specified, limited circumstances.

Section 1252c was first introduced as an amendment to the House Bill that later became the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Representative John Doolittle (R-CA) introduced the measure, expressing concern about the absence of authority for state and local law enforcement officials to arrest people for criminal immigration violations:

"In fact, the Federal Government has tied the hands of our State and local law enforcement officials by actually prohibiting them from doing their job of protecting public safety. I was dismayed to learn that the current Federal law prohibits State and local law enforcement officials from arresting and detaining criminal aliens whom they encountered through their routine duties."[9]

In the very same set of introductory remarks, Rep. Doolittle noted that some members had expressed concern about the state and local authority created by the bill, and that he had assuaged those concerns by limiting his bill to encounters with "criminal aliens" and requiring prior confirmation with INS officials:

"Mr. Chairman, by way of summary, I would like to allay fears or concerns that Members may have about the scope of my amendment. . . . [M]y amendment is very narrow and only covers situations in which the State or local officer encounters criminal aliens within his routine duties. . . . Only confirmed criminal aliens are at risk of being taken into custody."[10]

Likewise, the legislative history of § 1357(g), enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), reinforces that Congress intended to give the Executive Branch the option of designating state or local officers to carry out certain immigration officer functions for which they otherwise would lack authority, but only under congressionally mandated, federal controls. Representative Tom Latham (R-IA), who sponsored an amendment that would have gone further than § 1357(g) in authorizing state and local involvement in immigration enforcement, noted that under federal law in 1996,

"there is legally nothing that a State or local law enforcement agency can do about a violation of immigration law other than calling the local INS officer to report the case. . . . My amendment will allow State and local law enforcement agencies to enter into voluntary agreements with the Justice Department to give them the authority to seek, apprehend, and detain those illegal aliens. . . . [This amendment operates] [b]y allowing –not mandating – State and local agencies to join the fight against illegal immigration."[11]

By enacting these provisions and no others, Congress deliberately chose to circumscribe state and local officers' participation in the enforcement of federal immigration laws to specific and narrow circumstances. Congress' enactments leave no room for any state authority to carry out these functions. The state laws' granting of authority to police officers to interrogate, arrest, and detain noncitizens for immigration purposes violates the Supremacy Clause because it intrudes on a field that Congress has occupied and because it directly conflicts with federal law.[12]

b. Animus Against Hispanic and Latino Residents

Proponents of state and local immigration enforcement use the rhetoric of "illegal" immigration to pursue an agenda targeted at Hispanics, Latinos, and all immigrants. Part of this rhetorical campaign is to make synonyms of "Hispanic," "Latino," and "illegal." Moreover, many proponents use hyperbole to villainize undocumented immigrants and use threatening language towards them in a way so out of proportion to reality that it can only be understood as bias. They allege a void of federal immigration enforcement, willfully ignoring the fact that the Obama administration is deporting people in record-breaking numbers. In truth, it is clear that the architects behind

[9] 142 Cong. Rec. H 2190, 2191 (1996) (statement of Rep. Doolittle).
[10] Id.
[11] 142 Cong. Rec. H 2475, 2476-77 (1996) (statement of Rep. Latham).
[12] *See, e.g., DeCanas v. Bica*, 424 U.S. 351, 356, 363 (1976) (setting out field and conflict preemption standards); *see also Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 n.6 (2000) (explaining that the "categories of preemption are not 'rigidly distinct'") (citation omitted).

state and local immigration enforcement seek to single out Hispanic and Latino residents for hardship, in order to expel them from their communities.

In Alabama, HB 56's sponsors, state Senator Scott Beason and state Representative Micky Hammon, spoke of counties "most heavily hit" by illegal immigration, as if referring to a natural disaster. Similarly, Arizona State Senator Russell Pearce calls undocumented immigrants invaders, adding that "I will not back off until we solve the problem of this illegal invasion."[13] Hammon described HB 56 as being modeled after S.B. 1070, but noted "an 'Alabama flavor' in that it 'attacks every aspect of an illegal immigrant's life.' . . . Beason warned: 'If you allow illegal immigration to continue in your area, you will destroy yourself eventually. If you don't believe illegal immigration will destroy a community, go and check out parts of Alabama around Arab and Albertville [both communities with large Latino populations].' . . . Beason called on his fellow Republicans to 'empty the clip, and do what has to be done.'"[14]

No wonder federal district Judge Myron Thompson assessed HB 56 by writing that "the court must be sensitive to the use, in the legislative debates, of illegal immigrant as a code for Latino or Hispanic, with the result that, while addressing illegal immigrants was the target, discriminating against Latinos was the target as well . . . . [T]here is evidence that the legislative debate on HB 56 was laced with derogatory comments about Hispanics."[15] The court noted as an additional example that "[a]fter a reporter inquired about Hammon's oft-repeated comment that 'Alabama has the second-fastest-growing illegal immigrant population in the nation' and asked for evidence substantiating Hammon's claim, Hammon sent the journalist a news article that indicates Alabama's Hispanic population had the second-largest percentage growth between 2000 and 2010, and says nothing about unauthorized immigration whatsoever."[16]

In this context, the Fifth Circuit Court of Appeals' recent decision striking down an anti-immigrant housing ordinance in Farmers Branch, Texas, spoke to a wider phenomenon than the case at hand: "We conclude that the ordinance's sole purpose is *not* to regulate housing but to exclude undocumented aliens, specifically Latinos, from the City of Farmers Branch and that it is an impermissible regulation of immigration." Describing Latinos as a targeted population, the court added that "the great majority live quietly, raise families, obey the law daily, and do work for our country . . . , contribut[ing] to our welfare." The ordinance, according to the court, "exemplifies . . . verbal and legal discrimination against these people."[17]

c. Racial Profiling

Motivated by animus, these laws result in racial profiling of their targeted group of Hispanics, Latinos, and other people of color, in violation of the Constitution's Fourth and Fourteenth Amendments. The linchpin is their requirement that state and local police detain and investigate the immigration status of persons they stop and have a "reasonable suspicion" are in the United States unlawfully. No legislator or state official has come up with a good explanation for what "reasonable suspicion" means, and the laws fail to provide any guidance. Arizona has issued guidelines suggesting that officers should rely on factors such as traveling in an overcrowded vehicle, travelling in tandem with others, or providing inconsistent information to an officer. However, these factors are not probative of unlawful presence and are so overbroad as to be meaningless. Other factors in the Arizona guidelines – manner of

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[13] Gebe Martinez, "Beyond Arizona: Without Comprehensive Immigration Reform, Intolerance Will Rise Across Our Country." Center for American Progress (May 14, 2010), available at http://www.americanprogress.org/issues/2010/05/beyond_arizona.html

[14] Paul Reyes, "'It's Just Not Right': The Failures of Alabama's Self-Deportation Experiment." *Mother Jones* (Mar. – Apr. 2012), available at http://motherjones.com/print/160326. See also Campbell Robertson, "After Ruling, Hispanics Flee an Alabama Town." *New York Times* (Oct. 3, 2011), available at http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?pagewanted=all; Gwendolyn Ferreti-Manjarrez, "Attrition via Enforcement: Snuffing Latino Immigrants Out of the Deep South." *Anthropology News* (Feb. 2012), available at http://www.anthropology-news.org/index.php/2012/02/01/attrition-via-enforcement/

[15] *Cent. Ala. Fair Hous. Ctr. v. Magee*, No. 2-11cv982 (M.D. Ala.) (Dec. 12, 2011).

[16] Id.

[17] *Villas at Parkside Partners v. City of Farmers Branch*, No. 10-10751 (5th Cir. 2012).

dress and significant difficulty communicating in English – are merely impermissible proxies for race and ethnicity.[18]

Most of these state laws pay lip service to avoidance of racial profiling by including prohibitions on the illegal practice "except to the extent permitted by the United States or [state] Constitution," but numerous police chiefs and sheriffs in these states have stated publicly that there is no way to enforce the laws' "show me your papers" provisions without engaging in stereotypes based on race and ethnicity. Salt Lake City Police Chief Chris Burbank explains that inquiries based on "factors that cannot be readily observed, such as [the Utah law's proposed] 'reasonable cause to believe that the person is an alien' . . . would allow for arrest based solely on violations of civil immigration law rather than criminal law. These provisions invite racial profiling and expand the power to arrest in dangerous ways."[19] The Police Executive Research Forum has warned that "[a]ttempts to enforce immigration laws may make local police vulnerable to civil rights lawsuits and claims that they are using racial profiling when questioning or arresting people."[20]

The S.B. 1070 model incentivizes state and local police to stop people who look or sound "foreign" on pretextual bases, for purposes of inquiring into immigration status. Federal enforcement programs that involve state and local police have track records demonstrating increased racial profiling. When ICE's Criminal Alien Program was introduced in Irving, Texas, for example, there was a "marked rise in low-level arrests of Hispanics."[21] A recent newspaper analysis of Secure Communities fingerprint checks in Travis County, Texas, revealed that "more than 1,000 people have been flagged for deportation in Travis County in the past three years after arrests for minor infractions such as traffic tickets or public intoxication."[22] Secure Communities creates an incentive for state and local police to target immigrants for arrest for minor offenses or even pretextually. Police understand that even if the arrest is baseless or the person is later cleared of wrongdoing, Secure Communities will bring that person to ICE's attention for potential deportation. Unsurprisingly, Latinos comprise 93% of individuals arrested through Secure Communities though they only comprise 77% of the undocumented population in the United States.[23]

The ACLU and its allies are litigating a certified class action against the Maricopa County (Arizona) Sheriff's Office (MCSO) for a pattern and practice of racial profiling of Latinos, and illegal stops and seizures. DOJ recently concluded that MCSO "engaged in a widespread pattern or practice of law enforcement and jail activities that discriminate against Latinos. This discrimination flows directly from a culture of bias and institutional deficiencies that result in the discriminatory treatment of Latinos." DOJ's statistical expert opined that "this case involves the most egregious racial profiling in the United States that he has ever personally seen in the course of his work, observed in litigation, or reviewed in professional literature."[24] Yet, S.B. 1070 would encourage other agencies to adopt MCSO's tactics and would be invoked by MSCO officers as justifying their egregious behavior.

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[18] See SB 1070 Public Information Center, Implementation of the 2010 Arizona Immigration Laws Statutory Provisions for Peace Officers Arizona POST 3-4 (June 2010), available at http://agency.azpost.gov/supporting_docs/ArizonaImmigrationStatutesOutline.pdf

[19] Declaration of Chris Burbank, *Utah Coal. of La Raza v. Herbert*, No. 2:11-cv-00401-CW (D.Ut.) (May 6, 2011), 6; see also Arthur Hunter Jr., "The day-to-day reality of enforcing immigration laws." *Washington Post* (Apr. 23, 2012), available at http://www.washingtonpost.com/opinions/the-day-to-day-reality-of-enforcing-immigration-laws/2012/04/22/gIQA1UGjaT_story.html

[20] Debra A. Hoffmaster et al. "Police and Immigration: How Chiefs Are Leading their Communities through the Challenges." Police Executive Research Forum (Mar. 2011), xix, available at http://www.policeforum.org/library/immigration/PERFImmigrationReportMarch2011.pdf

[21] Trevor Gardner II and Aarti Kohli, The Chief Justice Earl Warren Institute on Race, Ethnicity & Diversity, "The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program," September 2009, 1, 5, 8, *available at* http://www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf

[22] Dave Harmon, "Undocumented immigrants in jail: Who gets deported?" *Austin American-Statesman* (Mar. 18, 2012), *available at* http://www.statesman.com/news/statesman-investigates/undocumented-immigrants-in-jail-who-gets-deported-2244677.html?viewAsSinglePage=true

[23] Aarti Kohli, Peter Markowitz, and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*. 5-6 (2011), *available at* http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf

[24] U.S. DOJ, Civil Rights Division, Letter from Assistant Attorney General Thomas E. Perez to Maricopa County Attorney Bill Montgomery (Dec. 15, 2011), *available at* http://www.justice.gov/crt/about/spl/documents/mcso_findletter_12-15-11.pdf

Although S.B. 1070 was enjoined before it could take effect, as other state laws have been (see attached appendix), it was already clear in Arizona that when police attempt to enforce immigration laws racial profiling does, in fact, follow. In a case recorded by the ACLU of Arizona, Saul Razcon, a Latino man driving on a Tucson-area freeway was stopped by the Arizona Highway Patrol in August 2010, allegedly for a broken window. He was asked for his driver's license and the officer also requested a license from his front seat passenger before questioning whether the three young girls in the back – aged 11, 13 and 17 – had "papers." One of the girls admitted that she didn't. ICE officers arrived and a parent raced to the scene in order to prevent his documented stepdaughter from being taken away. He recalled: "Saul was stopped for next to nothing. The officer told me that he didn't know if they were 'terrorists or criminals.' This greatly offended me and made me think that this man was racist and shouldn't be working as a police officer."[25] The other two girls, sisters, were deported to Mexico. To put these stops in larger perspective, the Arizona Department of Public Safety makes more than 500,000 stops per year, only 2% of which result in an arrest.[26] S.B. 1070 would invite racial profiling during every one of these stops by making "suspicion" based on stereotypes of what undocumented immigrants look or sound like a major part of day-to-day law enforcement.

Alabama is the only state in which "reasonable suspicion" provisions have gone into effect. Jose Contreras, a grocery store owner in Albertville, which has a sizable Latino population, noted that the police checkpoints have been "a nuisance to our community for the last two years, but since HB 56, I've heard of many more incidents of police detaining and sometimes deporting immigrants, about three to four accounts a week."[27] HB 56 has caused many Latinos to fear leaving their homes. According to Birmingham resident Isobel Gomez, "[i]f [police] see me they will think I'm suspicious and then they will detain me indefinitely. They will see the color of my skin."[28] Race-based apprehensions under HB 56 have marred the law from its first days, when Etowah County's Sheriff touted the apprehension of a Yemeni man as the first state immigration arrest. After a weekend of detention, the man was determined to be in the U.S. lawfully and released.[29]

All people of color are vulnerable to HB 56 "show me your papers" checks, which disproportionately fall on them: the first 141 people arrested by the Tuscaloosa police for failing to have drivers' licenses after HB 56 went into effect were "97 blacks, 34 Latinos, and 10 whites."[30] Arrests for driving without a license are frequently a pretext for racial profiling. The post-HB 56 Alabama experience bears this out: In November 2011, a Latino man was pulled over by a police officer, allegedly because of broken windshield wipers, even though it wasn't raining. Earlier this year, another Latino man was pulled over, allegedly because of a defective headlight. Each was arrested for driving without a license. In the headlight case, the complainant's U.S. citizen partner said that when she collected his vehicle both headlights worked fine.

The ACLU is aware of numerous reported cases of racial profiling, both cases following the letter of HB 56's "reasonable suspicion" requirement and cases going far beyond, which result when police feel unconstrained in using race-based law enforcement. For example, in February 2012 a Latino man alleged that he was standing and talking to an acquaintance at a gas station when two local police officers approached. The officers asked the men if they had Alabama identification. When one answered that he had his passport, the officer asked if he had a green card, adding that "police have the right to ask." When the men said they did not, they were arrested. No immigration charges were brought by ICE against the complainant, who paid $400 to get his car out of impound. He does not know what happened to his acquaintance.

San Francisco District Attorney George Gascón has 32 years of law enforcement experience, including leadership positions in the Los Angeles, Mesa, Arizona, and San Francisco police departments. He emphasized in sworn testimony on Alabama's HB 56 that "[a]n officer motivated by race or ethnicity can easily find a valid pretext for encountering an individual . . . by following a car until a minor traffic violation occurs." Indeed, undocumented immigrants' inability in 48 states to obtain a driver's license enables an easy arrest. Gascón concluded that:

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[25] Andrew Kennis, "Latinos Continue To Be (Illegally) Told, 'Show Me Your Papers!'" *AlterNet* (Sept. 27, 2011).
[26] Univ. of Cincinnati Policing Inst., *Traffic Stop Data Analysis Study: Year 3 Final Report Prepared for the Arizona Department of Public Safety*. 17 (2009).
[27] Kennis, supra.
[28] Ed Pilkington, "The grim reality of life under Alabama's brutal immigration law." *The Guardian* (Oct. 14, 2011).
[29] "First alleged violator of Ala. immigration law is legal." *Associated Press* (Oct. 4, 2011).
[30] Reyes, supra.

"[T]he immigration status check provisions of HB 56 cannot be enforced in a race-neutral manner. When police officers attempt to determine whether an individual they encounter on patrol is in the United States without federal immigration status . . . they will inevitably rely upon race and ethnicity as factors in establishing reasonable suspicion . . . . As a practical matter, short of directly observing an individual actually crossing the border in a surreptitious way . . . , there are not reliable indicia that would give rise to a reasonable suspicion to believe that a person is unlawfully present in the United States."[31]

The evidence is clear: When police officers are tasked with enforcing immigration laws, they necessarily resort to racial stereotypes about who "looks foreign." Yet there is no way to tell by looking or listening to a person whether he or she is in the U.S. without lawful status. State laws like Arizona's S.B. 1070 and Alabama's HB 56 target undocumented immigrants, but they have harmed all communities of color in those states – U.S. citizens and immigrants alike.

III. State and Local Enforcement of Immigration Laws Hurts All Residents, Including U.S. Citizens and Documented Immigrants, as Alabama's Humanitarian and Civil Rights Crisis Exemplifies.

a. U.S. Citizens and Documented Immigrants

State immigration laws are sold as targeting undocumented immigrants, but they frequently ensnare lawful residents and U.S. citizens. These effects are not hypothetical; the aggressive enforcement initiatives already underway in some localities offer a cautionary tale for what Arizona would look like state-wide. The ACLU's lawsuit against Arizona's S.B. 1070 includes plaintiff Jim Shee, a 71-year-old lifelong resident of Arizona and a U.S. citizen of Spanish and Chinese descent, who claims that S.B. 1070 would worsen racial profiling that he has already experienced. On two occasions in April 2010, Shee was stopped by law enforcement officers when he was driving, and asked to produce his "papers" – not his license and registration as ordinarily requested at a traffic stop. In one instance, the officer told Shee he was stopped because he "looked suspicious," and both times he was released without citation. As a precautionary measure, Shee and his wife now carry their passports whenever they drive, even though they are concerned about theft or loss. He has said: "My grandchildren are not blonde hair, blue eyes, and I fear for them that they are going to have to probably produce paperwork that they are here, what is their immigration status . . . . I feel that's very degrading and embarrassing."

Shee is far from the only worried U.S. citizen. Julio Cesar Mora, born in Avondale, Arizona, is a U.S. citizen of Mexican ancestry. On February 11, 2009, Mora and his then-sixty-six-year-old father (a lawful permanent resident who had lived in the United States for thirty years) were on their way to work. Just yards from their destination, they were surrounded by two vehicles from the MCSO, and ordered out of their pickup truck. They were frisked, handcuffed, and eventually taken to Mora's workplace – the site of an MCSO immigration raid. Mora is still astounded by the treatment he received. As he explains, "[m]aybe it was because of the Campesina radio station sticker on our bumper or . . . because my dad was wearing his Mexican tejana [hat] and they thought we were illegal. But they never bothered to ask us."[32] S.B. 1070 would make such racial profiling state-sanctioned in Arizona.

George Ibarra, a fourth-generation U.S. citizen, was born in the border town of Nogales, Mexico, but has lived in Arizona since infancy. He derived citizenship through his U.S. citizen mother. A veteran wounded during the first Gulf War, today Ibarra suffers from PTSD. He has been mistaken for a noncitizen and erroneously deported on two separate occasions.[33] S.B. 1070 would ensnare citizens like Ibarra, exacerbating ICE's already shocking record of detaining and deporting U.S. citizens.[34]

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[31] Declaration of George Gascón, *Hispanic Interest Coal. of Ala. v. Bentley*, No. 5:11-cv-02484-SLB (N.D. Ala.) (July 21, 2011), 4-5.

[32] Amicus Brief of the Leadership Conference on Civil and Human Rights et al. in *Arizona v. United States*, No. 11-182 (Mar. 26, 2011), 27-28, available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondenrtamculeadershipconferenceetal.authcheckdam.pdf

[33] *Id.* at 11.

[34] See generally Jacqueline Stevens, U.S. Government Unlawfully Detaining and Deporting U.S. Citizens as Aliens, (2011) VA. J. SOC. POL'Y & L. 606, 619-30, available at http://www.jacquelinestevens.org/StevensVSP18.32011.pdf

Shee, Mora, and Ibarra demonstrate the vulnerability of U.S. citizens to the immigration enforcement efforts of state and local police. The state laws also expose to state arrest and criminal detention immigrants who are entitled to congressionally mandated forms of relief, but who do not carry proof of lawful immigration status and in many cases are not yet recognized within federal databases as possessing lawful status. Those harmed by being picked up for lack of documentation will include individuals from nations experiencing crisis, victims of violent crime, asylum seekers, and relatives of U.S. citizens. For example:[35]

•In 1997, Congress passed the Nicaraguan Adjustment and Central American Relief Act ("NACARA") to provide immigration benefits to certain asylees. A plaintiff in the ACLU's lawsuit challenging the South Carolina law came to the United States in 1989 to escape a civil war in Guatemala. He obtained an Employment Authorization Document ("EAD") through NACARA. He must apply for renewal of his EAD on an annual basis, but due to administrative delay, often goes for weeks or months before he receives a current EAD. During these times, he lacks a registration document.

•Congress created the U-Visa to give legal status to victims of certain crimes and to encourage them to aid in investigation and prosecution. One of the plaintiffs in the ACLU's Arizona lawsuit is an immigrant from Mexico who entered into a relationship with a man who became abusive. After he slashed her tires, destroyed her clothes, and defaced the walls of her apartment, she became afraid for her safety and that of her children. She immediately applied for U-status as a survivor of violent crime, but it took fifteen months before she received a registration document.

•Another plaintiff in ACLU's Arizona lawsuit is a thirty-five-year-old woman of South Asian descent. Because she practices Catholicism, she was severely persecuted in her home country, which is Muslim. She was kidnapped and sexually assaulted, but authorities refused to investigate her attack. She and her family were forced to flee to the United States. During the pendency of her asylum application, she lacked a registration document.

•Temporary Protected Status ("TPS") is a benefit granted to immigrants in the United States from countries with extraordinary conditions that prevent such individuals from safely returning. Recipients of TPS who do not work, like children and the elderly, lack any registration documents. C.M., an Arizona plaintiff originally from Haiti, is a high school junior who was granted TPS after the devastating 2010 earthquake. She now fears questioning because of her dark skin and is nervous to speak Creole in public.

•Martha, of central Alabama, is married to a U.S. citizen, with whom she has a U.S. citizen son. She is adjusting her status, in compliance with federal law. After Alabama's HB 56 went into effect, she was stopped in a parking lot, allegedly for not having her lights on. When she failed to provide proof of citizenship, Martha was arrested for violating the new law. She spent three days in criminal custody until immigration officials arrived to verify her status.[36] Congress grants a path to permanent immigration status to family members of U.S. citizens and lawful permanent residents. The federal government allows thousands of such immigrants to wait in the United States while their cases are adjudicated, without registration documents.

Immigrants eligible for lawful status in addition to U.S. citizens therefore bear a severe share of the burdens imposed by state and local efforts to enforce immigration laws.

b. The Humanitarian and Civil Rights Crisis in Alabama

Alabama's HB 56 is the only state law which courts have permitted to take partial effect. The implementation of its novel enforcement provisions foreshadows broader consequences of state immigration enforcement if it is permitted to continue.

President Obama noted in October 2011 at the Forum on American Latino Heritage that "[t]he land of opportunity hasn't always been the land of acceptance," recalling a telegram of solidarity Dr. Martin Luther King, Jr. sent to Cesar Chavez in 1966.[37] Alabama's HB 56 continues to cause division and foment anxiety in Alabama,

[35] Examples all compiled in id.
[36] Southern Poverty Law Center, *Alabama's Shame: HB 56 and the War on Immigrants*. (2012), available at http://www.splcenter.org/sites/default/files/downloads/publication/SPLC_HB56_AlabamasShame.pdf
[37] Available at http://www.gpo.gov/fdsys/pkg/DCPD-201100748/html/DCPD-201100748.htm

living up to the *Washington Post*'s description of the law as a "viciously xenophobic"[38] measure that is, the *Newark Star-Ledger* observed, creating "an apartheid state, with an underclass of people living in fear."[39]

Rev. Roger Price, pastor of Birmingham's 16th Street Baptist Church, bombed in 1963 during the civil rights struggle, commented that HB 56 "is in blatant disregard of Christian values. It is bringing back the shameful and ugly past of our state."[40] The consequences of HB 56 were immediate and destructive, forcing immigrants in Alabama into an untouchable status.[41] Terrified parents kept their children out of school to avoid the threat of immigration queries. Families lost their water service because they lacked government-issued ID. Immigrants have been told by landlords that they are no longer welcome as renters, since their leases are unenforceable. And the law has unleashed widespread bigotry beyond its formal dictates. Latinos buying groceries have been asked by check-out clerks for their papers, and children who do show up at school are asked why they haven't "gone back" to Mexico.

HB 56 requires that Alabama public schools determine the immigration status of students at the time of enrollment. Before the 11th Circuit Court of Appeals enjoined this provision, more than 2,000 Hispanic and Latino children, including many U.S. citizens, were absent from school in Alabama in the days after the law went into effect. 58 of 223 Hispanic students at a Mobile elementary school withdrew from school or were absent.[42] American Federation of Teachers president Randi Weingarten expressed dismay that "[p]arents are afraid to drive their kids to school, [fearing] that something will happen and they won't be able to care for their children. Nobody wins when a law pushes children into the shadow of society. Teachers should be safety nets, not snitches. Guardians, not guards."[43]

The law put teachers and administrators in a severe bind, and some singling out of Hispanic and Latino children may even have been well-intentioned. For example, in front of their entire class, two first-graders were handed know-your-rights documents to give to their parents. Elsewhere, children were removed from class and given the document.[44] A Birmingham-area middle school isolated students with Spanish surnames in order to reassure them that school officials would not deport their families. Said one boy, "Our principal told us to come, all the Mexicans to come to the library," where his classmate observed that "half of the kids were already crying." The school's assistant principal told the media, "[w]e're already looking at about a quarter of our Hispanic population indicating that they will be leaving us very soon."[45]

Parents responded by making emergency arrangements for their children; more than 200 power of attorney papers were quickly drawn up in Tuscaloosa alone.[46] Other measures were tragically ad hoc; for example, Cristian Gonzalez, 28, "informally asked the manager of the rental property where she lives to take care of her 10-year-old daughter should she and her husband be arrested . . . . The girl, a U.S. citizen who has medals for making good grades, needs to finish school in America and is deeply rooted in Alabama, she said."[47] As Judge Myron Thompson noted, "that HB 56's treatment of children in mixed status families, who are overwhelmingly Latino, is so markedly different from the State's historical treatment of children in general suggests strongly that the difference in treatment was driven by animus against Latinos in general and thus that the statute was discriminatorily based."[48]

Rev. Paul Zoghby, who has a large Hispanic congregation in Alabama, observed that "[t]his is the saddest thing I have experienced in my 18 years as a priest. We've already lost 20 percent of the congregation in the past few weeks, and many more will be gone . . . . It is a human tragedy."[49] In scenes bringing to mind overseas footage of ethnic conflict, or America's domestic historical memory of the Great Migration, families tried desperately to sell

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[38] "Targeting schoolchildren." *Washington Post* (Oct. 1, 2011).
[39] "Criminalizing Undocumented Immigrants No Solution." *The Star-Ledger* (Newark, New Jersey) (Oct. 9, 2011).
[40] Pamela Constable, "In Alabama, apprehension." *Washington Post* (Oct. 9, 2011).
[41] See generally Southern Poverty Law Center, *Alabama's Shame*, supra.
[42] "Targeting," supra.
[43] Patrik Jonsson, "Is Alabama immigration law creating a 'humanitarian crisis'?" *Christian Science Monitor* (Oct. 6, 2011).
[44] Elizabeth Beresford, "ACLU Report from Alabama." (Oct. 11, 2011), available at http://www.aclu.org/aclu-report-alabama.
[45] NBC Nightly News (Oct. 7, 2011).
[46] Ed Pilkington, Alabama crackdown on 'illegals' triggers rush to safeguard children. *The Guardian* (Oct. 12, 2011).
[47] Jay Reeves, "Immigrants fearing deportation make plans for kids." *Associated Press* (Oct. 10, 2011).
[48] *Cent. Ala. Fair Hous. Ctr.*, supra.
[49] Constable, supra.

their homes and belongings before leaving Alabama. The ghosts of productive community members are all that remain.

IV. States with Anti-Immigrant Racial Profiling Laws Have Damaged Their Economies and Caused Reputational Harm to the Business Climate.

All residents suffer from the economic harms associated with state and local involvement in immigration enforcement. Jay Reed, president of the Alabama chapter of Associated Builders and Contractors and cofounder of Alabama Employers for Immigration Reform – a consortium of 18 industrial associations, including Alabama Poultry and Egg – commented that while HB 56 "wasn't meant to drive out those here legally working, it has – especially in carpentry, masonry, landscaping." Charles Hall of the Georgia Fruit and Vegetable Grower's Association adds that "[a]nybody that's promoting illegal-immigration enforcement as a job-creation bill has no clue of the real world."[50] Alabama's economic damage is so severe that the state's economy is expected to shrink by billions of dollars annually.[51]

Even where courts have blocked states from implementing core provisions of these laws, a severe impact has been felt, due to the fear and controversy engendered by the laws' debate and passage. In 2011, Georgia suffered a $300 million estimated loss in harvested crops statewide, with a $1 billion total estimated impact on Georgia's economy.[52] Arizona's losses include $141 million in conference cancellations alone and $253 million in overall economic output.[53]

These laws have a chilling effect on international investment as well. In November 2011, a German Mercedes-Benz executive, visiting an auto plant in Tuscaloosa, Alabama, was arrested during a routine traffic stop for failing to produce evidence that he was in the United States legally. A Japanese Honda employee was subsequently cast under suspicion when his international driver's license was deemed insufficient as a registration document.[54] Two of Indiana's largest employers made their objections clear. Eli Lilly and Cummins, Inc. (with a combined market capitalization of $62-billion) issued a joint statement in opposition to Indiana's legislation: "From the perspective of large Indiana employers with global and diverse workforces, Lilly and Cummins believe that there are compelling business reasons to oppose Senate Bill 590. Anti-immigration and English-only laws impede the ability of Indiana businesses to be competitive in global markets, and will make it more difficult for Lilly and Cummins to grow in Indiana."[55]

Gerald Dial, Alabama State Senate Republican whip and former HB 56 supporter, thinks that investors have paid attention to the law's effects. "Other states will say, 'Hey, you don't want to go to Alabama now,'" said Dial. "We're probably going to lose those people. We won't know about it. There won't be a big red flag: 'Hey, we didn't go to Alabama, we're going to go to [another state].' That's probably the most detrimental part of the whole bill."[56] Supreme Court amicus briefs filed to oppose S.B. 1070 by Arizona Employers for Immigration Reform, the Arizona Hispanic Chamber of Commerce, American Subcontractors Association of Arizona, and the Greater Houston Partnership, demonstrate business concern about these laws.[57] States which pass anti-immigrant racial profiling laws flout the best interests of their economies and mar their commercial reputations.

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[50] Reyes, supra.

[51] Tom Baxter, *Alabama's Immigration Disaster: The Harshest Law in the Land Harms the State's Economy and Society*. (Feb. 2012), available at http://www.americanprogress.org/issues/2012/02/alabama_immigration_disaster.html

[52] Tom Baxter, *How Georgia's Anti-Immigration Law Could Hurt the State's (and the Nation's) Economy*. (Oct. 2011), available at http://www.americanprogress.org/issues/2011/10/georgia_immigration.html

[53] Lecayo, supra.

[54] *Bad for Business: How Anti-Immigration Legislation Drains Budgets and Damages States' Economies*. Immigration Policy Center (Mar. 26, 2012), available at http://www.immigrationpolicy.org/just-facts/bad-business-how-anti-immigration-legislation-drains-budgets-and-damages-states%E2%80%99-economie

[55] Available at http://www.indianacompact.com/news/alliance-for-immigration-reform-in-indiana-releases-new-information-on-oppo/

[56] *Bad for Business*, supra.

[57] Available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcuazeiretal.authcheckdam.pdf (Arizona Employers for Immigration Reform et al.); and http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcugreaterhoustonpartnership.authcheckdam.pdf (Greater Houston Partnership).

V. State Immigration Enforcement Laws Harm Public Safety by Discouraging Cooperation from Victims and Witnesses of Crime and Damaging the Trust Necessary for Effective Community Policing.

Law enforcement leaders have cautioned against putting state and local police in the position of enforcing federal immigration laws because this alienates the communities they serve and endangers everyone's public safety by making victims and witnesses afraid to come forward. A leading law enforcement research group, the Police Executive Research Forum (PERF), has advised that "active involvement in immigration enforcement can complicate local law enforcement agencies' efforts to fulfill their primary missions of investigating and preventing crime."[58] As Salt Lake City Chief Burbank has testified, state immigration laws like Utah's "undermine[] my ability to set law enforcement priorities for my agency because I cannot prohibit the allocation of already scarce resources toward civil immigration enforcement instead of violent crimes and criminal enforcement."[59] Tuscaloosa, Alabama, Police Chief Stephen Anderson recalled, "[w]e were told they were going to provide training for us, and that didn't happen. You just had a group of people who wanted a bill passed, and they did it. No guidance, no training, no funding."[60]

Former Arizona Attorneys General Terry Goddard (D) and Grant Woods (R) joined 42 other former state attorneys general in urging the Supreme Court to recognize that law enforcement is harmed by state laws like S.B. 1070. They emphasized that the state laws are a direct threat to gains made recently in community policing: "State and local law enforcement officials have devoted substantial time, energy, and resources to fostering these relationships. SB 1070, by turning local officers into immigration agents, and by increasing the likelihood of racial profiling against certain communities, will undermine the progress that these programs have painstakingly achieved. These problems will negatively impact all enforcers within the criminal justice system, from line officers to prosecutors, impeding their efforts to ensure public safety."[61]

Similarly, an amicus brief filed by the Major Cities Chiefs Police Association, PERF, and the National Latino Peace Officers Association, as well as 18 present or former chiefs of police, explains in detail how "[w]hen every individual with whom the police interact must be subjected to immigration scrutiny, it is inevitable that law-abiding witnesses and victims of crimes will avoid police interaction, allowing perpetrators to escape and creating an atmosphere of fear that will spill over to the rest of the community. And this impact will not be restricted to the states that adopt laws resembling S.B. 1070. It will spill across borders, and adversely affect law enforcement in states that do not adopt such policies."[62]

These public safety consequences are real and shocking. To give but one example, Tuscaloosa Chief Anderson recalled that after tornados hit Alabama in April 2011, when HB 56 was actively being considered by the Legislature, "very few Latinos had shown up at the FEMA aid stations set up around town, despite the damage done to their neighborhoods – in particular, to the Graceland Apartments complex, where the brick facades were shredded and the rubble of a roof piled up behind windows. Following a hunch, Anderson sent officers into these buildings. They discovered Latino families hiding in the ruins, nursing cuts and broken bones. Many wouldn't ask for help from FEMA or the police or at hospitals for fear of being deported."[63]

These law enforcement experts, who know best how to promote public safety in their communities, vouchsafe that state and local involvement in immigration enforcement damages their ability to work effectively.

The federal government also expresses law enforcement concerns. Chief Burbank notes that involving state and local police in direct immigration enforcement will "dramatically prolong detention duration because

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[58] Hoffmaster et al., supra at xv.
[59] Burbank, supra.
[60] Reyes, supra. Local law enforcement and local government associations urged the Mississippi Legislature not to enact a similar law, emphasizing that "another state *unfunded mandate* passed down to local tax payers and local governments of Mississippi will not resolve the problem of illegal immigration." See Letter of Mississippi Sheriffs' Association et al. (Mar. 26, 2012).
[61] (Mar. 26, 2012), available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcufmrazattorneysgenetal.authcheckdam.pdf
[62] (Mar. 2012), 9, available at http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-182_respondentamcustate-locallawenforcementofficials.authcheckdam.pdf
[63] Reyes, supra.

immigration status is not something that can be easily and expeditiously verified in the field. *Law enforcement officers in the field do not have access to a database containing information about an individual's immigration status.* Therefore, an officer's only option to verify immigration status will be to contact [ICE] directly and wait for verification or book individuals unnecessarily into jail."[64] ICE has stated with respect to its database center, the Law Enforcement Support Center (LESC), that "the average [immigration status] query waits for approximately 70 minutes before a Law Enforcement Specialist is available to work on the request. On average, it takes an additional 11 minutes per query to research DHS data systems and to provide the written alien status determination."[65] This hour-and-a-half per query also applies under the state laws to lawful permanent residents and U.S. citizens who are "reasonably" believed to be undocumented, an elastic definition that could easily be extended to cover the vast majority of Americans who do not carry proof of citizenship.

ICE has criticized the state laws' required immigration-status-check submissions because "an increase in the number of U.S. citizens and lawful permanent residents being queried through the LESC . . . reduc[es] our ability to provide timely responses to law enforcement on serious criminal aliens." In the context of only one state's potential to increase the number of queries sent to the LESC, ICE warned that if Arizona is permitted to require its officers to check immigration status, it:

"will delay response times for all [queries] and risks exceeding the capacity of the LESC to respond to higher priority requests for criminal alien status determinations from law enforcement partners nationwide. Furthermore, the potential increase in queries by Arizona along with the possibility of other states adopting similar legislation could overwhelm the system. If the LESC's capacity to respond to requests for assistance is exceeded, the initial impact would be delays in responding to time-sensitive inquiries from state, local, and federal law enforcement, meaning that very serious violators may well escape scrutiny and be released before the LESC can respond to police and inform them of the serious nature of the illegal alien they have encountered. If delays continue to increase at the LESC, ICE might have to divert personnel from other critical missions to serve the needs of our law enforcement partners. The LESC directly supports both the public safety and national security missions of DHS. These are critical missions which cannot be allowed to fail."[66]

State and federal law enforcement leaders are strong voices opposing state attempts to enforce immigration law.

VI. Conclusion

The ACLU urges Congress to do everything in its power to combat unconstitutional state and local intrusions on federal immigration authority and protect all residents' constitutional rights. These laws are an affront to congressional prerogatives in the realm of immigration regulation and must be combatted with the full force of federal legislative and executive power. Congress should act to terminate federal immigration enforcement programs like Secure Communities and 287(g), pass the End Racial Profiling Act, and appropriately fund comprehensive oversight by the Executive Branch of these laws' pernicious effects.

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[64] Burbank, supra (emphasis added).
[65] Declaration of David C. Palmatier, Unit Chief, Law Enforcement Support Center, in *United States v. Arizona* (2010), available at http://www.justice.gov/opa/documents/declaration-of-david-palmatier.pdf
[66] *Id.*

Appendix: Summary of Pending Litigation

Since the enactment of Arizona's infamous law in April 2010, the ACLU has tracked legislation in 28 states that introduced bills with one or more features initiated by S.B. 1070. Five of these laws were enacted.

Key provisions of the state laws presently being challenged in litigation include the following (lawsuits by the federal government are pending in all but Georgia and Indiana, and lawsuits by the ACLU and its civil rights coalition partners are pending in all six states):

a. Alabama (HB 56)

•creates a state crime of failing to carry registration documents (section 10)
•requires state and local law enforcement officers to investigate the immigration status of any person stopped, arrested or detained if the officer has a "reasonable suspicion" that the person is "unlawfully present in the United States" (section 12)
•prohibits business transactions by undocumented persons with the state government (section 27)
•requires public schools to determine citizenship and immigration status (section 28)
•makes contracts with private parties unenforceable if one party has knowledge that another is undocumented (section 30)

With the exception of section 12, which is in effect, these provisions have been enjoined, *see Hispanic Interest Coal. of Alabama v. Bentley*, Nos. 11-14532, 11-14535 (11th Cir. Mar. 8, 2012) (order).

b. Arizona (S.B. 1070)
•requires state and local law enforcement officers to verify the citizenship or alien status of people arrested, stopped, or detained (section 2)
•creates a state-law crime of being unlawfully present in the United States and failing to register with the federal government (section 3)
•creates a state-law crime for drivers of motor vehicles to stop to pick up day laborers, and for day laborers to get in a motor vehicle (section 5, enjoined by *Friendly House v. Whiting*, No. 10-1061 (D. Az. Feb. 29, 2012) (order))
•creates a state-law crime of seeking work or working while not authorized to do so (section 5)
•authorizes warrantless arrests of aliens believed to be removable (section 6)

These provisions have been enjoined, *see United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011), *cert. granted*, 132 S. Ct. 845 (No. 11-182, oral argument on Apr. 25, 2012)

c. Georgia (HB 87)
•creates state law crimes penalizing "transporting or moving an illegal alien," "concealing or harboring an illegal alien," and "inducing an illegal alien to enter into this state (section 7)
•authorizes Georgia peace officers to request identity documents from persons subject to any investigation, and to investigate the immigration status of persons unable to produce designated documents (section 8)
•criminalizes accepting an identity document that is not "secure and verifiable" for "any official purpose" (section 19)

Sections 7 and 8 were enjoined by *Ga. Latino Alliance for Human Rights v. Deal*, No. 11-1804 (N.D. Ga. June 27, 2011) (order). This case is now on appeal at the Eleventh Circuit (No. 11-13044) (oral argument held on Mar. 1, 2012).

d. Indiana (SEA 590)
•prohibits, as an infraction, the use of consular identification cards (Section 18)
•permits state and local law enforcement officers to arrest persons on the sole basis of a removal order, immigration detainer, DHS notice of action, or an indictment or conviction for an aggravated felony (section 19)

These provisions were enjoined by *Buquer v. City of Indianapolis*, No. 11-708 (S.D. Ind. June 24, 2011) (order). The case is presently at its summary judgment stage.

e. South Carolina (SB 20)

- •creates state crimes for those who have "come to, entered, or remained in the United States in violation of law to allow themselves to be transported" or "to conceal, harbor, or shelter themselves from detection . . . in any place, including a building or means of transportation [to] avoid apprehension or detection" (section 4)
- •creates a state crime for "fail[ure] to carry in the person's personal possession any certificate of alien registration or alien registration receipt card . . . while the person is in this State" (section 5)
- •requires every state and local law enforcement officer to determine the immigration status of any person stopped if the officer develops "reasonable suspicion to believe that the person is unlawfully present in the United States" (section 6)
- •criminalizes the use or possession of false identification "for the purpose of offering proof of the person's lawful presence in the United States (section 6)
- •requires law enforcement officers to determine whether a person is "an alien unlawfully present in the United States" if he or she is confined for any period in jail (section 7)

With the exception of section 7, these provisions were enjoined by *United States v. South Carolina* and *Lowcountry Immigration Coalition v. Haley*, Nos. 11-2958, 11-2779 (D. S.C. Dec. 22, 2011) (order). These cases are now on appeal at the Fourth Circuit (Nos. 12-1096, 12-1099).

f. Utah (HB 497)

- •mandates that state and local law enforcement officers require that any person who is the subject of a "lawful stop, detention, or arrest" produce one of four types of listed identification documents (sections 3 and 4)
- •prohibits any state or local government agency from having a policy limiting or restricting authority to investigate or enforce violations of the federal misdemeanor offenses of willful failure to register as an alien and willful failure personally to possess an alien registration document (section 6)
- •creates new state crimes for transporting unauthorized immigrants into or within the state of Utah; concealing, harboring or sheltering an unauthorized immigrant within Utah; encouraging or inducing non-citizens to come to, enter, or reside in Utah where doing so would be in violation of federal law; or engaging in a conspiracy to commit any of the foregoing offenses (section 10)
- •grants state and local law enforcement officers broad authority to make warrantless arrests for purposes of immigration enforcement (section 11)

The Utah law continues to be on hold, as it is subject to a temporary restraining order while the district court awaits guidance from the U.S. Supreme Court's decision in *Arizona v. United States*. *See Utah Coal. of La Raza v. Herbert*; *United States v. Utah*, Nos. 11-401, 11-1072 (D. Ut.) (Feb. 21, 2012) (order).



COMMUNITY EDUCATION CENTER · IMMIGRATION POLICY CENTER · INTERNATIONAL EXCHANGE CENTER · LEGAL ACTION CENTER

On behalf of the Immigration Policy Center, a division of the American Immigration Council, I respectfully request that the Subcommittee on Immigration, Refugees, and Border Security accept the following materials into the record for its hearing entitled "Examining the Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law."

Since the passage of SB 1070, the Immigration Policy Center has published numerous articles and fact sheets related to the costs and consequences of state anti-immigrant legislation. Despite the many myths advanced that passage of such laws will improve the economic and social well-being of state residents, the opposite is true. The reports from Arizona, Alabama, Georgia, and many other states that have passed or considered passing SB 1070-like immigration laws demonstrate that there are significant economic and fiscal costs to these bills. The disruption of families and communities is severe, U.S.-citizen children are harmed, and the heightened likelihood of civil rights violations and racial profiling will have consequences long beyond the debate over immigration.

We hope that the following materials will assist the Subcommittee in its deliberations:

Friedland, Joan, "Turning Off the Water: How the Contracting and Transaction Provisions in Alabama's Immigration Law Make Life Harder For Everyone," Immigration Policy Center, Washington, D.C., November 2011 (http://www.immigrationpolicy.org/special-reports/turning-water-how-contracting-and-transaction-provisions-alabamas-immigration-law-ma).

Immigration Policy Center, "Bad for Business: How Harsh Anti-Immigration Legislation Drains Budgets and Damages States' Economies," Immigration Policy Center, Washington, D.C., March 2012 (http://www.immigrationpolicy.org/sites/default/files/docs/bad_for_business_states_032612.pdf).

Immigration Policy Center, "*Q&A Guide to State Immigration Laws: What you Need to Know if Your State is Considering Anti-Immigrant Legislation*," Immigration Policy Center, Washington, D.C. 2012 (http://www.immigrationpolicy.org/sites/default/files/docs/State_Guide_to_Immigration_Laws_Updated_021612.pdf).

Waslin, Michele, "Discrediting Self-Deportation as Immigration Policy: Why an Attrition Through Enforcement Strategy Makes Life Difficult for Everyone," Immigration Policy Center, Washington, D.C., February 2012 (http://www.immigrationpolicy.org/special-reports/discrediting-%E2%80%9Cself-deportation%E2%80%9D-immigration-policy).

Sincerely,

Mary Giovagnoli, Director

RIGHTS working group

STATEMENT OF

MARGARET HUANG, EXECUTIVE DIRECTOR
RIGHTS WORKING GROUP

HEARING ON "EXAMINING THE CONSTITUTIONALITY AND PRUDENCE OF STATE AND LOCAL GOVERNMENTS ENFORCING IMMIGRATION LAW"

SENATE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND BORDER SECURITY

UNITED STATES SENATE

APRIL 24, 2012

Chairman Schumer, Ranking Member Cornyn, and members of the Subcommittee: I am honored to submit this testimony for the record on behalf of Rights Working Group regarding today's hearing on "Examining the Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law."

Rights Working Group (RWG) was formed in the aftermath of September 11th to promote and protect the human rights of all people in the United States. A coalition of more than 330 local, state and national organizations, RWG works collaboratively to advocate for the civil liberties and human rights of everyone regardless of race, ethnicity, religion, national origin, citizenship or immigration status. Currently, RWG leads the *Racial Profiling: Face the Truth Campaign,* which seeks to end racial and religious profiling.

RWG is particularly concerned about state immigration legislation, such as Arizona's SB 1070, that unconstitutionally preempts federal authority to enforce immigration laws as well as

current federal immigration enforcement policies which encourage state and local law enforcement agencies to participate in enforcing federal immigration law. This collaboration has resulted in discriminatory policing practices such as racial profiling and violate the civil and human rights of people living in the United States.

Arizona's SB 1070 and Its Copycats

Arizona Senate Bill 1070 (SB 1070) was signed into law in April of 2010. SB 1070, among other things, requires law enforcement officials to ask for legal documentation or "papers" from individuals they have "reasonable suspicion" of being undocumented during the course of a lawful stop and gives the people of Arizona the power to sue law enforcement agencies if SB 1070 is not being effectively enforced. These provisions were enjoined before taking effect. If implemented the provisions would codify racial profiling in Arizona by mandating state and local law enforcement officials to target individuals based on appearances—their perceived race, ethnicity, national origin or immigration status. The Department of Justice and several civil rights organizations have sued the state of Arizona to stop this law from taking effect. Many provisions, including the "papers please" provision have been blocked pending appeal. Though some provisions have not yet gone into effect, much of the damage has already been done. Families have been torn apart and lives have been shattered as immigrants flee the hostile anti-immigrant climate in Arizona, leaving everything behind[1]. Arizona lost hundreds of millions of dollars in taxes and economic output as well as other revenue as individuals and businesses across the country are boycotting Arizona[2]. Community policing efforts and public safety in Arizona have been jeopardized as disempowered immigrants refrain from reporting crimes. The Arizona Association of Chiefs of Police (AACOP) foresaw this possibility and

[1] Husna Haq, *Hispanics Abandon Arizona, Fleeing Economy, Immigration Law*, Christian Science Monitor, June 10, 2010, *available at* http://www.csmonitor.com/USA/Society/2010/0610/Hispanics-abandon-Arizona-fleeing-economy-immigration-law.
[2] Marshall Fitz and Angela Kelley, *Stop the Conference: The Economic and Fiscal Consequences of Conference Cancellations Due to Arizona's S.B. 1070*. Center for American Progress. 2010), *available at* http://www.americanprogress.org/issues/2010/11/az_tourism.html.

issued a statement of opposition to SB 1070 before it was signed into law,, "The provisions of the bill remain problematic and will negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner. While AACOP recognizes immigration as a significant issue in Arizona, we remain strong in our belief that it is an issue most appropriately addressed at the federal level. AACOP strongly urges the U. S. Congress to immediately initiate the necessary steps to begin the process of comprehensively addressing the immigration issue to provide solutions that are fair, logical, and equitable.[3]"

Troublingly, SB 1070 inspired copycat bills in several other states. In 2011, Alabama, Georgia, Indiana, South Carolina and Utah each passed SB 1070 copycat laws. Each of these states has been sued and many of the most harmful provisions have not yet taken effect. However, in Alabama the "papers please" provision has been allowed to take effect. The agricultural and construction industries in Georgia, Alabama and Indiana have also seen immediate effects, with states losing hundreds of millions of dollars in revenue due to the fear documented and undocumented immigrant workers have of going to work or out in public to shop for groceries[4] or seek medical treatment.[5] In 2012 many other state legislatures have shown interest in passing more SB 1070 copycat laws.[6].

Federal Policies Paved the Way for Arizona's SB1070

[3] Arizona Association of Chiefs of Polices, 2010 AACOP Statement on Senate Bill 1070, *available at* http://www.lcci.us/main/media/AACOP_STATEMENT_ON_SENATE_BILL_1070.pdf.

[4] Campbell Robertson, *After Ruling, Hispanics Flee an Alabama Town*, N.Y. Times, Oct. 3, 2011, *available at* http://www.nytimes.com/2011/10/04/us/after-ruling-hispanics-flee-an-alabama-town.html?pagewanted=all.

[5] Mary Bauer, Legal Director, Southern Poverty Law Center, *Capitol Hill Press Conference on Alabama Immigration Law*, Oct. 20, 2011, YouTube.com, *available at* http://www.youtube.com/watch?v=VIqmt1PfiY4&NR=1.

[6] Anita Sinha and Richael Faithful, *State Battles Over Immigration: The Forecast for 2012*, The Advancement Project, February 2012, *available at* http://www.advancementproject.org/sites/default/files/publications/Immigrant%20Rights%202012%20Legislative%20Battles_FINAL%20Feb%201%202012_0.pdf.

The trend of states and localities taking on the role of immigration enforcement has been the direct result of federal policies. Particularly in the last decade federal immigration initiatives have increasingly implicated state and local law enforcement in civil immigration enforcement, an area of law historically considered to be within the sole purview of federal authorities. Examples include the 287(g) program, where state and local officials are deputized to enforce immigration law; the Secure Communities program, where biometric information obtained in state or local booking processes, is sent to DHS; and the Criminal Alien Program, which allows state and local agents to arrest individuals and invite federal immigration officers to come into their jails to check the immigration status. These programs incentivize racial profiling and data has shown that state and local agents have disproportionately targeted Latinos.[7] Even U.S. citizens and lawful permanent residents have been swept up by these programs, with one independent study approximating that as many as 3,600 U.S. citizens have been identified and arrested for immigration violations under the auspices of Secure Communities.[8] This greater involvement in immigration enforcement has required state and local agents to assist in performing immigration functions for which they are untrained and unprepared, resulting in allegations of racial profiling and violations of due process rights. Moreover, this involvement in immigration work has distracted state and local agencies from their core mission of protecting communities by investigation and solving crimes.[9] The assumption of responsibility for immigration enforcement by local police also results in widespread fear in immigrant

[7] Trevor Gardner II and Aarti Kohli, The C.A.P. Effect: Racial Profiling in the ICE Criminal Alien Program (The Warren Institute on Race, Ethnicity and Diversity, Sept. 2009), *available at* www.law.berkeley.edu/files/policybrief_irving_FINAL.pdf.

[8] Aarti Kohli, Peter L. Markowitz and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, The Chief Justice Earl Warren Institute on Law and Social Policy, October 2011, *available at* http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

[9] East Valley Tribune, Special Report: Reasonable Doubt, 2009, *available at* http://www.eastvalleytribune.com/special_reports/reasonable_doubt/.

communities and communities of color, as the community perceives law enforcement not as protectors but as deporters.

Law enforcement leaders share the deep concern that state and local law agencies' participation in immigration enforcement leads to racial profiling.[10] In a report released this year by the Police Executive Research Forum which presented findings from a number of meetings with law enforcement officials, the conclusion was clear: police chiefs do not want to engage in immigration enforcement.[11] "The San Antonio Police Department's position is that we do not want to isolate the community from the police department, so we don't ask people about their immigration status" wrote San Antonio Police Chief Bill McManus. "The relationship we've built with the community over the years is a fragile one. If the community got the idea that police were going to ask them for their papers, it would frighten them from calling the police or communicating with the police in any way. We don't want to see that happen."

287(g) Program

The message that state and local law enforcement have the authority to perform immigration functions has been delivered through DHS' promotion of the failed 287(g) program. This program, which deputizes state and local law enforcement officers with immigration authority, has been widely discredited and found to be plagued by mismanagement and lack of oversight.[12] Research by independent sources indicates that 287(g) programs lead to racial

[10] Fernanda Echavarri, "Villaseñor: Feds, not cops must handle immigration," *Arizona Daily Star*, Apr., 23, 2011 *available at* http://azstarnet.com/news/local/crime/article_1f29f761-15e2-5fed-a8ba-384a8d3c86a3.html.

[11] Police Executive Research Forum, Voices From Across the Country: Local Law Enforcement Officials Discuss the Challenges of Immigration Enforcement, 2012 *available at* http://policeforum.org/library/immigration/VoicesfromAcrosstheCountryonImmigrationEnforcement.pdf.

[12] *See* Mai Thi Nguyen and Hannah Gill, "The 287(g) Program: The Costs and Consequences of Local Immigration Enforcement in North Carolina Communities," The University of North Carolina at Chapel Hill, Feb. 2010 *available at* http://isa.unc.edu/migration/287g_report_final.pdf. *See also* Migration Policy Institute "Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement," Jan. 2011 *available at* http://www.migrationpolicy.org/pubs/287g-divergence.pdf.

profiling.[13] Research conducted by the DHS Inspector General confirms these findings.[14] Even before SB 1070, Maricopa County Sheriff Joe Arpaio demonstrated the harm that comes from involving local law enforcement in federal immigration work. Once Arpaio was signed onto the 287(g) program and diverted his office to immigration duties, response times to 911 calls increased, arrest rates dropped and thousands of felony warrants went unserved.[15] In light of the evidence that the 287(g) program inherently leads to racial profiling, the program should be terminated and the federal government should reclaim authority over civil immigration enforcement.

The Secure Communities Program

Secure Communities also creates an avenue for state and local law enforcement agents to arrest people for pre-textual reasons, such as race, religion, ethnicity or national origin, so that their immigration status can be checked during the booking process. DHS has stated that Secure Communities is funded to identify and remove criminal aliens, "the worst of the worst." However, Immigration and Customs Enforcement's (ICE) own data demonstrates that the program does not comply with its own stated priorities. For example, between the program's inception and June 2010, 79% of the people deported due to Secure Communities are non-criminals or were picked up for lower level offenses, such as traffic violations.[16] Even victims of domestic violence have been swept up by the program when they've called their local police for help.[17]

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[13] *See id.*
[14] Department of Homeland Security Office of Inspector General, "The Performance of 287(g) Agreements, March 2010," *available at* http://www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-63_Mar10.pdf.
[15] East Valley Tribune, Special Report: Reasonable Doubt, 2009, *available at* http://www.eastvalleytribune.com/special_reports/reasonable_doubt/.
16 Immigration and Customs Enforcement, Secure Communities, IDENT/IAFIS Interoperability, Monthly Statistics through June 30, 2010, prepared on July 9, 2010, ICE FOIA 10-2674.000080 - ICE FOIA 10-2674.000079, at ICE FOIA 10-2674.000086.
[17] Lee Romney and Paloma Esquivel, "Noncriminals swept up in federal deportation program," *LA Times*, Apr. 25, 2011 available at http://articles.latimes.com/2011/apr/25/local/la-me-secure-communities-20110425.

Secure Communities incentivizes racial profiling—a charge demonstrated by data analyses done by researchers at the University of California, Berkeley which show that Latinos are disproportionately targeted by the program and that approximately 3,600 U.S. citizens have been arrested by ICE through Secure Communities.[18] Through FOIA litigation, evidence has come to light demonstrating that DHS acted improperly in presenting the Secure Communities program to local communities, Congress, and the public, [19] though a recent DHS Office of the Inspector General's report found miscommunications by DHS were not deliberate. [20] However, state and local communities impacted by Secure Communities found the Inspector General's audit of the program to be wholly inadequate in investigating widespread concerns about the program.[21] The rapid and exponential growth of Secure Communities has also improperly signaled to state and local law enforcement that they have a key role to play in detaining and deporting immigrants, often in contravention of their core mission to protect and promote public safety. Secure Communities should be immediately terminated in all jurisdictions that choose not to participate in the program; where there is a documented record of racial profiling; where the Department of Justice is investigating a pattern or practice of discriminatory policing; or in states like Arizona and Alabama, that have enacted anti-immigrant legislation.

The Criminal Alien Program

The Criminal Alien Program (CAP) is yet another program that set the stage for laws like SB 1070 to flourish, by encouraging collaboration between state and local law enforcement

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18 Aarti Kohli, Peter L. Markowitz and Lisa Chavez, *Secure Communities by the Numbers: An Analysis of Demographics and Due Process*, The Chief Justice Earl Warren Institute on Law and Social Policy, October 2011, *available at* http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

[19] "Congresswoman calls for investigation of enforcement program that screens for illegal immigrants in jails," *LA Times*, Apr. 22, 2011 *available at* http://latimesblogs.latimes.com/lanow/2011/04/congresswoman-calls-for-investigation-of-enforcement-program-that-screens-for-illegal-immigrants-in-.html.

[20] Department of Homeland Security Office of Inspector General, *Communication Regarding Participation in Secure Communities*, March 2012 *available at* http://www.oig.dhs.gov/assets/Mgmt/2012/OIG_12-66_Mar12.pdf.

[21] *DHS Inspector General Issues Disappointing Reports on ICE's Secure Communities Program*, April 9, 2012 *available at* http://immigrationimpact.com/2012/04/09/dhs-inspector-general-issues-disappointing-reports-on-ices-secure-communities-program/.

authorities and immigration agents. CAP allows state and local police to partner with ICE to investigate the immigration status of individuals in their jails and make referrals to ICE when they suspect that someone is undocumented. Federal agents can then interview those individuals and place immigration holds or 'detainers' on those who cannot prove U.S. citizenship, initiating deportation hearings. A 2009 study by the University of California, Berkeley School of Law examining the CAP program in Irving, Texas strongly suggests that the program incentivized local police officers to racially profile individuals and conduct pre-textual arrests on minor charges including driving offenses, as they knew that federal officers would check immigration status through CAP. CAP, should be terminated in jurisdictions with a documented record of racial profiling, where the Department of Justice is investigating a pattern or practice of discriminatory policing, or in states like Arizona where anti-immigrant laws have been passed.

Inherent Authority?

Immigration enforcement programs that implicate state and local police not only result in discriminatory policing practices, they have had the added consequence of reinforcing the message to states and localities that they have a role in determining immigration policies and priorities. The 2002 Department of Justice Office of Legal Counsel Memorandum, dated April 3, 2002 regarding the [n]on-preemption of the authority of state and local law enforcement officials to arrest aliens for immigration violations (inherent authority memo) has reinforced this belief.[22] It reversed years of previous legal opinions by finding that state and local law enforcement had "inherent authority" to enforce civil immigration law. It has been interpreted by some state and

[22] *See* Department of Justice Office of Legal Counsel, *Memorandum for the Attorney General*, April 3, 2002 *available at* http://www.aclu.org/files/FilesPDFs/ACF27DA.pdf.

local law enforcement as granting states the inherent power to arrest individuals for violations of immigration law.

This federal devolution of immigration enforcement authority to states and localities has emboldened racist and xenophobic efforts in state and local political bodies. Unsurprisingly, we have seen anti-immigrant state bills and local ordinances take root across the country that cite to and rely on this perceived "inherent authority" - most notably with Arizona's SB 1070 and its copycats in Alabama, Georgia, Indiana, South Carolina, and Utah.[23]

Conclusion

Our country's immigration enforcement policies must reflect our core values and traditions of due process and equal protection. Currently, the devolution of immigration authority to state and local law enforcement has resulted in increased racial profiling and the violation of civil and human rights of people in the US. Moreover, state and local enforcement of immigration law jeopardizes the federal government's ability to set priorities for immigration enforcement. Congress must condemn anti-immigrant racial profiling state laws but it must also go further. The federal government must reassert full authority for creating and enforcing immigration law and policy. This requires the end of federal immigration enforcement programs and policies that have created an environment where state and local agents are routinely relied upon to enforce an area of law that has historically (and appropriately) been within the sole purview of the federal government. We additionally recommend:

- Members of Congress should speak out against anti-immigrant state bills that have passed and discourage the passage of additional measures. Congress should introduce and pass the "End

[23] Jerry Markon, *Memo from 2002 Could Complicate Challenge of Arizona Immigration Law*, Washington Post, May 18, 2010, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2010/05/17/AR2010051702175.html.

Racial Profiling Act" instating a federal ban on profiling based on race, religion, ethnicity and national origin at the federal, state and local levels.

- The Subcommittee should urge the Obama Administration to revise the 2003 Department of Justice Guidance on the Use of Race by Federal Law Enforcement Agencies to eliminate the border and national security loopholes; to include profiling based on religion and national origin; to cover law enforcement surveillance activities; to apply anywhere federal agents act in partnership with state or local law enforcement agents and to any agency that receives federal funds; and to ensure that the guidance is enforceable.
- The Subcommittee should pressure the Obama Administration to rescind the Department of Justice (DOJ) 2002 OLC "inherent authority" memo and issue a new memo clarifying that state and local law enforcement agents may not enforce federal immigration laws.
- The Subcommittee should urge the Obama Administration to immediately halt the implementation of Secure Communities and similar programs, such as the 287(g) and the Criminal Alien Programs, in states that have passed anti-immigrant state bills, where there is a documented history of racial profiling, or where DOJ is actively investigating a pattern or practice of discriminatory policing.
- The Subcommittee should demand that DHS allow local communities concerned about racial profiling and community policing to opt out of Secure Communities.
- The Subcommittee should ensure that DHS immigration enforcement policies comply with civil and human rights laws and urge DHS to create effective safeguards to prevent racial profiling and other rights violations.

Thank you again for this opportunity to express the views of the Rights Working Group coalition. We welcome the opportunity for further dialogue and discussion about these important issues.



TESTIMONY OF AMBASSADOR JOHNNY YOUNG

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United States Conference of Catholic Bishops (USCCB)

On

Examining the Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law

Submitted to

The Senate Judiciary Subcommittee on Immigration, Refugees and Border Security

April 24, 2012

I am Ambassador Johnny Young, Executive Director of Migration and Refugee Services of the United States Conference of Catholic Bishops (USCCB). I submit this statement to you on behalf of USCCB.

I would like to thank Subcommittee Chairman Schumer and Ranking Member Cornyn for permitting me to submit our statement on this important matter.

Today's hearing is entitled "Examining the Constitutionality and Prudence of State and Local Governments Enforcing Immigration Law." In my statement, I will outline the foundation for USCCB's position in opposition to Arizona S.B. 1070 and similar unconstitutional state and local immigration policies. I will also restate our support for comprehensive federal immigration reform legislation as the more appropriate solution to a broken immigration system.

The USCCB Position on Immigration

In January 2003, the U.S. and Mexican Catholic bishops released a pastoral letter on migration entitled, "*Strangers No Longer: Together on the Journey of Hope*." In their letter, the bishops stressed that, "[w]hen persons cannot find employment in their country of origin to support themselves and their families, they have a right to find work elsewhere in order to survive. Sovereign nations should provide ways to accommodate this right."[1] The bishops made clear that the "[m]ore powerful economic nation . . . have a stronger obligation to accommodate migration flows."[2]

In *Strangers No Longer,* the USCCB recognized the right of the sovereign to control and protect its borders, stating: "we accept the legitimate role of the U.S. ... government in intercepting undocumented migrants who attempt to travel through or cross into [the country]." The U.S. Bishops emphasized, however, that ". . . [w]e do not accept . . . some of the policies and tactics that our government has employed to meet this . . . responsibility."[3]

The U.S. bishops made clear that despite the sovereign's right to control its borders and engage in enforcement of immigration laws, the "human dignity and human rights of undocumented migrants should be respected." We declared that "[r]egardless of their legal status, migrants, like all persons, possess inherent human dignity that should be respected . . . Government policies that respect the basic human rights of the undocumented are necessary."[4]

Based on *Strangers No Longer* and a long history of Papal and Gospel teachings[5], the U.S. Catholic bishops have called for reform of our nation's immigration laws for years now, advocating for a new system which balances our heritage as a nation of immigrants with respect

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[1] *Strangers No Longer: Together on a Journey of Hope. A Pastoral Letter Concerning Migration from the Catholic Bishops of Mexico and the United States,* January 23, 2003, No. 35 [hereinafter, *Strangers No Longer*].

[2] *Strangers No Longer at* No. 36.

[3] *Strangers No Longer at* No. 78.

[4] *Strangers No Longer,* at No. 38.

[5] Compendium of Catholic Social Doctrine, U.S. Conference of Catholic Bishops, September, 2011.

for the rule of law. Not only must we re-examine enforcement strategies and policies, we also must revamp other aspects of the system, including legal immigration and family unification policies.

Specifically, the USCCB supports legislation which includes 1) an earned path to citizenship for the 11 million undocumented in the nation; 2) a future flow worker program which protects both the rights of U.S. workers and foreign-born workers; 3) improvements in our family-based immigration system to reduce reunification waiting times; 4) due process reforms for immigrants; and 5) policies which address the root causes of migration, such as economic disparities with sending countries.

Mr. Chairman, there exists a national consensus that the U.S. immigration system is severely flawed and needs an overhaul. Of particular concern to USCCB is the impact our broken immigration system is having on immigrant families, many of whom have one or more undocumented persons among their number. Federal and local law enforcement policies have led to an unprecedented separation of families, as undocumented parents are being separated from their U.S. citizen children. Children are often the innocent victims of these policies, which leave them without parents and less opportunity to live a full and productive life in their home country, the United States.

The USCCB has repeatedly testified before Congress and commented on immigration law and policy. In a March 2012 letter to Speaker of the House John Boehner, His Eminence Timothy Cardinal Dolan, archbishop of New York and president of the USCCB, and Archbishop Jose Gomez, archbishop of Los Angeles and chairman of the USCCB Committee on Migration, explained why the Church is particularly concerned about immigrants in the United States today: "As pastors to millions of Catholics across the nation, we and our brother bishops are keenly aware of the human suffering being caused by our flawed immigration laws, as we witness it each day in our parishes, social service programs, and health-care facilities. We also understand the political challenges confronting federal immigration reform and the political divisions caused by this issue."[6]

USCCB Position on State Immigration Enforcement Laws

From the USCCB perspective, Arizona SB 1070 is symptomatic of the absence of federal leadership on the issue of immigration. State laws in Alabama, Arizona, and other states have created environments in which immigrants, regardless of their legal status, and law enforcement personnel are pitted against each other, eroding long-held trust between immigrant neighborhoods and local authorities. The Catholic bishops in states including Arizona[7] and Alabama[8] have spoken in opposition to such measures, urging a federal solution rather than state laws.

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[6] USCCB, Letter to House on Immigration, March 22, 2012, *available at* http://www.usccb.org/issues-and-action/human-life-and-dignity/immigration/letter-to-house-on-immigration-2012-march.cfm.

[7] Arizona Catholic Conference, *Arizona Catholic Conference Bishops Statement on Legislation Impact Vulnerable Populations*, March 2010, *available at* http://www.justiceforimmigrants.org/documents/Arizona-Catholic-Conference-Statement-1070.pdf.

[8] Most Reverend Thomas Rodi, Archbishop of Mobile, August 1, 2011, *available at* http://www.justiceforimmigrants.org/documents/Bishop-Baker-Birmingham-Immigration-Letter.pdf.

USSCB joined with the Catholic bishops of Arizona in strongly opposing the enactment and implementation of SB 1070. This law, although limited to the State of Arizona, could have negative impact throughout the nation, in terms of how members of our immigrant communities are both perceived and treated. Because of congressional inaction, the federal courts have been forced to intervene to halt their implementation.

Similarly, the USCCB supported the bishops of Alabama, who filed suit against provisions of the Alabama law. The Alabama bishops argue that certain provisions of the state law would inhibit their ability to minister to immigrant communities, a violation of religious freedom: "The law makes illegal the exercise of Christian religion which we, as citizens of Alabama, have a right to follow. The new Alabama law makes it illegal for a Catholic priest to baptize, hear the confession of, celebrate the anointing of the sick with, or preach the word of God to, an undocumented immigrant."[9]

Mr. Chairman, USCCB feels strongly that state laws such as S.B. 1070, if allowed to stand, would harm our nation.

First, these laws would create a society that treats the foreign-born not as contributors but as threats to us — and would profile them as criminals. The Arizona statute requires law enforcement to detain a person if there is a lawful stop, detention, or arrest, and they have a reasonable suspicion that the person is undocumented, if that person cannot prove otherwise. This gives a green light to racial profiling, as ethnic minorities could be targeted for the slightest of infractions, such as a busted tail light. They also would impact U.S. citizens and legal immigrants who are caught up in the dragnet.

Second, they would make permanent the family separation and breakdown that currently characterizes our nation's enforcement approach to immigration. In recent years, we have witnessed an alarming rise in family separations, as undocumented parents are being removed from their U.S. citizen children at a record rate. Arizona-type laws will only increase the circumstance of a child waiting at home for their parent(s) to care for them, only to never have them arrive. This causes undue suffering and is no way to instill national pride in the more than 4 million U.S. citizen children living with undocumented parent(s).

By giving them full sway to act as immigration agents, these laws also would forever alter the role of state and local law enforcement, especially as they relate to immigrant communities. As many law enforcement personnel would testify, trust between law enforcement and a community is essential to public safety. It is hard to create that trust when members of a community are the target.

Finally, and most disturbing, they would change our fundamental nature as a welcoming nation, which has served us well since our inception. The goals of Arizona-type copycat laws are to discourage immigrants from coming and to encourage those who are here to leave. We must carefully consider whether that is the signal we want to send to the world, given that immigrants and their ancestors — all of us — built this country and will continue to renew it.

[9] *Ibid.*

USCCB Position on the Constitutionality in State and Local Governments Enforcing Immigration Law

USCCB and several other Christian denominations filed an *amicus curiae* brief with the U.S. Supreme Court in the case of *Arizona vs. United States*, supporting the principle that the federal government controls the enactment and implementation of the nation's immigration laws.[10] The brief, submitted March 26, argued that the federal government is in the best position to protect the well-established goals of family unity and human dignity in the nation's immigration system. The brief also made the case that a patchwork of state laws could inhibit the Church's mission to serve immigrants, thus impinging upon religious liberty. The Evangelical Lutheran Church of America, the Presbyterian Church (U.S.A.), and the Lutheran Immigration and Refugee Service joined the bishops in filing the brief.

Specifically, the USCCB brief contends that the Arizona law conflicts with the well-established goals of federal immigration law to promote the values of family unity and human dignity and that the law – and that only the federal government can reconcile competing objectives of enforcement and these values.

"The Conference has a strong interest in ensuring that courts adhere to two important goals of federal immigration law — the promotion of family unity and the protection of human dignity," the brief stated. "The provisions of SB 1070 at issue in this case would hinder these critical federal objectives by replacing them with the single goal of reducing the number of undocumented immigrants in Arizona at all costs."

The brief adds that the Arizona law's singular state goal of "attrition" of undocumented immigrants through enforcement is flatly inconsistent with this longstanding U.S. approach to immigration policy to protect family unity and human dignity.

In addition, the USCCB brief argues that state laws such as SB 1070 threaten to restrict the Church's ability to provide pastoral and social service care to immigrants and their families, thus infringing upon the Church's religious liberty. Often churches are where immigrants come for support, both pastoral and material. Certain provisions of certain state laws could negatively affect church ministries — soup kitchens, homeless shelters, hospitals, and parishes — which provide basic material and spiritual needs to persons who seek help, regardless of their legal status.

"The Catholic Church's religious faith, like that of many religious denominations, requires it to offer charity — ranging from soup kitchens to homeless shelters — to all in need, whether they are present in this country legally or not. Yet SB 1070 and related state immigration laws have provisions that could . . . criminalize this charity . . . [or] exclude from that charity all those whose presence Arizona and other states would criminalize," the brief argued.

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[10] The brief is *available at* http://www.usccb.org/about/general-counsel/amicus-briefs/upload/state-of-arizona-v-united-states-of-america.pdf.

USCCB asked the Supreme Court to affirm the judgment of the United States Court of Appeals for the Ninth Circuit in striking down the Arizona law. We are hopeful that these arguments will bring an additional perspective to the arguments against SB 1070.

Conclusion

Mr. Chairman, it is our opinion that we should not have arrived at this precipitous moment in which the Supreme Court will rule on this law. Congress and the Administration already should have enacted immigration reform.

It is our hope that the Supreme Court will rule the Arizona law unconstitutional and Congress will move toward the enactment of comprehensive immigration reform as soon as possible. Arizona's S.B. 1070 and similar laws are not a proper solution to the current problems in federal law. To the contrary, such state action actually causes more problems than it solves.

Mr. Chairman, passage of immigration reform is more important now than ever. While many of our federal elected officials have made good faith efforts to pass reform, too many still view the issue through a political lens, using it to gain political or partisan advantage. This gamesmanship must stop.

Unless Congress acts in the near future, we are deeply concerned that these new State laws will continue to tear at the social fabric of our nation. As a result of these state and local laws, divisions between U.S. citizens and immigrant communities continue to grow, to the detriment of our nation.

Mr. Chairman, we stand ready to work with you to help all Americans, as well as their congressional representatives, better understand the importance of immigration reform, so that the members of Congress feel more emboldened to address this important issue—sooner rather than later. We urge you to work to build consensus with your colleagues so that immigration reform legislation can be adopted by Congress as soon as possible.

Thank you for your consideration of our views.

Arizona Immigration Law Section 3(B)

B. For any lawful contact STOP, DETENTION OR ARREST made by a law enforcement official or a law enforcement agency of this state or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this state IN THE ENFORCEMENT OF ANY OTHER LAW OR ORDINANCE OF A COUNTY, CITY OR TOWN OR THIS STATE where reasonable suspicion exists that the person is an alien who AND is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. Any 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 federal government pursuant to 8 United States code section 1373(c). A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not solely 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. A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

1. A valid Arizona driver license.
2. A valid Arizona nonoperating identification license.
3. A valid tribal enrollment card or other form of tribal identification.
4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification.

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