

# Enforcing Immigration Law: What States Can Do To Assist the Federal Government and Fight the Illegal Immigration Problem

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## KEY TAKEAWAYS

Many state politicians are not aware of all that they can do at the state level to fight illegal immigration.

States can pass licensing and similar laws directed at those who employ, recruit, transport, or refer illegal aliens.

The assistance and support of the states is essential to comprehensive and effective enforcement of our immigration laws.

States play, and should continue to play, an important role in enforcing federal immigration law—but more can be done by the states. The problem is many state politicians are not aware of all that they can do at the state level to fight illegal immigration. This research paper should act as their guide in that effort. True, the federal government has the primary role in establishing immigration rules for the country, including the employment rules governing noncitizens. But the states do have a supporting role.

It is “well settled,” says the U.S. Supreme Court, that it is the federal government, not state governments, that “has broad, undoubted power over the subject of immigration and the status of aliens.”<sup>1</sup> But the “pervasiveness of federal regulation does not diminish the importance of immigration policy to the States,” which bear the many “consequences of unlawful immigration.”<sup>2</sup>

This paper, in its entirety, can be found at <http://report.heritage.org/lm254>

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States can legislate and act in this space to a limited—but crucial—extent as long as their actions are not preempted by federal law. For example, states can pass licensing and similar laws directed at those who employ, recruit, or refer for a fee illegal aliens. There is no doubt, given the enormity of the problem and the limited resources of the federal government, that the assistance and support of the states is essential to comprehensive and effective enforcement of our immigration laws.

## How Great Is the Problem?

The federal government, despite its vast financial resources and expansive workforce, simply does not have the manpower to enforce every federal immigration law. That is where the states come in, as they are force multipliers in confronting the problem—and no one can rationally deny that we have an illegal alien problem in this country. According to the U.S. government, there were 12 million illegal aliens residing in the U.S. in 2015.<sup>3</sup> Another study says the number in 2016 may have ranged from almost 17 million to as high as 22 million.<sup>4</sup>

Illegal aliens have a fiscal impact on local governments due to costs incurred for public education, health care, law enforcement,<sup>5</sup> and other government services.<sup>6</sup> States primarily fund those local essential government services, and, as a result, bear the burden of those costs. States, and the citizens who live there, feel the impact of illegal immigration much more than federal bureaucrats squirreled away in Washington, DC.

States and, in some instances, counties within states, can—and indeed should—play a crucial role in the enforcement of federal immigration law. For too long, opponents of commonsense, step-by-step immigration reform have repeated the myth that only the federal government can enforce immigration law or pass immigration laws. That is simply not true.

## What States Can Do

What follows is a list of the major types of laws that states have passed to enforce immigration law at the state level, and a discussion about how they work, and why they make common sense.

**Require Licensed Businesses to Use E-Verify.** One of the major driving forces behind illegal immigration is our economy and the ability to earn money. That is where the term “economic migrants” stems from. Aliens from less prosperous areas of the world want to take advantage of our thriving economy and high standard of living. Aliens in the U.S. send over \$54 billion

per year back to their native countries. Mexico receives the most remittances, over \$24 billion in 2015, making up 2 percent of the nation's economy and nearly 20 percent of income in the poorest parts of the country.<sup>7</sup>

But illegal aliens are not authorized to work for businesses in the United States. That is one of the major differences between being an illegal alien and a lawful permanent resident (LPR, or "green card" holder). The former are prohibited from working; the latter can be employed, just like American citizens. But as is obvious, many illegal aliens are working in the United States. Where else would the remittances come from?

States can pass laws that make it more difficult for illegal aliens to work, hold jobs, and earn salaries by considering requiring businesses, which are licensed by the state, to use E-Verify. A real-time, Web-based verification system run by the Department of Homeland Security and the Social Security Administration, E-Verify can determine with great accuracy the authenticity of the personal information and credentials offered by new hires. In most cases, verification occurs almost instantly.<sup>8</sup> E-Verify is used by the federal government and all federal contractors to verify if a potential employee has proper work authorization and can legally work in the United States.

In 2007, Arizona passed a law that requires employers to use the voluntary federal E-Verify system to "verify the employment eligibility of the employee."<sup>9</sup> E-Verify is not foolproof. No law and no government program is, nor does it completely prevent document or identity fraud. But it is very accurate and the "best means available to determine the employment eligibility of new hires" according to the Department of Homeland Security.<sup>10</sup> Requiring state-licensed businesses (selecting the size of the business it applies to is a legislative question) to use E-Verify or suffer financial consequences helps the federal government fight the problem of illegal aliens working in the United States.

**Target Businesses Who Knowingly Hire Illegal Aliens.** The other aspect of the Arizona law that was upheld by the Supreme Court, above and beyond the use of E-Verify, is the part that provides that the license of a business can be suspended or revoked by the state if an employer "knowingly" hires an illegal alien.<sup>11</sup> Willful ignorance of immigration status by businesses happens all too often.

Opponents of tough enforcement of current immigration laws, like the U.S. Chamber of Commerce, argued against the Arizona E-Verify law. So did the Obama Administration, which unsuccessfully filed a brief with the Supreme Court arguing that the Arizona law was preempted by federal law.<sup>12</sup>

But the Supreme Court, in a 5–3 decision, disagreed, and held that the licensing law, including requiring employers to use a citizenship verification

system that is voluntary under federal law, fell well within the confines of the authority Congress left to the states—and was not directly or impliedly preempted by federal law.<sup>13</sup> Of particular note, the Court found that federal immigration law “expressly reserves to the States the authority to impose sanctions on employers hiring unauthorized workers, through licensing and similar laws.”<sup>14</sup>

Part of the key to the acceptability (and legality) of this provision of the Arizona statute was that the state was not making its own determination on the citizenship status of aliens. Arizona was using the federal government’s definition of an “unauthorized alien,” and the state was relying “solely on the Federal Government’s own determination of who is an unauthorized alien” using the federal government’s “own system for checking employee status.”<sup>15</sup>

Since that 2011 Supreme Court decision, states have had a green light to pass similar laws in their states.<sup>16</sup> Seven states in addition to Arizona have made E-Verify mandatory for all or most employers: Alabama, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Utah. Other states, such as Texas and Oklahoma, use E-Verify only for public employees.<sup>17</sup>

**Pass Vehicle Laws Aimed at Thwarting Day Labor.** One obvious outward sign of aliens who are in the country illegally is the proliferation of day laborers. Eager to work, illegal aliens gather on busy intersections or streets in communities with lots of traffic in the hope that someone, often a contractor, will hire them for the day and pay them cash wages—with no questions asked—for that day’s work. Hence the name “day laborer.” Day laborers are a common sight in Arizona, California, Texas, and other states with large illegal immigrant populations.<sup>18</sup>

Illegal immigrants choose the day-labor route precisely because it avoids official work verification tools, such as E-Verify. Because they know that they do not have the legal authority to work, many would prefer not to engage in fraud by holding themselves out as lawfully able to work in the United States.

Residents in those states and neighborhoods where day laborers congregate know, or at the very least, must suspect that the young, working-age males on the side of the street, usually early in the morning, are not only illegal aliens, but are available for day labor. To engage a day laborer, an employer simply drives up to the individual or group, has a quick conversation about work, and the day laborer hops into the vehicle and is taken to the job site. This happens thousands of times each day across America, including in Arizona.

The Arizona legislature decided to do something about the day laborer phenomenon by passing three criminal laws aimed at this practice. None of

those laws were preempted by federal law, and none has been struck down by the courts, so each is available for states to pass.

In general, the Arizona vehicle law makes it unlawful to hire or pick up passengers for work under certain circumstances:

1. Under the first provision (Section A), it is a state law crime for the occupant of a motor vehicle that is stopped on a street to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.<sup>19</sup>

Notice that the statute does not mention the word immigration at all, and applies to legal and illegal immigrants alike, as well as citizens. It also applies to the “occupant,” which would include both the driver and non-driver occupants in the vehicle.

2. The second provision (Section B) is focused on the day laborer. It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway, or highway in order to be hired by an occupant of the motor vehicle and transported to a different location if the motor vehicle blocks or impedes the normal movement of traffic.<sup>20</sup>

Again, the statute does not mention the word immigration, much less illegal immigrant or the like.

Presumably, it could be a defense to each of these statutes to argue that the vehicle in question was not blocking or impeding the normal movement of traffic. And creative employers could pull up to red lights or stop signs before quickly hiring the laborer, thus avoiding the block or impede operative language of the statute.

3. The third provision (Section C) applies to illegal aliens. The statute reads: “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.”<sup>21</sup>

Each of these provisions was part of the controversial and much larger Arizona statute called the Support Our Law Enforcement and Safe Neighborhoods Act, or as it came to be known, Arizona S.B. 1070 (S.B. because it was passed in Senate Bill 1070).

The Obama Administration sued the State of Arizona, challenging many provisions of S.B. 1070, claiming that they were unconstitutional, and moved for an injunction to prevent Arizona from enforcing the statute.<sup>22</sup> Of particular note, the Obama Administration did not seek to enjoin the first two sections discussed above, sections (A) and (B). The district court refused to enjoin the entire act, and instead evaluated the constitutionality of individual provisions.<sup>23</sup> Since the Obama Administration did not seek to enjoin Sections (A) and (B) of Title 13–2928, they remain on the books today in Arizona.<sup>24</sup>

States concerned about day laborers can consider passing laws like Sections (A) and (B) above.

The district court did enjoin paragraph C, which prohibits illegal aliens from applying for work.<sup>25</sup> The Supreme Court upheld that injunction, concluding that the state provision was preempted by federal law because the “text, structure, and history” of federal immigration law showed that “Congress decided it would be inappropriate to impose criminal penalties on aliens who seek or engage in unauthorized employment.”<sup>26</sup>

**Require State and Local Law Enforcement to Determine Immigration Status.** In 2012, the Supreme Court upheld another section of Arizona S.B. 1070, which required state and local law enforcement officials to make a “reasonable” attempt to determine the immigration status of any person they stop, detain, or arrest if “reasonable suspicion exists that the person is an alien and is unlawfully present in the United States.”<sup>27</sup> Any person arrested “shall have the person’s immigration status determined before the person is released.” But officers may not consider “race, color or national origin...except to the extent permitted by the United States [and] Arizona Constitution[s].”<sup>28</sup>

Thus, state legislatures can *require* law enforcement officers to verify the citizenship status of anyone who is stopped, detained, or arrested on state and local matters. Moreover, “no formal agreement or special training needs to be in place for state officials to ‘communicate with the [Federal Government] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States.’”<sup>29</sup>

U.S. Immigration and Customs Enforcement (ICE), which must respond to any such request for information from state officials, runs a Law Enforcement Support Center that operates “24 hours a day, seven days a week, 365 days a year” to provide “immigration status, identity information and real-time assistance to local, state and federal law enforcement agencies.”<sup>30</sup>

**Prevent Sanctuary Policies in Counties and Cities.** When an illegal alien commits a crime in the United States and is caught, usually by local

law enforcement, law enforcement officers typically attempt to ascertain who the person is (naturally) and, if he or she is in the country illegally, to notify the federal authorities. That is commonsense policing and is what has happened, for the most part, for a long time. It is no different than local authorities notifying law enforcement officials in the federal government, like the FBI, or in other state governments when they discover that there is an outstanding arrest warrant on an individual they have arrested issued by the federal government or another state.

Then President Trump was elected. He promised to secure our southern border and vigorously enforce existing immigration law. As a reaction to his election and this policy, a handful of states, politicians, and cities decided to resist Trump by refusing to cooperate with federal law enforcement in the arena of immigration law, and in some instances, to actively obstruct such enforcement.<sup>31</sup>

Jurisdictions that refuse to cooperate with ICE detainer requests to hold criminal aliens in their custody are known as “sanctuary” states or cities. These states, counties, and cities have enacted a variety of sanctuary-like policies in addition to simply refusing outright to cooperate with ICE. Sanctuary policies, largely an outgrowth of the “resist” movement, have serious consequences, endangering the public and threatening the safety of both local and federal law enforcement officers.

Variations of sanctuary policies include not providing adequate notice of criminal aliens who are already in custody, releasing criminal aliens back into communities without notice to the federal government, refusing to notify ICE of detained criminal aliens with final removal orders, and the like.<sup>32</sup>

All of these unwise policies release criminals back into local communities—where they can reoffend and commit more crimes against local residents. A report released by the Department of Homeland Security in June detailed the crimes committed by criminal illegal aliens, including assault, rape, and murder—*after* they were released by local authorities in Oregon and Washington who ignored ICE detainer warrants due to their sanctuary policies.<sup>33</sup> Sanctuary policies just create sanctuaries for criminals.

Picking up criminal aliens from local jails—where they obviously have no access to weapons—also lowers the threat to the safety of federal immigration officers, in contrast to having to find and detain them outside prison.

State legislatures can pass a law forbidding state officials from enacting sanctuary policies in their states. Furthermore, state officials who are concerned about local jurisdictions implementing so-called “sanctuary” policies that prevent local sheriffs, police officers, and other law

enforcement officials from communicating with federal officials over the immigration status of aliens who have been arrested for committing local crimes, should be aware of a *federal law that bans such a policy*.

Federal law specifically provides that:

[A] Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.<sup>34</sup>

Under the Arizona law upheld by the U.S. Supreme Court, if an illegal alien is convicted of a state or local crime, ICE *must* be notified by local officials when that alien is discharged from imprisonment or is assessed a “monetary obligation.”<sup>35</sup>

Furthermore, the Arizona law provides a ban on state and local governments and agencies imposing *any* limits or restrictions on providing information on immigration status that will be used to determine eligibility for public benefits, services, or licenses; to verify claims of residence or domicile; or to check whether the alien is in compliance with federal immigration registration laws.<sup>36</sup>

**Empower Legal Residents to Sue Officials Who Thwart Immigration Law Enforcement.** Another provision of Arizona’s law that was upheld is a prohibition on local officials implementing *any* policy that limits the enforcement of federal immigration laws.<sup>37</sup> This statute allows any legal resident of Arizona to bring an action in court against any official who adopts or implements such a policy—and provides for the recovery of attorneys’ fees and costs if he or she prevails. A violation is also punishable by a civil penalty of up to \$5,000 a day “for each day that the policy has remained in effect” after the lawsuit is filed.<sup>38</sup>

The State of Texas fought back against sanctuary policies as well. The purpose was to prevent political subdivisions within the state (counties, cities, and towns) from imposing sanctuary policies that limit cooperation and the exchange of information with federal authorities and obstruct enforcement of federal immigration laws. Naturally, the opponents of commonsense immigration enforcement and cooperation sued. But the law was also upheld in Texas.<sup>39</sup>

The Texas state legislature passed a law that required city and county officials to assist federal immigration agents, including honoring all detainer requests on illegal aliens in custody. The Texas law imposes a civil penalty on sanctuary cities of up to \$25,500 for each day they intentionally violate the

law. Texas law enforcement officials, such as local sheriffs, can be charged with a criminal misdemeanor for failing to honor detainer warrants, and the state attorney general can file a petition with a state court to remove them from office.<sup>40</sup>

**Require Law Enforcement to Participate in the 287(g) Program.**

The vast majority of law enforcement officials across the country are state and local police officers, sheriffs, and the like. They come into contact with far more people across the country on a day-to-day basis than federal immigration officers. That is because of pure numbers; there are hundreds of state and local law enforcement officers for every federal immigration officer.<sup>41</sup> As a result, state and local officials are much more likely to come into contact with illegal aliens. As stated above, state and local law enforcement are force multipliers for the federal government and act cooperatively (for the most part) with their federal colleagues in law enforcement.

States can enhance enforcement of federal immigration law by requiring state and local law enforcement agencies to participate in the 287(g) program, a provision added to federal law in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.<sup>42</sup> The 287(g) program authorizes ICE to “enter into agreements with state and local law enforcement agencies, which permit designated officers to perform limited immigration law enforcement functions.” ICE provides training to local officials, and they “function under the supervision of ICE officers.”<sup>43</sup>

As of July 2019, ICE has 287(g) agreements with 79 law enforcement agencies in 21 states.<sup>44</sup> One report from 2012 indicated that in a six-year period, the 287(g) program resulted in the removal of 120,000 illegal aliens. This is an effective program that should be vastly expanded to the thousands of state, county, and local law enforcement agencies that exist across the country.

**Enroll Rural Jurisdictions That Cannot Afford the 287(g) Program in the WSO Program.** One of the challenges to the 287(g) program for jurisdictions is that it requires the expenditure of resources to enroll in and support the program. Local offices must fund the travel and training of designated officers. Smaller jurisdictions, with more limited resources, may not be able to add such costs to their budgets.

Responding to this reality, ICE worked with law enforcement to come up with a 287(g)-lite program, called the Warrant Service Officer (WSO) program. Launched in May of 2019, the WSO program is designed for jurisdictions that either limit cooperation with ICE or do not have the budget and personnel resources to participate in the full 287(g) program.<sup>45</sup>

According to ICE, the WSO program differs from the 287(g) program in several respects:

1. Whereas 287(g)-designated officers attend a four-week training program at the Federal Law Enforcement Training Center in South Carolina for certification, WSO officers are given one day of training from ICE at a local training site.
2. WSO officers do not question people about their citizenship, alienage, or removability, nor do they process aliens who are unlawfully in the United States. Instead, WSO officers serve administrative warrants and execute arrests on behalf of ICE, but only within the confines of the jails where they work. If ICE does not take the alien into custody within 48 hours after service of process, the alien must be released.<sup>46</sup>

As the executive director of the National Sheriffs' Association, Jonathan Thompson, says, the "program gives sheriffs the legal support to help federal law enforcement keep dangerous criminal illegal aliens out of their communities."<sup>47</sup>

**Pass Laws Making It a Crime to Transport, Conceal, or Induce an Alien.** Once again, Arizona has been a leader among states in passing laws to enforce federal immigration law.

Arizona has made it a state law crime to "transport or move or attempt to transport or move an alien in this state, in furtherance of the illegal presence of the alien in the United States, in a means of transportation if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of the law."<sup>48</sup>

Notice the *mens rea* requirement of the offender in the statute. A common defense to a violation of this statute would be that the offender did not have knowledge of the immigration status of the person they moved or transported. But that is a *factual* matter, where, no doubt, all the surrounding circumstances would come into play in making that determination. Having this law on the books will likely make residents of Arizona think twice before violating the statute, just as posted speed limits make drivers think twice before exceeding the speed limit.

Another provision in this law makes it a criminal offense to "conceal, harbor or shield or attempt to conceal, harbor or shield an alien from detection in any place in this state, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation

of law.”<sup>49</sup> The Obama Administration was unsuccessful in its attempt to convince a federal court to enjoin this provision.<sup>50</sup>

The geographical scope of this provision is broad, as it covers “any place in the state,” to include “any building” or “any means of transportation.” This is exceptionally useful, as it would seem to cover churches, some of which have attempted to give safe harbor to illegal aliens.

Another Arizona provision makes it a crime to encourage or induce “an alien to come to or reside in this state.”<sup>51</sup> Taken together, this trio of statutes sends a loud and clear message to the residents of the state: Do not help illegal aliens, because if you do, you could be charged with a crime.

**Make It Illegal to Provide Illegal Aliens Licenses, Automobile Plates, or In-State Tuition.** There are other steps that a state can take to limit the transportation options of illegal aliens, which will make it more difficult for them to work and live in a state. No state is required to provide aliens who are unlawfully in the country with a driver’s license, although at least 13 states and the District of Columbia do so.<sup>52</sup> Providing illegal aliens with driver’s licenses is an unwise policy because it helps aliens evade immigration law by providing them with the major form of identification used by U.S. citizens.

A driver’s license gives the alien the ability to travel freely throughout the country<sup>53</sup> and is used for countless other purposes, including registering to vote and applying for government benefits, as well as establishing bank and credit card accounts. As one critic has said, it provides illegal aliens with the appearance of “legality, giving the alien access to goods and services he would otherwise be unable to use.”<sup>54</sup> And it “defies common sense to contend that the best way to combat accidents by illegal aliens is to give them all drivers’ licenses...to prevent crashes by unlicensed drivers, that state should discourage them from driving in the first place.”<sup>55</sup>

Another action states can take that has been upheld in court is restricting the issuance of license plates for vehicles to citizens and noncitizens legally in the U.S.<sup>56</sup> This may be an effective method of restricting the transportation ability of illegal aliens. After all, it is far easier for an individual without a driver’s license to drive a car without detection as long as he obeys traffic laws and is not stopped by law enforcement authorities. But an automobile without a current license plate will be detected more quickly, making it much more difficult for an illegal alien to own an automobile.

In fact, an Alabama law that makes it a state felony for an illegal alien to apply, or attempt to apply for, not just vehicle license plates, but also driver’s licenses, identification cards, and business, commercial, and professional licenses was upheld by a federal appellate court in 2012.<sup>57</sup>

Finally, under Arizona law, it is a felony to “intentionally engage in the smuggling of human beings for profit or commercial purpose.”<sup>58</sup> Smuggling is defined very broadly to include “the transportation, procurement of transportation or use of property or real property” by someone who “knows or has reason to know that the person” being transported is not lawfully in the U.S.<sup>59</sup>

As we have previously written, there is a provision in federal immigration law regarding in-state college tuition for illegal aliens.<sup>60</sup> Section 1623 of the Immigration Reform and Immigrants Responsibility Act of 1996 prohibits state colleges and universities from providing in-state tuition rates to illegal aliens “on the basis of residence within the state” unless the same in-state rates were offered to all citizens of the United States.<sup>61</sup>

One of the major problems with this law is that it did not provide for a private right of action by people offended that their kids have to pay out-of-state tuition prices when illegal aliens got in-state tuition at a college or university. As things stand, it is up to the federal government, through the U.S. Department of Justice, to sue states that have violated that federal law. As of the date of this publication, 19 states offer in-state tuition rates to illegal aliens.<sup>62</sup> Unfortunately, the Justice Department has *never* enforced this provision against any state.<sup>63</sup>

That said, states are not helpless in this arena. States can pass their own laws prohibiting in-state tuition for illegal aliens. Doing so would make it quite difficult for future governors of that state to ignore the law and give in-state tuition to illegal aliens by executive fiat.

**Publish Crimes Committed by Aliens.** One of the arguments made by open-borders supporters is that Americans are not harmed by sanctuary policies or the large inflow of illegal aliens into the country. There are a number of studies showing that this claim is not true—and documenting the crimes committed by criminal aliens.

For example, a Government Accountability Office (GAO) report released in 2005 looked at the crimes committed by 55,322 aliens who “had entered the country illegally and were still illegally in the country at the time of their incarceration in federal or state prison or local jail.”<sup>64</sup> According to the report, these aliens were arrested a total of 459,614 times and committed almost 700,000 criminal offenses.<sup>65</sup> The crimes committed included murder, robbery, assault, burglary, drug dealing, and sex-related crimes.

A 2011 GAO report on 251,000 criminal aliens in federal, state, and local jails showed they had been arrested 1.7 million times for committing 3 million criminal offenses.<sup>66</sup> Another report, this time by state, instead of federal, authorities, provides a good example of the type of information

all state law enforcement and incarceration authorities should be reporting so that we have accurate and timely information on the extent of this problem.

The Texas Department of Public Safety released a report on the 297,000 aliens “booked into local Texas jails between June 1, 2011 and July 31, 2019” for committing local crimes.<sup>67</sup> Texas participates in the Department of Homeland Security’s Priority Enforcement Program, which allows the state to determine the immigration status of individuals arrested and booked into local jails. More than *two-thirds* (202,000) of those aliens were confirmed as illegal immigrants by the federal government. Over the course of their criminal careers, they were charged with committing 494,000 criminal offenses. Those illegal aliens have been convicted of crimes ranging from murder to kidnapping to robbery and sexual assault.<sup>68</sup>

This type of information is needed from *all* states, particularly those with the largest populations of criminal aliens. According to the 2011 GAO report, those states are California, Texas, Arizona, Florida, New York, and Illinois.<sup>69</sup> Every state has a criminal justice system that collects large amounts of data. If states do not collect information on the immigration status of each criminal arrested and incarcerated in state and local prisons and jails, they should. And if they do collect that data, they should look at the method Texas is using to disclose that information and consider doing something similar on a constantly updated basis.

The public is entitled to that information since it affects their safety as well as the cost of government that they are paying for through taxes.

## States Must Do More

Illegal immigration is a large and growing problem that has many deleterious effects on states, from increasing costs for education, health care, and law enforcement, to endangering residents who would otherwise not be victimized if those aliens who commit crimes were not in the country.

While the federal government bears the chief responsibility for immigration enforcement, there are many actions that state governments can take to help enforce the law, deter illegal aliens from residing in their states, and publicize the problems caused by uncontrolled, illegal immigration.

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## Endnotes

1. *Arizona v. U.S.*, 567 U.S. 387, 394 (2012).
2. *Id.* at 397.
3. *Population Estimates: Illegal Alien Population Residing in the United States: January 2015*, U.S. DEPT. OF HOMELAND SECURITY, OFFICE OF IMMIGRATION STATISTICS (Dec. 2018), p. 3; [https://www.dhs.gov/sites/default/files/publications/18\\_1214\\_PLCY\\_pops-est-report.pdf](https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf).
4. Louis Casiano, *Number of Illegal Immigrants in US May Be Twice What's Reported: Yale-MIT Study*, FOX NEWS (Sept. 23, 2018); <https://www.foxnews.com/us/number-of-illegal-immigrants-in-us-may-be-twice-whats-reported-yale-mit-study>.
5. Some aliens commit crimes and are a threat to public safety. In that regard, the Supreme Court noted, for example, that illegal aliens in Maricopa County, Arizona, are “responsible for a disproportionate share of serious crime.” While representing 8.9 percent of the population of the county, they account for 21.8 percent of the felonies. *Arizona*, 567 U.S. at 398. Furthermore, a study released by the U.S. Justice Department’s Bureau of Justice Statistics in August 2019 reveals that aliens accounted for nearly two-thirds (64 percent) of all federal arrests in 2018. In fact, more Mexicans than U.S. citizens were arrested on charges of committing federal crimes. Mark Motivans, *Immigration, Citizenship, and the Federal Justice System*, U.S. DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, NCJ 253116 (August 2019); <https://www.bjs.gov/content/pub/pdf/icfjs9818.pdf>. Another report from the Texas Department of Public Safety found that over 300,000 aliens had been “booked into local Texas jails between June 1, 2011[,] and August 31, 2019.” More than two-thirds of them (204,000) were illegal aliens. Over the course of their entire criminal careers, those illegal aliens were charged with committing almost 500,000 criminal offenses, ranging from murder, rape, and assault, to burglary, kidnapping, and robbery. *Texas Criminal Illegal Alien Data*, TEXAS DEPT. OF PUBLIC SAFETY; [https://www.dps.texas.gov/administration/crime\\_records/pages/txCriminalAlienStatistics.htm](https://www.dps.texas.gov/administration/crime_records/pages/txCriminalAlienStatistics.htm).
6. For a fulsome analysis on the overall economic impact of illegal and legal immigration, see James Jay Carafano, John G. Malcolm, and Jack Spencer, *An Agenda for American Immigration Reform*, HERITAGE FOUNDATION, Special Report No. 210 (Feb. 20, 2019), pages 8–9; <https://www.heritage.org/immigration/report/agenda-american-immigration-reform>.
7. Rafael Bernal and Mike Lillis, *Remittances Play Huge Role in Immigrant Economy*, THE HILL (Oct. 31, 2016); <https://thehill.com/latino/303471-remittances-play-huge-role-in-immigrant-economy>.
8. See Robert Rector, *Reducing Illegal Immigration Through Employment Verification, Enforcement, and Protection*, HERITAGE FOUNDATION, Backgrounder No. 2192 (Oct. 7, 2008), p.2; <https://www.heritage.org/immigration/report/reducing-illegal-immigration-through-employment-verification-enforcement-and>.
9. *Chamber of Commerce v. Whiting*, 131 S.Ct. 1968, 1977 (2011). The Supreme Court noted that several other states have similar provisions, including Mississippi, South Carolina, Utah, and Virginia. *Id.* at footnote 3.
10. *Chamber of Commerce*, 131 S.Ct. at 1986 (citation omitted).
11. *Id.* at 1976.
12. See Brief for the United States as Amicus Curiae Supporting Petitioners in *Chamber of Commerce v. Whiting*; [https://www.americanbar.org/content/dam/aba/publishing/preview/publiced\\_preview\\_briefs\\_pdfs\\_09\\_10\\_09\\_115\\_PetitionerAmCuUSA.pdf](https://www.americanbar.org/content/dam/aba/publishing/preview/publiced_preview_briefs_pdfs_09_10_09_115_PetitionerAmCuUSA.pdf).
13. *Chamber of Commerce*, 131 S.Ct. at 1987.
14. *Id.*
15. *Id.*
16. See Charles D. Stimson, *States Get a ‘License’ to Enforce Immigration Laws*, HERITAGE FOUNDATION, WebMemo No. 3342 (August 22, 2011); [http://thf\\_media.s3.amazonaws.com/2011/pdf/wm3342.pdf](http://thf_media.s3.amazonaws.com/2011/pdf/wm3342.pdf).
17. See *E-Verify States Map*, <https://www.lawlogix.com/e-verify-map/>; see also *E-Verify*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/immigration/everify-faq.aspx>.
18. One of the authors routinely passes such a site located in northern Virginia—only 15 miles from the Washington headquarters of the Immigration and Customs Enforcement Agency—on his commute into the office.
19. See Ariz. Rev. Stat. Ann. § 13-2928(A).
20. See Ariz. Rev. Stat. Ann. § 13-2928(B).
21. Ariz. Rev. Stat. Ann. § 13-2928(C).
22. *Arizona v. U.S.*, 567 U.S. 387.
23. See *U.S. v. Arizona*, 703 F.Supp.2d 980 (2010).
24. *Id.* at 986.
25. *Id.* at 987.
26. *Arizona*, 567 U.S. at 406–407.

27. Arizona, 567 U.S. at 411 (citing Ariz. Rev. Stat. Ann. § 11-1051(B)).
28. *Id.*
29. *Id.* (citing 8 U.S.C. § 1357(g)(10)(A)).
30. *Id.* at 412 (citations omitted).
31. Hans von Spakovsky and Charles Stimson, *Judges Can't Ignore Immigration Laws They Don't Like*, FOX NEWS (May 3, 2019); <https://www.foxnews.com/opinion/von-spakovsky-and-stimson-judge-cant-ignore-immigration-laws-they-dont-like>.
32. *See To Make America Safe Again, We Must End Sanctuary Cities and Remove Criminal Aliens*, U.S. DEPT. OF HOMELAND SECURITY, Press Release (Feb. 15, 2018); <https://www.dhs.gov/news/2018/02/15/make-america-safe-again-we-must-end-sanctuary-cities-and-remove-criminal-aliens>.
33. *Cooperation Between ICE, Local Law Enforcement Makes for Safer Communities*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Press Release (June 17, 2019); <https://www.ice.gov/news/releases/cooperation-between-ice-local-law-enforcement-makes-safer-communities>.
34. 8 U.S.C. § 1373(a).
35. Ariz. Rev. Stat. Ann. § 11-1051(C).
36. *Id.* at § 11-1051(F).
37. *U.S. v. Arizona*, 703 F.Supp.2d 980 (D. Ariz. 2010). This provision was upheld by the federal district court, and the U.S. Justice Department did not appeal that particular holding, nor a number of other holdings in that decision.
38. Ariz. Rev. Stat. Ann. § 11-1051(H).
39. *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018).
40. SB 4, codified at Texas Gov. Code § 752.053(a)-(b).
41. ICE has 20,000 law enforcement and support personnel. In comparison, there are over 1 million full-time state and local law enforcement officers. *See Who We Are*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; <https://www.ice.gov/about>; *see also National Sources of Law Enforcement Employment Data*, U.S. DEPT. OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, NCJ 249681 (Oct. 4, 2016); <https://www.bjs.gov/content/pub/pdf/nsleed.pdf>.
42. *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; <https://www.ice.gov/287g>.
43. *Id.*
44. *Id.*
45. *ICE Launches Program to Strengthen Immigration Enforcement*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT; <https://www.ice.gov/news/releases/ice-launches-program-strengthen-immigration-enforcement>.
46. *Id.*
47. *Id.*
48. Ariz. Rev. Stat. Ann. § 13-2929(A)(1).
49. Ariz. Rev. Stat. Ann. § 13-2929(A)(2).
50. Arizona, 703 F.Supp.2d at 1002.
51. Ariz. Rev. Stat. Ann. §13-2929(A)(3). However, the 11th Circuit Court of Appeals, which has jurisdiction only over Alabama, Florida, and Georgia, upheld an injunction against a similar provision in Alabama state law that criminalized the concealment, harboring, or transporting of illegal aliens, as well as encouraging or inducing them to reside in Alabama. *U.S. v. Alabama*, 691 F.3d 1269 (11th Cir. 2012).
52. Those states include California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, New Mexico, New York, Utah, Vermont, and Washington. *States Offering Driver's Licenses to Immigrants*, NATIONAL CONFERENCE OF STATE LEGISLATURES; <http://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx>.
53. That is why the 9/11 hijackers obtained state driver's licenses: It was essential to how they "breached our immigration system and then embedded in the United States," according to Janice Kephart, former counsel to the 9/11 Commission. Janice Kephart, *Driver's License Insecurity* (Sept. 4, 2012); <https://cis.org/Memorandum/Drivers-License-Insecurity>.
54. Testimony of Dan Stein, President of Federation for American Immigration Reform (Oct. 15, 2007), New York Senate Committee on Veterans, Homeland Security and Military Affairs and Standing Committee on Transportation; <https://www.fairus.org/legislation/impact-granting-drivers-licenses-illegal-aliens-new-york>.
55. *Id.* Stein also pointed out that there was no reason to believe that illegal aliens, "having disregarded so many other laws, would obey state statutes requiring drivers to have automobile insurance." This is particularly true because of the invalid assumption that "illegal aliens, who generally are low-income, have the cash available to acquire auto insurance plus the incentive to buy it in order to protect what little assets they have." *Id.*
56. *U.S. v. Alabama*, 691 F.3d 1269 (11th Cir. 2012), cert. denied, 569 U.S. 968 (2013).

57. *Id.* at 1301. This provision does not apply to marriage licenses or transactions related to housing or property ownership, including payment of property or other taxes. 691 F.3d at 1297.
58. Ariz. Rev. Stat. Ann. § 13-2319(A).
59. *Id.* at (C)(3).
60. Hans A. von Spakovsky and Charles D. Stimson, *Providing In-State College Tuition for Illegal Aliens: A Violation of Federal Law*, HERITAGE FOUNDATION, Legal Memorandum No. 74 (Nov. 22, 2011); <https://www.heritage.org/immigration/report/providing-state-tuition-illegal-aliens-violation-federal-law>.
61. See 8 U.S.C. § 1623 (1996).
62. *Undocumented Student Tuition: Overview*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Sept. 19, 2019); <http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx>. Seventeen states provide in-state tuition through state legislation: Arkansas, California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, and Washington. Two states provide in-state tuition through decisions by their boards of regents (Oklahoma and Rhode Island), while the Universities of Hawaii and Michigan also provide in-state tuition for illegal aliens through decisions of their boards of regents. *Id.*
63. There is no requirement that states even allow illegal aliens to attend college. The 11th Circuit Court of Appeals recently upheld the State of Georgia's requirement that selective colleges and universities verify the "lawful presence" of all students seeking admission. The law was not preempted by federal immigration law, and it was not a violation of equal protection to deny admittance to illegal aliens—including aliens who received deferred action under the DACA program. *Estrada v. Becker*, 917 F.3d 1289 (11th Cir. 2019).
64. *Information on Certain Illegal Aliens Arrested in the United States*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-05-646R (May 9, 2005), p. 2; <https://www.gao.gov/assets/100/93167.pdf>.
65. *Id.* at 3.
66. *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-11-187 (March 2011); <https://www.gao.gov/new.items/d11187.pdf>.
67. *Texas Criminal Illegal Alien Data*, TEXAS DEPARTMENT OF PUBLIC SAFETY; [https://www.dps.texas.gov/administration/crime\\_records/pages/txCriminalAlienStatistics.htm](https://www.dps.texas.gov/administration/crime_records/pages/txCriminalAlienStatistics.htm).
68. *Id.*
69. *Criminal Alien Statistics: Information on Incarcerations, Arrests, and Costs*, U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-11-187 (March 2011), p. 11; <https://www.gao.gov/new.items/d11187.pdf>.