



# A Q&A GUIDE TO STATE IMMIGRATION LAWS

WHAT YOU NEED TO KNOW IF YOUR STATE IS CONSIDERING  
ANTI-IMMIGRANT LEGISLATION

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FEBRUARY 2012

### **ABOUT THE IMMIGRATION POLICY CENTER**

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy in U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at [www.immigrationpolicy.org](http://www.immigrationpolicy.org) and our blog at [www.immigrationimpact.com](http://www.immigrationimpact.com).

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## WHY DO I NEED THIS GUIDE?

In April 2010, Arizona governor Jan Brewer signed the “Support Our Law Enforcement and Safe Neighborhoods Act,” or, as it is commonly known, SB1070. At the time of its passage, Arizona’s immigration law surpassed all previous state immigration-control efforts. While much of the law has been enjoined by the courts, its passage inspired legislators in other states to pass similar legislation.

Since SB1070 passed, 36 other states have attempted to pass harsh immigration-control laws. Of those, 31 states have rejected or refused to advance their bills. However, five states—Utah, Indiana, South Carolina, Georgia, and Alabama—have passed laws that mirror or go beyond the Arizona law.<sup>1</sup> It is likely that additional states will attempt to pass similar anti-immigrant legislation during the 2012 legislative session.

SB1070 and other immigration-related state legislation represent, among other things, a growing frustration with our broken immigration system. The courts will decide the constitutionality of the various laws, and time will answer many questions about their impact. In the short term, much evidence suggests that an enforcement-only strategy—whether attempted at the federal or state level—will not solve the root causes of unauthorized immigration.

This guide provides key answers to basic questions about state immigration-related laws—from the substance of the legislation and myths surrounding the debate to the legal and fiscal implications. As other states contemplate legislation, knowing the answers to these basic questions is critically important in furthering a rational discussion.

## WHAT TYPES OF LAWS HAVE ALREADY PASSED?

Some people refer to state laws passed after Arizona's SB1070 as SB1070 "copycats." While it is true that some of the provisions of SB1070 have been copied by other states, it is also the case that subsequent state laws have evolved beyond SB1070, incorporating some of its provisions and building upon them. Alabama's HB56, for example, goes well beyond SB1070 and includes new extreme provisions, and other states are now looking toward Alabama's law as a model. While some states may attempt to pass "omnibus" immigration laws that include an entire range of provisions intended to control unauthorized immigration and interfere in the lives of unauthorized immigrants, it is likely that 2012 will see states picking and choosing from among various provisions, modifying existing provisions, and experimenting with new ideas.

The range of provisions that have already been introduced and become law includes:

- Requiring state and local law-enforcement agencies (LEAs) to check the immigration status of anyone encountered during a lawful stop or arrest for whom they possess "reasonable suspicion" of lacking valid immigration status.
- Requiring LEAs to check the immigration status of anyone booked into custody, held in custody, or convicted of a crime.
- Authorizing LEAs to make warrantless arrests for civil immigration violations.
- Making it a state crime to fail to carry immigration registration documents.
- Making it a state crime for unauthorized immigrants to solicit or to perform work.
- Making it a state crime to hire unauthorized day laborers or for day laborers to solicit work in a roadway or get into a vehicle.
- Making the E-Verify system mandatory for all businesses in the state.
- Making it illegal to enter into business transactions with unauthorized immigrants.
- Preventing the courts from enforcing any contracts entered into by an unauthorized immigrant.
- Requiring primary and secondary schools to check the immigration status of all students enrolling in the school.
- Denying unauthorized students access to postsecondary educational institutions.

**A table of the provisions contained in the six state laws that have passed is included in Appendix I of this document.**

## CURRENT STATUS OF THE LAWS

**Q: What is the legal status of Arizona SB1070 and other state immigration laws?**

**A:** In December 2011, the U.S. Supreme Court agreed to hear the legal challenge to Arizona SB1070, including its infamous provision involving “reasonable suspicion.” Earlier in the year, the U.S. Court of Appeals for the Ninth Circuit had upheld the entry of a preliminary injunction against four key provisions of the law. Oral arguments will take place in April, and a decision will almost certainly come by the end of June. Justice Elena Kagan, who likely participated in internal discussions about the law while serving in the Obama Administration, will not take part. If the Justices split 4-4, the injunction will be upheld but no opinion will be issued. Until the Court delivers its ruling, lower courts are unlikely to rule in the cases described below.

In Alabama, a federal judge issued a ruling in September 2011 temporarily enjoining certain provisions of HB56 but allowing others to go into effect—including a provision requiring schools to ascertain the immigration status of any newly enrolling student born abroad or to an unauthorized parent. The plaintiffs immediately appealed, however, and the U.S. Court of Appeals for the Eleventh Circuit issued a “stay” preventing Alabama from enforcing the provision while the case is under consideration. Oral arguments, which have been consolidated with the case against Georgia HB87, are scheduled for March 1.

In Georgia, a federal judge issued a ruling in June 2011 temporarily enjoining two provisions of HB87—including a provision making it a state crime to “harbor” or transport unauthorized immigrants. The state appealed to the Eleventh Circuit, and consolidated oral arguments with the case against Alabama HB56 are scheduled for March 1.

In Indiana, a federal judge issued a ruling in June 2011 temporarily enjoining two provisions of SEA 590—including a provision forbidding the use or acceptance of consular identification cards. In November, the plaintiffs filed a motion asking for a permanent injunction.

In South Carolina, a federal judge issued a ruling in December temporarily enjoining three provisions of South Carolina Act 69 and finding a fourth provision likely to be overturned in future proceedings. The case is “stayed” pending the outcome of Arizona’s case at the Supreme Court.

In Utah, a federal judge issued a ruling in May enjoining HB497 pending further order of the court. The case remains ongoing.

# DEBUNKING THE MYTHS BEHIND STATE IMMIGRATION LAWS

## THE RELATIONSHIP BETWEEN STATE LAWS AND FEDERAL LAWS

**Q: Don't these laws simply "mirror" federal law?**

A: No. Laws such as Arizona SB1070 and Alabama HB56 go well beyond federal law, creating new responsibilities for state officials and imposing more severe penalties than federal law. The laws also create complex jurisdictional issues, as the Constitution gives the federal government exclusive power to admit and remove immigrants from the United States. Thus, even if local police arrest every unauthorized person in the state, it is still up to the federal government to charge them, conduct removal proceedings, and if necessary, deport them. In other words, laws that create new state crimes may "mirror" federal law in their language, but not in their effect.

**Q: Why have parts of state immigration laws been enjoined before going into effect?**

A: When a law is challenged in court, judges can enter preliminary injunctions against some or all of its provisions. The purpose of a preliminary injunction is to maintain the status quo until a final ruling is made. Obtaining a preliminary injunction is very difficult, however, because plaintiffs must show that they are likely to prevail on the merits *and* that they will suffer irreparable harm if the law takes effect.

Despite this high standard, every federal court to consider a challenge to a state immigration law has entered or upheld a preliminary injunction against at least one provision. While the sections facing injunctions vary by state (see appendix), the legal reasoning has been consistent. Every federal court to consider the legality of a state immigration law has found at least one provision to conflict with, and therefore be "preempted" by, the federal Immigration and Nationality Act (INA).

As the U.S. Court of Appeals for the Ninth Circuit [explained](#), "Congress has created a comprehensive and carefully calibrated scheme—and has authorized the Executive to promulgate extensive regulations—for adjudicating and enforcing civil removability." The court continued, "we are simply not persuaded that Arizona has the authority to unilaterally transform state and local law enforcement officers into a state-controlled DHS {Department of Homeland Security} force to carry out its declared policy of attrition."<sup>2</sup>

**Q: Why are state immigration-enforcement laws likely to increase racial profiling?**

A: Laws like SB1070 open the door to intrusive questioning of anyone a local police officer stops who they have "reasonable suspicion" to believe is in the country illegally. Many U.S. citizens do not carry passports or other identification, and the lack of such documentation could result in lengthy questioning—and possibly arrest or detention—if they cannot persuade an officer that they are in the United States legally. In particular, critics fear that persons who are Hispanic or dark-skinned, who have accents, or who otherwise appear "foreign" are more likely to face racial profiling. In Alabama, for example, a federal judge

noted that requiring local police to ascertain the immigration status of suspected unauthorized immigrants could lead to widespread constitutional violations because local officers “are not trained to discern suspicion of unlawful presence without consideration of the person’s race, color, or national origin.”<sup>3</sup>

**Q: But if you don’t have papers, you are probably here illegally and the federal government is going to deport you anyway, so what’s the harm?**

A: Determining whether someone is in the country unlawfully is not as simple as checking a database or asking whether the person has “papers.” Before being deported, most immigrants appear before an immigration judge and can apply for various forms of relief, such as asylum, cancellation of removal, or Temporary Protected Status (TPS). Others may obtain a green card based on a marriage to a U.S. citizen. And even if an immigration judge enters a removal order, federal law gives immigrants the right to at least one appeal. State immigration-enforcement laws circumvent that process, punishing people based solely on the determination of a state or federal law-enforcement officer before a full determination has been made.

In addition, laws like SB1070 may also impose burdens on immigrants who are lawfully in the United States. As a federal judge in Arizona noted:

Legal residents will certainly be swept up by [the provision requiring that you carry your papers], particularly when the impacts of the provisions pressuring law enforcement agencies to enforce immigration laws are considered. Certain categories of people with transitional status and foreign visitors from countries that are part of the Visa Waiver Program will not have readily available documentation of their authorization to remain in the United States, thus potentially subjecting them to arrest or detention.<sup>4</sup>

**Q: Are new laws needed to give police the authority to arrest immigrants?**

A: No. The police have always had authority to arrest immigrants for crimes committed under state and local law. In addition, when expressly permitted by federal statute, local police may arrest noncitizens for *criminal* violations of the immigration laws, such as reentering the United States after previously being deported. Furthermore, once an immigrant has been lawfully arrested, the police may contact Immigration and Customs Enforcement (ICE) and inquire about an arrestee’s immigration status. Many prisons and jails already cooperate with ICE so that deportable immigrants can be identified and placed into removal proceedings.

By contrast, state and local police have *never* possessed the authority to arrest immigrants simply for lacking valid immigration status. The only exception is in jurisdictions with 287(g) agreements, which give designated officers the authority to enforce civil violations of immigration laws.



## IMMIGRANTS AND WELFARE

**Q :** Don't illegal immigrants cost states a lot of money?

A : Some state legislators argue that unauthorized immigrants cost states too much money. Many rely upon a deeply distorted report issued by the Federation for American Immigration Reform (FAIR) in July 2010. That report, *The Fiscal Burden of Illegal Immigration on United States Taxpayers*, is not a credible source of data, yet its numbers have been cited repeatedly in debates over immigration legislation in the states. The report relies upon empirically baseless assumptions to inflate its estimate of the costs unauthorized immigrants impose on federal, state, and local governments. For example:

- Much of the “cost” FAIR attributes to unauthorized immigration is actually the amount spent on education and healthcare for the U.S.-citizen children of unauthorized parents. While FAIR acknowledges that approximately 72 percent of the children counted in its cost estimate are native-born U.S. citizens,<sup>5</sup> it makes no distinction with children who are unauthorized themselves.
- Once native-born children of unauthorized parents turn 18—at which point many will become working (and taxpaying) adults—FAIR counts them as U.S. citizens. Thus, in its rush to place a price tag on unauthorized immigrants, FAIR is unable to see that investing in children today pays off economically tomorrow.
- FAIR also neglects to mention the enormous fiscal and economic costs that would be incurred by attempting to *remove* unauthorized immigrants from the United States. According to a comprehensive [report](#) from the Center for American Progress (CAP), attempting to remove all unauthorized immigrants would cost \$285 billion over a five-year period.<sup>6</sup>

## IMMIGRANTS AND CRIME

**Q:** Don't illegal immigrants cause crime?

A: No. Unauthorized immigration is not associated with higher crime rates.

- Although the unauthorized immigrant population roughly *tripled* in size to more than 11 million from 1990 to 2008, [data](#) from the Bureau of Justice Statistics indicates that the violent crime rate in the United States *declined* by 37.7 percent and the property crime rate fell by 36.7 percent over the same time period.<sup>7</sup>
- The decline in crime rates was not just national, but also occurred in border cities and other cities with large immigrant populations such as San Diego, El Paso, Los Angeles, New York, Chicago, and Miami.<sup>8</sup>

**Q:** But surely there is a rise in border crime related to illegal immigration?

A: Border cities are not necessarily prone to higher crime. As a [story](#) in *Reason Magazine* describes, El Paso, Texas—a relatively poor and heavily Latino city that is home to many unauthorized immigrants—is among the safest big cities in the United States, even though it is next door to the violence-ridden Mexican city of Ciudad Juarez.<sup>9</sup>

## **ENFORCEMENT-ONLY LAWS AND COMMUNITY SAFETY**

**Q: Won't strong state immigration enforcement make American communities safer and help police catch serious criminals?**

A: No. If anything, harsh state immigration laws make communities less safe because immigrants—legal and unauthorized—will be fearful of reporting crimes to the police or coming forward as victims or witnesses. When immigrants fear that the police will arrest them or their family members for immigration violations, trust between the police and the community erodes, making community policing more difficult and entire communities less safe.

Moreover, judging from the experience of Maricopa County under Sheriff Joe Arpaio, SB1070-like laws can divert law-enforcement resources away from investigating and solving more serious crimes.

- The [East Valley Tribune](#) found that, as Sheriff Arpaio has diverted his department's resources to immigration enforcement, response times to 911 calls have increased, arrest rates have dropped, and thousands of felony warrants have not been served.<sup>10</sup>
- Despite the time and energy spent on immigration enforcement, the [East Valley Tribune](#) found that Sheriff Arpaio has had little success in building cases against violent immigrant offenders or those at the top of smuggling rings.<sup>11</sup>
- In 2006-2007, Maricopa County sheriff's deputies arrested 578 illegal immigrants in the course of traffic stops, and—of those—498 faced a single charge of conspiracy to smuggle themselves.<sup>12</sup>

**Q: Do law-enforcement officials support state immigration-enforcement laws?**

A: Generally, no. According to police officials, state immigration-enforcement laws make it more difficult for police officers to do their jobs.

For example, many top law-enforcement officials, including the Arizona Association of Chiefs of Police, opposed Arizona SB1070. They say the law will harm their ability to protect the community and alienate police officers from the communities they serve. The law will also force police to devote scarce resources to investigating immigrants' status rather than solving serious crimes.

- **Arizona Association of Chiefs of Police (AACOP)**  
“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.”<sup>13</sup>

- **Sergeant Brian Soller, Mesa, AZ; President, Mesa Lodge, Fraternal Order of Police** “If we’re getting hammered with calls, is a misdemeanor [trespassing by an illegal immigrant] more important than a stabbing or shooting? No. The problem with this law is that it’s an unfunded mandate and could eat up a lot of manpower and cost a lot of money.”<sup>14</sup>
- **The International Association of Chiefs of Police (IACP)**, the nation’s premier law-enforcement association, has stated that “local police agencies depend on the cooperation of immigrants, legal and illegal, in solving all sorts of crimes and in the maintenance of public order. Without assurances that they will not be subject to an immigration investigation and possible deportation, many immigrants with critical information would not come forward, even when heinous crimes are committed against them or their families.”<sup>15</sup>
- In 2006, the **Major Cities Chiefs Association (MCCA)**, a group of police chiefs from the 64 largest police departments in the United States and Canada, stated “without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”<sup>16</sup>

**Q: What impact could state immigration-enforcement laws have on federal immigration-enforcement resources?**

**A:** State immigration-enforcement laws put a tremendous strain on ICE resources and reduce the federal government’s effectiveness in enforcing immigration laws. State immigration laws [undermine the federal government’s ability](#) to set priorities for federal immigration enforcement and divert scarce federal resources from finding dangerous criminals throughout the United States, focusing instead on detaining and deporting non-violent immigrants.

Laws like SB1070 will inundate DHS with requests to determine the immigration status of individuals police have “reasonable suspicion” to believe are unlawfully present. If ICE believes the individual is indeed unlawfully present, ICE would be expected to take custody of him/her and place him/her in deportation proceedings. In other words, individual states would bombard ICE with an unmanageable number of requests relating to immigration status, most for people charged with or convicted of very minor offenses, if any. As a result, ICE will have fewer resources to target noncitizens who pose a terrorist threat or a threat to the community.

# THE FINANCIAL COST OF STATE IMMIGRATION LAWS

**Q: What will it cost states to implement an immigration-enforcement law?**

**A:** At a time when all states face financial struggles, enacting an immigration-enforcement law will consume even more taxpayer dollars. Potential costs include:

- **Cost to Police:** Costs associated with a projected increase in arrests and overtime.
- **Cost to Jails:** Costs associated with a projected increase in jail population.
- **Other Criminal-Justice Costs:** Cost of projected increase in prosecutorial and public-defender staff, jail space, court rooms, and support offices needed to handle increased caseload.
- **Costs to State Agencies:** Costs associated with additional personnel and time necessary to check the identification documents of all persons applying for certain state benefits. Also cost of foster care for children of detained immigrants.
- **Costs to Schools:** Costs associated with checking and reporting the immigration status of children enrolled in schools and lost federal or state funding for schools due to decreases in school enrollment.
- **Legal Costs:** Legal costs incurred by the state to defend against lawsuits.

While Arizona conducted no fiscal analysis on how much SB1070 would cost, a [fact sheet](#) produced by Yuma County Sheriff Ralph E. Ogden in response to similar legislation proposed in 2006 provides some quantifiable data.<sup>17</sup> Yuma County is one of Arizona's 15 counties, with a population of about 200,000. The Sheriff estimated that:

- Law-enforcement agencies would spend between \$775,880 and \$1,163,820 in processing expenses;
- Jail costs would increase between \$21.2 and \$96.1 million;
- Attorney and staff fees would increase between \$810,067 and \$1.6 million;
- Additional detention facilities would have to be built at unknown cost;
- In addition, the Superior Court, Justice Courts, Juvenile Courts, and Municipal Courts would realize increased costs for additional court staff, interpreters, administrative staff, and pre-trial services.<sup>18</sup>

Some states that considered immigration-enforcement laws in 2010 and 2011 backed off once they received cost estimates for such legislation.<sup>19</sup>

- In Indiana, state police said they would have to spend \$5 million to train for and enforce the law.<sup>20</sup>
- Similar estimates were given in Tennessee, where the General Assembly Fiscal Review Committee found that it would increase expenditures by \$3 million for the first year and \$1.8 million every year after that.<sup>21</sup>

- In Kentucky, an enforcement bill was rejected after an estimate showed it would cost the state \$89 million per year to enforce.<sup>22</sup>
- In [Louisiana](#), a bill was withdrawn when it was estimated to cost \$11 million to implement.<sup>23</sup>

While implementation costs mount, tax revenues decrease. The unauthorized, like everyone else in the United States, pay sales taxes. They also pay property taxes—even if they rent. [At least half](#) of unauthorized immigrants pay income taxes. In total, it amounts to billions in revenue to state and local governments. The [Institute for Taxation and Economic Policy](#) (ITEP) has [estimated the state and local taxes paid](#) in 2010 by households that are headed by unauthorized immigrants. These households may include members who are U.S. citizens or legal immigrants. Collectively, these households paid \$11.2 billion in state and local taxes. That included \$1.2 billion in personal income taxes, \$1.6 billion in property taxes, and \$8.4 billion in sales taxes. The Immigration Policy Center provides [estimates for each state](#).

**Q: What other costs could states incur?**

A: State immigration-enforcement laws drive away workers, taxpayers, and consumers upon whom the state economy depends, and invite costly lawsuits and tourist boycotts. Few states can afford such economic consequences at a time of gaping budget deficits. When harsh anti-immigrant laws are implemented, state economies suffer.

- States could experience a major blow to tourism and conventions. After Arizona passed SB1070, major groups and associations cancelled events and conventions in the state. A report by the [Center for American Progress](#) (CAP) estimates that Arizona will lose \$45 million in lodging revenue alone. After factoring in losses to food and beverage, entertainment, in-town transportation, and retail sales, the estimated combined loss of conference attendee spending rises to \$141 million.<sup>24</sup> Arizona was eventually forced to spend \$250,000 for a marketing campaign to help improve its image after SB1070 was enacted.<sup>25</sup>
- Anti-immigrant laws have a negative impact on a state's economy. According to Professor Samuel Addy at the Center for Business and Economic Research at the University of Alabama, Alabama's HB56 will reduce Alabama's Gross Domestic Product (GDP) by as much as \$10.8 billion, or 6.2% of the state's \$172.6 billion 2010 GDP.<sup>26</sup> It could cost the state up to 140,000 jobs and \$264.5 million in state income and sales taxes, and Addy said the law "is certain to be a drag on economic development even without considering costs associated with enforcement of the law...demand in the Alabama economy is reduced since the income generated by these people and their spending will decline. That results in a shrinking of the state economy and will be seen in lower economic output, personal income, and fewer jobs than would otherwise have been."<sup>27</sup>
- Two of Indiana's largest employers, Eli Lilly and Co. (a drug manufacturer) and Cummins Inc. (an engine manufacturer) published a [statement](#) arguing that Indiana's proposed immigration-enforcement law ([SB 590](#)) would impede their ability to compete globally and grow in Indiana. According to Eli Lilly and Co., Indiana has a sizeable and growing

biosciences industry, with almost 90,000 employees and supporting a total of \$22.7 billion in economic output—direct, indirect and induced. Spokesman Ed Sagebiel [said](#) the company’s “ability to thrive in Indiana is dependent on an environment that is welcoming.” Similarly, Cummins Inc. highlighted 550 new high-paying jobs they brought to the state as a result of Indiana’s friendliness to new business.

- State immigration-enforcement laws could potentially hurt the state’s ability to attract international investments. According to Gerald Dial, Alabama State Senate Republican whip and former HB 56 supporter, an unintended consequence of the legislation in that state has been to make other states more attractive for investors. “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 Arkansas or we’re going to go to South Carolina.’ That’s probably the most detrimental part of the whole bill.”<sup>28</sup> In Nashville, Tennessee, the [Chamber of Commerce called](#) harsh immigration-control legislation “detrimental to work force development and international trade efforts,” while the president of a local commercial real estate firm said it would “make Tennessee unattractive to businesses looking to relocate.
- The agricultural industry has been devastated in states with harsh immigration laws. Immigrant workers have failed to show up for work and millions of dollars of produce has been left to rot in the fields. Legal U.S. workers have not been filling the open jobs. The uncertainty about how much labor will be available affects growers’ ability to prepare and plant for [next year](#).
  - After passing its immigration-enforcement bill (HB87), [Georgia’s agriculture industry](#) has already seen severe labor shortages. Early reports from the state estimate economic losses for the 2011 growing season to be between \$300 million and \$1 billion.
  - [Farmers in Alabama](#) fear that the new law will kill a \$5.5 billion industry. Brian Cash, an Alabama tomato farmer, stated, “Tomato production contributes \$1.6 billion a year to the state’s economy, but without immigrant labor, that money will disappear. We grow it. Hispanics pick it. That’s just the way it is.”
  - Alabama Agriculture Commission John McMillan stated “the economic hardship to farmers and agribusiness will reverberate throughout Alabama’s economy, as one-fifth of all jobs in our state come from farming.”<sup>29</sup>
  - Agriculture is not only a key industry in many states, but losses in the agricultural sector tend to have multiplier effects that ripple throughout the entire state economy. Jobs in agriculture support other “upstream” jobs in processing and transportation, and these jobs are affected by a downturn in agriculture. Entire communities are negatively affected when jobs are lost, tax revenues decrease, and consumer spending drops.
- State immigration-enforcement laws mean businesses must incur additional costs. Economist Jeremy Thornton of Samford University points to the “shadow costs”

employers incur when they take steps to protect themselves from the law's stiff penalties.<sup>30</sup> Businesses will spend more on employee screening to protect themselves from provisions of the law that bar them from knowingly hiring unauthorized workers. There could also be increased litigation costs for businesses because legal workers could sue employers for allegedly hiring unauthorized workers. "Every business that now has to comply with this legislation, that's just extra cost. And anytime you raise costs, businesses shrink."<sup>31</sup> Businesses will likely have to spend more on third party assistance for employment eligibility paperwork and extra human resources staff.<sup>32</sup>

- There are also costs associated with making the E-Verify employment-verification system mandatory for all businesses.<sup>33</sup> Bloomberg estimated that implementing E-Verify costs small businesses an estimated \$435 per year.<sup>34</sup> There are also costs to U.S. citizens and legal immigrants who are erroneously flagged as not eligible to work by E-Verify and must take time off of work to navigate the bureaucracy to fix the error. The Immigration Policy Center estimates the cost of E-Verify to states in a series of [state fact sheets](#).

**Q: What is the cost of litigation?**

A: State immigration-control laws are inevitably challenged in court, and states and localities have already spent millions of dollars in legal fees.

- In Arizona, [seven lawsuits](#) were filed to stop implementation of SB1070, and other states are likely to see numerous lawsuits against similar legislation. By February 2011, Arizona had [already spent](#) more than \$1.5 million defending SB1070.<sup>35</sup>
- Fremont, Nebraska passed a ban on hiring or renting property to unauthorized immigrants, yet is having trouble implementing the law because of litigation costs. Officials estimated that defending the law would cost the state an average of \$1 million per year in legal fees, and that Fremont taxpayers could face a potential 18 percent increase in property taxes as a result.<sup>36</sup>
- By 2010, Farmers Branch, Texas had already spent about \$3.2 million in legal fees since September 2006, when it enacted the first of three immigration-related ordinances. Legal costs were expected to exceed \$5 million.<sup>37</sup>
- Hazleton, Pennsylvania accumulated nearly \$2.4 million in attorney's fees defending its Illegal Immigration Relief Act. A federal court subsequently ruled the city's insurance carrier was not responsible for the payments.<sup>38</sup>
- Riverside, New Jersey rescinded an ordinance that penalized renting to or employing unauthorized immigrants after the town of 8,000 accumulated \$82,000 in legal fees.<sup>39</sup>

**Q: If it was possible to remove all unauthorized immigrants from a state, what would the impact be on the economy?**

A: Unauthorized immigrants make many contributions to the economy as workers, taxpayers, and consumers. If a state were somehow able to succeed in removing all unauthorized immigrants, the impact on the economy could be devastating.

- A 2011 [report](#) by Dr. Raul Hinojosa-Ojeda and Marshall Fitz found that deporting all of the unauthorized immigrants in Arizona would decrease total employment by 17.2 percent, eliminate 581,000 jobs for immigrants and native-born workers alike, shrink the state economy by \$48.8 billion, and reduce state tax revenues by 10.1 percent.<sup>40</sup>
  - Hinojosa-Ojeda and Fitz also found that if all of the unauthorized immigrants in California were removed, the state would lose \$301.6 billion in economic activity, decrease total employment by 17.4 percent, and eliminate 3.6 million jobs.<sup>41</sup>
  - A [study released](#) in July 2007 by the University of Arizona’s Udall Center for Studies in Public Policy concluded that economic output would drop annually by at least \$29 billion, or 8.2 percent, if all non-citizens, including unauthorized workers, were removed from Arizona’s workforce. About 14 percent of the state’s 2.6 million workers are foreign-born, and about two-thirds to three-fourths of non-citizens are unauthorized.<sup>42</sup>

## WHO IS BEHIND STATE IMMIGRATION ENFORCEMENT LAWS?

**Q: Are the various state laws connected?**

A: Many state immigration-enforcement proposals are part of a larger national strategy called “attrition through enforcement,” which involves reducing the number of unauthorized immigrants in the United States by increasing the incentives for immigrants to “deport themselves.” This strategy was created and is supported by national immigration-restrictionist groups such as FAIR, the Center for Immigration Studies (CIS), the Immigration Reform Law Institute (IRLI), and NumbersUSA. In addition to increasing enforcement and deportations at the national level, these organizations believe that state and local governments have a key role to play in encouraging unauthorized immigrants to “self deport.”

- National organizations have worked with state legislators to introduce and promote state immigration-control laws. IRLI, in particular, “works to design and promote state and local legislation that enables communities to effectively address problems resulting from illegal immigration.”<sup>43</sup> Kris Kobach is the current Secretary of State of Kansas and continues to serve as chief legal counsel to IRLI. Kobach has been working to set the stage for an enhanced role for states and localities for at least a decade. He openly acknowledges his role in writing and defending such laws in Arizona and Alabama; Hazleton, PA; Valley Park, MO; Farmers Branch, TX; and Fremont, NE.<sup>44</sup>
- State Legislators for Legal Immigration (SLLI) was founded in 2007 by Republican Pennsylvania state senator Daryl Metcalf as an organization that works closely with FAIR and IRLI to promote restrictionist legislation in the states. In 2011, SLLI promoted state



bills to deny birthright citizenship to children born in the U.S. to unauthorized immigrants.

## IS STATE IMMIGRATION ENFORCEMENT LEGISLATION NEEDED?

**Q: But the federal government hasn't done anything, has it?**

**A:** For more than two decades, the U.S. government has tried without success to stamp out unauthorized immigration through enforcement efforts at the border and in the interior of the country without fundamentally reforming the broken immigration system that spurs unauthorized immigration in the first place. Ironically, while billions upon billions of dollars have been poured into enforcement, the number of unauthorized immigrants in the United States has increased dramatically.

- The Obama administration [deported](#) 396,906 individuals from the country in FY 2011—the highest number in the agency's history.<sup>45</sup> Since FY 2009, more than [one million](#) people have been deported.<sup>46</sup> Approximately [33,400](#) immigrants are in federal detention on any given day.<sup>47</sup>
- On August 13, 2010, President Obama signed into law a \$600 million bill focused on border security. The bill provided \$175.9 million for additional Border Patrol agents, \$50 million for additional ICE agents, \$14 million for additional border fencing, \$32 million for unmanned aerial vehicles on the border, and \$30 million for law-enforcement activities targeted at reducing violence along the southwest border.<sup>48</sup>
- The [budget](#) of U.S. Customs and Border Protection (CBP) for Fiscal Year (FY) 2012 is set at \$11.8 billion, up from \$5.9 billion in FY 2003.<sup>49</sup> The number of Border Patrol agents stationed along the southwest border with Mexico grew to 21,370 in FY 2012—a six-fold increase since FY 1992.<sup>50</sup>
- The [budget](#) of ICE is \$5.8 billion for FY 2012, up from \$3.3 billion in FY 1992.<sup>51</sup>
- Yet the unauthorized-immigrant population of the United States has tripled in size, from roughly 3.5 million in 1990 to 11.2 million in [2010](#).<sup>52</sup> Clearly, all of the additional resources spent on enforcement alone are not successfully reducing the unauthorized-immigrant population.

**Q: What is the solution?**

**A:** If we want to avoid creating a patchwork of unconstitutional laws that attempt to regulate national immigration policy state by state, then we must fix our broken immigration system. States are legitimately frustrated, but a patchwork of enforcement-only laws will not provide a solution. The [problems](#) are complex, but there are [real solutions](#). It is time for Congress and the President to propose comprehensive solutions that recognize the complexity and balance needed for an orderly and fair immigration system. A comprehensive approach to immigration reform recognizes that unauthorized immigration will never be stopped solely by building fences and putting the National Guard on the

border. It requires addressing the reasons people come to the United States—to work, to be with family, to build a new life—by ensuring that we have a legal immigration system that meets the demands of our economy and our families; that requires people who are here without authorization to register, pay taxes, and learn English; and that uses smart workplace, border, and interior-enforcement strategies to enforce our laws.

## ENDNOTES

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## Appendix: Provisions of State Immigration Enforcement Laws (as of Feb 15, 2012)

Provision	AZ	AL	GA	IN	SC	UT
Law enforcement agencies (LEAs) may/must check immigration status during any lawful stop or arrest	X	X	X		X	X
LEAs must check immigration status of people booked into custody, held in custody, convicted of a crime, etc.	X	X	X		X	X
LEAs authorized to make warrantless arrests for civil immigration violations	X		X	X		X
Crime for failing to carry immigration registration documents	X	X			X	X
Crime for transporting or harboring an unauthorized immigrant	X	X	X	X	X	X
Crime for unauthorized immigrants to solicit or perform work	X	X		X		
Crime to hire unauthorized day laborers or for day laborers to solicit work in a roadway or get in a vehicle	X	X				
Mandatory E-Verify	X	X	X	X	X	
Illegal to enter into a business transaction with unauthorized immigrants		X				
Contracts with unauthorized immigrants not enforceable		X				
Requires school administrators to determine whether a newly enrolling student was born outside of the US or is the child of an unauthorized immigrant.		X				