U.S. Commission on Civil Rights
Briefing on the Civil Rights Effects of State Immigration Laws
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Statement of
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Thank you for this opportunity to present the American Immigration Council's views on the impact of state immigration control laws on civil rights. The Council is devoted to providing accurate, factual information on immigrants and immigration policy, and promoting a rational, constructive dialogue on this contentious issue. To this end, the Council has published numerous articles on the impact of immigration on the U.S. economy and society. The evidence overwhelmingly shows that immigration is a net gain to the country and that the contributions of immigrants in the work force complement rather than detract from jobs and wages for native born workers. However, in states like Alabama and Arizona, myths, and misperceptions, about the impact of immigrants on employment, crime, and public benefits have all contributed to an atmosphere of fear that facilitated passage of overly broad immigration control laws.

It has long been established, and as the Supreme Court recently confirmed, that states have no power under the Constitution to admit or deport non-citizens. Consequently, many state efforts at immigration control focus on creating an inhospitable environment for immigrants, particularly undocumented immigrants. This approach dates at least as far back as the 1970s with efforts to prevent undocumented immigrants from attending school, which was subsequently found unconstitutional in *Plyler v. Doe*. More recently, in 1994, Proposition 187 in California would have denied basic services and education to unauthorized immigrants and would have required health care workers, state agency personnel, and others to report suspected unauthorized immigrants to the federal government.

Beginning in the early 2000's, laws denying driver's licenses to unauthorized immigrants were intended to make it difficult to complete everyday tasks that require driving or showing identification. Subsequent legislation, most notably laws passed in Arizona in 2010 and Alabama in 2011, significantly expanded this attempt to regulate "non-immigration" aspects of people's lives, creating direct and indirect consequences for the civil rights of all residents in those states. In recent years, this approach has come to be known as "attrition through enforcement," a political strategy that is premised on the notion that if the federal government and states make living conditions difficult enough by targeting non-immigration aspects of daily life, it will increase the incentives for unauthorized immigrants to "deport themselves."

There is significant evidence that state immigration laws like those in Arizona and Alabama institutionalize a climate that is ripe for discrimination, abuse, and civil rights violations. Reports of racial profiling in Arizona following passage of SB 1070 are numerous. Moreover, even without such a law, the assumption that discrimination will be condoned if it is tied to immigration creates a disturbing precedent. For example, the U.S. Department of Justice's investigation into Sheriff Joe Arpaio in Maricopa County, Arizona, provides numerous examples of the abuses that take place when the police prioritize immigration enforcement over other law enforcement. With the passage of SB 1070, which explicitly adopted the philosophy of attrition through enforcement in its preamble, many have argued that the state essentially sanctioned such behavior.

With respect to SB 1070, the Supreme Court recently found that the state of Arizona's actions were largely pre-empted by federal law. While the Court's decision in *Arizona v. United States* did not directly address the issue of civil rights, it acknowledged that there was significant potential for constitutional violations resulting from the implementation of certain provisions, and left the door open to future legal challenges.

Those challenges are already taking place in lower courts on a range of issues, in large part because it is virtually impossible to implement these laws without taking individuals' race or ethnicity into account. Take Alabama, for example, where HB 56 makes it illegal for an unlawfully present immigrant to enter into a "business transaction" with a state or local government entity, and leaves contracts with unlawfully present immigrants unenforceable by the courts. The ability to access basic human necessities—such as having safe water and electricity—are threatened by Alabama's law and the impact of these extreme provisions can affect the daily lives of all Alabamians.

The victims of these laws are not only unauthorized immigrants, but also lawfully present immigrants and U.S. citizens who "sound like" or "look like" immigrants and may thus be singled out for additional scrutiny and suspicion. We have evidence that lawful immigrants and U.S. citizens have been subjected to racial and ethnic profiling, and have been wrongfully detained.

Those responsible for implementing the laws also suffer the impact. Police officers may be placed in the position of determining who is "reasonably suspicious, and public workers may be forced to deny basic services to persons they suspect are unlawfully present, and face lawsuits if they do not implement the law to its fullest extent.

U.S. citizens must also submit to any new documentation requirements in order to perform the most basic of transactions. In some cases they would be required to get special permits in order to rent an apartment, and must obtain permission from the U.S. government to work. For these U.S. citizens, an error in a government database can mean the denial of health care, the right to vote, a job, or a paycheck.

Finally, all residents of the state can suffer from potential fiscal and economic fallout of the laws.

It is also important to note that the impact of these recent immigration control laws goes beyond the implementation of the letter of the law. They have created an environment in

which harassment, discrimination, and abuse are acceptable, sending a signal to those inclined toward discrimination that it is ok to act on their impulses, that harassment and abuse will be tolerated. These laws invite police to single out people they suspect of being unauthorized, resulting in profiling and discrimination. They create a context in which private individuals and businesses have taken it upon themselves to demand proof of legal status from people they suspect of being unlawfully present. We have heard cases reported of clerks at retail stores requiring customers to provide proof of citizenship in order to make a purchase. Human Rights Watch and others have reported that strangers make disparaging or abusive remarks in public to those who appear "foreign," and that Latino school children are being traumatized and bullied by their classmates.

Of course, we cannot overemphasize the impact on unauthorized immigrants, most of whom have lived here for over 10 years and have U.S. citizen family members. In 2011, the U.S. deported more than 46,000 mothers and fathers of U.S. citizen children and at least 5,100 children are currently living in foster care because their parents have been detained or deported.

While racial and ethnic profiling is prohibited by both the Constitution and federal law, the reality is that immigrants face overwhelming obstacles to vindicating their rights in court. Unlike criminal defendants, immigrants in removal proceedings are not entitled to an attorney if they cannot afford one, and are generally unable to exclude the introduction of evidence unlawfully obtained by law enforcement officials. Moreover, although immigrants are free to file civil rights suits in federal court, profiling claims are virtually impossible to win if the plaintiff is deported from the country while the suit is still pending.

Given the fact that attrition through enforcement has not resulted in a significant reduction in the unauthorized immigrant population, and recognizing the devastating impact that the strategy has had on communities, we must ask ourselves what type of country we really want to be.

No one claims that reforming our nation's immigration laws is easy, and very few would argue that there is no role for the states in a well-functioning legal immigration system. But adopting the philosophy of attrition through enforcement represents an invitation to discrimination, abuse, and civil rights violations. The American Immigration Council believes that honest and thoughtful dialogue about the consequences of restrictive state laws is a first step in reversing the tide and moving back toward a more rational discussion of immigration's role in America's future.