

Summary of Actions that States Are Permitted/Not Permitted to Take Regarding Immigration

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ACTIONS THAT STATES MAY TAKE

A. Require All Employers in a State to Use E-Verify

The United States Supreme Court ruled in *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011), that a state may require all public and private employers in a state to use the E-Verify system. The states of Arizona, Alabama, Mississippi, and South Carolina currently do so.

B. Require Government Agencies and Recipients of Government Contracts to Use E-Verify

Also implicitly affirmed by *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011). A significant number of states have implemented laws requiring recipients of government contracts to use E-Verify. Most notably, *all four of the states surrounding Kansas have already adopted such laws*. Colorado did so in 2006, Oklahoma did so in 2007, Missouri did so in 2008, and Nebraska did so in 2009. Other states include Florida, Georgia, Idaho, Indiana, Louisiana, Minnesota, North Carolina, Utah, and Virginia.

C. Require State/Local Police to Contact ICE When They Apprehend Suspected Illegal Aliens

The United States Supreme Court ruled in *Arizona v. United States*, 132 S. Ct. 2492 (2012), that a state may require law enforcement officers to contact the 24/7 hotline operated by the ICE Law Enforcement Support Center when they have reasonable suspicion that they have stopped illegal aliens. The states of Arizona, Alabama, Utah, Indiana, and South Carolina currently have this requirement.

D. Deny Public Benefits to Illegal Aliens

States are required by 8 U.S.C. § 1621 to deny public benefits to illegal aliens. Exceptions are made for emergency medical services, emergency disaster relief, and immunizations. 8 U.S.C. § 1621(b). The Systematic Alien Verification for Entitlements (SAVE) internet-based system was created to allow states to verify aliens' lawful immigration status. Approximately half of the states deny public benefits to illegal aliens.

E. Prohibit the Smuggling of Illegal Aliens

Upheld in *State v. Flores*, 218 Ariz. 407, 412-413 (Ariz. Ct. App. 2008). Arizona, Missouri, and Alabama do so.

F. Enter into an Agreement Deputizing State and Local Police to Exercise ICE Authority

Authorized by 8 U.S.C. § 1357(g). Florida, Alabama, and over 60 local jurisdictions currently do so.

G. Prohibit the Harboring of Illegal Aliens

Pending litigation in the 3rd, 5th, 8th, and 11th Circuits. Alabama and several local jurisdictions do so.

H. Prohibit Enforcement of Contracts that Require Illegal Aliens to Remain in the United States

Pending litigation in the 11th Circuit. Alabama does so.

I. Deny Bail to Illegal Aliens Accused of Crimes

Utah and Alabama do so. Has never been challenged in litigation.

ACTIONS THAT STATES MAY NOT TAKE

A. Provide In-State Tuition Rates to Illegal Aliens

Prohibited by 8 U.S.C. § 1623, unless the state gives in-state tuition rates to all U.S. citizens from other states: “Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.” Kansas has been violating this federal law by providing in-state tuition rates to illegal aliens since 2004.

B. Create a State-Level Registration System to Track Aliens

Ruled unconstitutional in *Hines v. Davidowitz*, 312 U.S. 52 (1941), and in *Arizona v. United States*, 132 S. Ct. 2492 (2012).

C. Impose Criminal Penalties on Aliens who Unlawfully Seek Employment

Struck down in *Arizona v. United States*, 132 S. Ct. 2492 (2012).

D. Deny Free Public K-12 Education to Illegal Aliens

Struck down in *Plyler v. Doe*, 457 U.S. 202 (1982).

E. Create a State Program Authorizing Illegal Aliens to Work in the State

Constitutes an impermissible “regulation of immigration.” *De Canas v. Bica*, 424 U.S. 351 (1976).