



Colorado
Legislative
Council
Staff

ISSUE BRIEF

Number 12-18

A Legislative Council Publication

October 22, 2012

STATE AND FEDERAL IMMIGRATION LAWS

by Clare Pramuk

This *issue brief* describes major topics of interest related to immigration, and specifically regarding the enforcement of immigration laws and laws regarding the verification of a person's eligibility to work in the United States. The brief also describes legislative efforts in Colorado concerning these topics, the differences between state and federal immigration laws, and the role the state plays in enforcing federal immigration laws.

Immigration Enforcement

Although the power to make immigration law resides solely with the federal government, states have a role in enforcing those laws. The role of the states continues to evolve through state legislation, court decisions, and the granting of authority by the federal government as discussed below. Colorado law addresses immigration enforcement primarily as it relates to human smuggling and human trafficking and is in concordance with federal law.

Colorado Department of Public Safety, Immigration Enforcement Unit. The General Assembly established the Colorado State Patrol Immigration Enforcement Unit (IEU) in the Department of Public Safety in 2006 to address the issues of human smuggling and human trafficking on Colorado's highways, both of which were made felony offenses at the state level that same year. Officers in this unit receive special training and equipment. Also, as part of an agreement with U.S. Immigration and Customs Enforcement (ICE) the officers can detain

and book undocumented immigrants into an ICE facility.

The officers in the IEU enforce immigration law only when they encounter such violations while performing their routine trooper duties. For instance, if a driver is stopped by an IEU officer for speeding on a Colorado highway and that officer determines that the driver is in the country unlawfully, the officer can transport the driver to an ICE facility for processing. If the officer discovers that the vehicle contains passengers who are in the county unlawfully, the officer may be able to charge the driver with a human smuggling offense under state law if ICE declines to take action against the driver.

In the 2012 legislative session, House Bill 12-1151 was passed that changed the laws related to human trafficking. Among the provisions, the new law allows the recovery of monetary damages from those who violate human trafficking laws.

Secure Communities. As of May 22, 2012, all 64 Colorado counties participate in the federally mandated Secure Communities initiative. The purpose of the initiative is to identify people in federal, state, or local law enforcement custody who are in the country unlawfully. The U.S. Department of Homeland Security (DHS) prioritizes enforcement actions to undocumented immigrants who have been charged with, or convicted, of serious criminal offenses, or who have committed multiple immigration violations.

When state and local law enforcement officers arrest and book someone into custody for a criminal offense, they are required to submit the individual's fingerprints to the Federal Bureau of Investigation (FBI) to be compared with its criminal database. The FBI sends the state and local authorities a record of the individual's criminal history.

ICE receives these fingerprints from the FBI, and determines if the individual is in the United States unlawfully and if he or she is a priority for enforcement action. ICE may request that the state or local jail facility hold the individual for up to 48 hours (excluding weekends and holidays) so ICE can interview the person. Following the interview, ICE decides whether to seek the person's removal.

Supreme Court decision in Arizona v. United States. The state of Arizona enacted an omnibus immigration law (Senate Bill 1070) in 2010. Four provisions of that law were challenged by the U.S. Department of Justice. The Supreme Court heard the case and issued its decision in *Arizona v. United States*, 132 S. Ct. 2492, in 2012. The decision clarified that a state's authority to enforce federal immigration law is limited. The court determined that Arizona could not: (1) require immigrants to obtain or carry immigration registration papers; (2) make it a state criminal offense for an undocumented immigrant to seek work or hold a job; or (3) allow police to arrest suspected undocumented immigrants without warrants.

The court upheld the provision in the law that requires police to verify the citizenship or immigration status of a person arrested, stopped, or detained if there is a reasonable suspicion that her or she is in the country unlawfully.

Employment Verification

U.S. law requires that employers hire only people authorized to work in the United States. These can be U.S. citizens or foreign citizens who are authorized to

work. The DHS requires that all new employees complete an employment eligibility verification form, also known as an I-9, and provide documents to their employers that establish their identity and authorization to work in the United States.

Colorado employment verification. Under Colorado law, within 20 days of hiring a new employee, an employer must examine and retain the I-9 form and copies of the documents that establish the employee's identity and authorization to work in the United States. An employer in violation of the documentation requirements is subject to a \$5,000 penalty for a first offense and \$25,000 for subsequent offenses.

E-Verify. E-Verify is a voluntary, Internet-based system operated by the DHS in partnership with the Social Security Administration that allows participating employers to electronically verify the employment authorization of their newly hired employees. This system uses the I-9 form and supporting documentation. Some Colorado employers use E-Verify voluntarily along with the employment verification requirements under Colorado law.

A number of bills have been proposed that replace the employment verification process in Colorado law with mandatory use of the E-Verify system, but none have become law.