

# **EXHIBIT 2**

## Exhibit 2

### A comparison of 8 U.S.C. §§ 1103(a)(10), 1252c(a), 1324( c), and 1357(g) and certain provisions of the “Support Our Law Enforcement and Safe Neighborhoods Act”

8 U.S.C. §1103(a)(10)	THE ACT
<p><b><u>Provides:</u></b></p> <p>“In the event the Attorney General determines that an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border, presents urgent circumstances requiring an immediate Federal response, the Attorney General may authorize any State or local law enforcement officer, with the consent of the head of the department, agency, or establishment under whose jurisdiction the individual is serving, to perform or exercise any of the powers, privileges, or duties conferred or imposed by this chapter or regulations issued thereunder upon officers or employees of [ICE]”;</p> <p><b><u>Requires:</u></b></p> <ul style="list-style-type: none"> <li>• express authorization from the United States Attorney General;</li> <li>• a determination by the United States Attorney General that based on an “actual or imminent mass influx of aliens” the federal government requires assistance from state and local law enforcement officials to enforce federal immigration law; and</li> <li>• an agreement by state or local authorities to engage in federal immigration law enforcement activities.</li> </ul> <p>See also 28 C.F.R. §§65.83, 65.84, attached as Exhibit 4.</p>	<p><b><u>A.R.S. §11-1051(B) provides:</u></b></p> <p>“For any lawful stop, detention or arrest made by a [state or local] law enforcement official . . . in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt <u>shall</u> be made, when practicable, to determine the immigration status of the person. . . .”</p> <p>“Any person who is arrested <u>shall</u> have the person’s immigration status determined before the person is released.” (Emphasis added.)</p> <p><b><u>A.R.S. §13-3883(A)(5) provides:</u></b></p> <p>“A peace officer, without a warrant, may arrest a person if the officer has probable cause to believe the person to be arrested has committed any public offense that makes the person removable from the United States.”</p> <p><b><u>Requires:</u></b></p> <ul style="list-style-type: none"> <li>• <u>no</u> authorization from the United States Attorney General;</li> <li>• <u>no</u> determination that based on an “actual or imminent mass influx of aliens,” the federal government requires assistance from state and local law enforcement officials; and</li> <li>• <u>no</u> agreement by state or local authorities to engage in federal immigration related law enforcement activities.</li> </ul>

**8 U.S.C. §1252c(a)**

**Provides:**

“State and local law enforcement officials are authorized to arrest and detain an individual who is an alien illegally present in the United States has previously been convicted of a felony in the United States and deported or left the United States after such conviction, but only after the State or local law enforcement officials obtain appropriate confirmation from [ICE] of the status of such individual and only for such period of time as may be required for the Service to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.” (Emphasis added.)

**Limitations:**

- applies only to felons previously convicted in the United States who have unlawfully reentered the United States;
- authorizes arrest by state and local law enforcement authorities only after confirming illegal status with ICE;
- duration of the arrest limited to “only for such period of time as may be required for [ICE] to take the individual into Federal custody for purposes of deporting or removing the alien from the United States.”

**Legislative History:**

Section 1252c was introduced as an amendment to the House Bill that ultimately became the

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**A.R.S. §11-1051(B) provides:**

“For any lawful stop, detention or arrest made by a [state or local] law enforcement official . . . in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person. . . .”

“Any person who is arrested shall have the person’s immigration status determined before the person is released.” (Emphasis added.)

**A.R.S. §13-3883(A)(5) provides:**

“A peace officer, without a warrant, may arrest a person if the officer has probable cause to believe the person to be arrested has committed any public offense that makes the person removable from the United States.”

**Limitations:**

- applies to all civil, misdemeanor and felony “stops”;
- mandates that state and local law enforcement officers detain individual if they have a reasonable suspicion that he or she is not lawfully in the United States;
- authorizes arrest on probable cause that the “person to be arrested has committed any public offense that makes the person removable from the United States”; and
- and release is contingent upon a prior “determination” of lawful presence in the United States.

Antiterrorism and Effective Death Penalty Act of 1996 by Representative John Doolittle (R. Cal.). Representative Doolittle introduced the amendment to authorize state and local law enforcement officials to arrest undocumented immigrants who had already convicted of felonies and had unlawfully reentered the United States:

“With such a threat to our public safety posed by criminal aliens, one would think that we would give law enforcement all the tools it needs to remove these criminals from our streets, but unfortunately just the opposite is true. In fact, the Federal Government has tied the hands of our State and local law enforcement officials by actually prohibiting them from doing their job of protecting public safety. I was dismayed to learn that the current Federal law prohibits State and local law enforcement officials from arresting and detaining criminal aliens whom they encountered through their routine duties. In fact, a low re-entry into the United States by deported aliens was considered a felony. Our State and local law enforcement officers are only permitted to release the felon and contact the INS with the details of the incident.”

“Mr. Chairman, current Federal law in this area places our communities at risk and has led me to offer this amendment to H.R. 2703, an amendment I feel will help put some sense back into our laws dealing with the re-entry of criminal aliens into this country.”

“My amendment would also permit State and local law enforcement officials to assist the INS by granting them the authority in their normal course of duty to arrest and detain criminal aliens until the INS can properly take them into Federal custody.”

“With my amendment, law enforcement officials would no longer be required to release known dangerous felons back into our communities.

Instead, this amendment would give those with the responsibility of protecting our public safety the ability to take a known criminal alien off our streets and put him behind bars.”

....

“My amendment is supported by our local law enforcement because they know that fighting illegal immigration can no longer be left solely to Federal agencies. Let us untie the hands of those we ask to protect us and include my amendment in H.R. 2703 today.”

.....

“Mr. Chairman, by way of summary, I would like to allay fears or concerns that Members may have about the scope of my amendment. . . . [M]y amendment is very narrow and only covers situations in which the State or local officer encounters criminal aliens within his routine duties. . . . Only confirmed criminal aliens are at risk of being taken into custody.”

142 Cong. Rec. H. 2190-2191 (1996).

**8 U.S.C. §§1304(e) and 1306(a)**

**8 U.S.C. §1304(e) provides:**

“Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined [in an amount] not to exceed \$100 or be imprisoned not more than thirty days, or both.”

**8 U.S.C. §1306(a) provides:**

“Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined [in an amount] not to exceed \$1,000 or be imprisoned not more than six months, or both.”

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**A.R.S. §13-1509(A) provides:**

“In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of United States Code section 1304(e) or 1306(a).”

**A.R.S. §13-1509(H) provides:**

“A violation of this section is a class 1 misdemeanor, except that the maximum fine is one hundred dollars and for a first violation of this section the court shall not sentence the person to more than twenty days in jail and for a second or subsequent violation the court shall not sentence the person for more than thirty days in jail.”

(By adding to the specific penalties established by Congress for violations of Sections 1304(e) and 1306(a), the Act violates the Supremacy Clause of the United States Constitution. See, e.g., Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948) (“The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states”), and Hines v. Davidowitz, 312 U.S. 52, 60-62 (1941) (“[n]o state can add to . . . the force and effect of . . . [a federal immigration] statute”).)

## 8 U.S.C. §1324(a) & ( c)

### Provides:

8 U.S.C. §1324(a) establishes criminal penalties for “smuggling,” “transporting,” “concealing,” “shielding,” and “harboring” undocumented immigrants;

8 U.S.C. §1324( c) provides that “[n]o officer or person shall have authority to make any arrests for a violation of any provision of this section [1324(a)] except officers and employees of [ICE] designated by the Attorney General, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.” (Emphasis added.)

(The legislative history of this statute makes clear that Congress intended to authorize state and local law enforcement officers to enforce Section 1324(a).)

### Limitations:

- applies only to the crimes of smuggling, transporting, concealing, shielding, and harboring undocumented immigrants under 8 U.S.C. §1324(a).

### Legislative history:

The Senate version of § 1324( c) provided that arrests of for violations § 1324(a) could be made only by INS agents and “other officers of the United States whose duty it is to enforce criminal laws.” However, Representative Francis Walter (D. Pa.) successfully offered an amendment to strike the words “of the United States” in order to “make it possible for any law enforcement officer to make an arrest.” 98 Cong. Rec. 1414-15 (1952).

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### A.R.S. §11-1051(B) provides:

“For any lawful stop, detention or arrest made by a [state or local] law enforcement official . . . in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person. . . .” (Emphasis added.)

“Any person who is arrested shall have the person’s immigration status determined before the person is released.” (Emphasis added.)

### A.R.S. §13-3883(A)(5) provides:

“A peace officer, without a warrant, may arrest a person if the officer has probable cause to believe the person to be arrested has committed any public offense that makes the person removable from the United States.”

### Limitations:

- applies to any “stop” for any civil or criminal violation of any kind and is not limited to smuggling, transporting, concealing, shielding, or harboring undocumented aliens.

**8 U.S.C. §1324(a)(1)(B)**

**Provides:**

“A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs—(I) in the case of a violation of subparagraph (A)(I) or (v)(I) or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, be fined under title 18, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), be fined under title 18, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(I), (ii), (iii), (iv), or (v) during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18) to, or places in jeopardy the life of, any person, be fined under title 18, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(I), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, or both.”

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**A.R.S. § 13-2319 provides:**

Smuggling; classification; definitions

- A. It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose.
- B. A violation of this section is a class 4 felony.
- C. Notwithstanding subsection B of this section, a violation of this section:
  - 1. Is a class 2 felony if the human being who is smuggled is under eighteen years of age and is not accompanied by a family member over eighteen 10 years of age or the offense involved the use of a deadly weapon or dangerous instrument.
  - 2. Is a class 3 felony if the offense involves the use or threatened use of deadly physical force and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any other basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court is served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

**A.R.S. § 13-2929 provides:**

Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment; exception; classification

- A. It is unlawful for a person who is in violation



(The Act is preempted by 8 U.S.C. §1324(a)(1)(B) because Sections 13-2319(B) and ( C) and 13-2929(F) of the Act add to the specific penalties enacted by Congress for violations of Section 1324(a) and thus violate the Supremacy Clause of the United States Constitution. See, e.g., Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948) (“The Federal Government has broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization. Under the Constitution the states are granted no such powers; they can neither add to nor take from the conditions lawfully imposed by Congress upon admission, naturalization and residence of aliens in the United States or the several states”), and Hines v. Davidowitz, 312 U.S. 52, 60-62 (1941) (“[n]o state can add to . . . the force and effect of . . . [a federal immigration] statute”).)

of a criminal offense to:

1. 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 law.
2. 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.
3. Encourage or induce an alien to come to or reside in this state if the person knows or recklessly disregards the fact that such coming to, entering or residing in this state is or will be in violation of law.

F. A person who violates this section is guilty of a class 1 misdemeanor and is subject to a fine of at least one thousand dollars, except that a violation of this section that involves ten or more illegal aliens is a class 6 felony and the person is subject to a fine of at least one thousand dollars for each alien who is involved.

**8 U.S.C. §1357(g)**

**Provides:**

"[ICE] may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by [ICE] to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function. . . ."

"An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws."

"In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of [ICE]."

**Limitations:**

- requires a written agreement between the ICE and local law enforcement authorities;
- requires that ICE approval of the specific officers subject to the agreement;
- ICE maintains supervision of the local law enforcement officials subject to the agreement;
- local law enforcement officers subject to the agreement must successfully complete ICE mandated training.

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**A.R.S. §11-1051(B) provides:**

"For any lawful stop, detention or arrest made by a [state or local] law enforcement official . . . in the enforcement of any other law or ordinance of a county, city or town or this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person. . . ."

"Any person who is arrested shall have the person's immigration status determined before the person is released." (Emphasis added.)

**A.R.S. §13-3883(A)(5) provides:**

"A peace officer, without a warrant, may arrest a person if the officer has probable cause to believe the person to be arrested has committed any public offense that makes the person removable from the United States."

**Limitations:**

- no "memorandum of agreement" with ICE required;
- no federal approval of the particular state or local law enforcement officers selected to enforce federal immigration law;
- no federal training required;
- no state training required;
- no federal supervision required;
- no federal approval required for a local law enforcement to arrest for immigration violations.

**Legislative history:**

Representative Thomas Latham (R. Ia.) acknowledged that under existing federal law:

[T]here is legally nothing that a State or local law enforcement agency can do about a violation of immigration law other than calling the local INS officer to report the case. . . . My amendment will allow State and local law enforcement agencies to enter into voluntary agreements with the Justice Department to give them the authority to seek, apprehend, and detain those illegal aliens. . . .

142 Cong. Rec. H 2475, 2476-77 (1996). Representative Xavier Becerra (D. Cal.) was concerned that state and local law enforcement officers be subjected to federal oversight if they were to be allowed to enforce federal immigration law:

You do not find the California Highway Patrol or any other State's highway patrol trying to enforce national immigration law. And that is because those are separate and distinct activities. . . . A law enforcement officer with the border patrol is taught and trained on how to conduct himself. . . . [A]s someone who is a member of an ethnic minority, it disturbs me when I hear that we will now have people who are not trained to do a specific type of law enforcement work out there doing something which has in the past caused harm, injury, and discrimination against certain classes of individuals.

Id. at 2477. Representative Jackson-Lee (D. Tex.) Commented agreed with Representative Becerra:

I know how important it is for local

law enforcement to establish trust with all of the ethnic and minority groups and communities in their cities. . . . It is dangerous to put immigration authority in these local law enforcements [sic] so that they cannot do their real job, which is to protect those communities and . . . engender trust in the community so that they can get the job done.

Id. at 2478.