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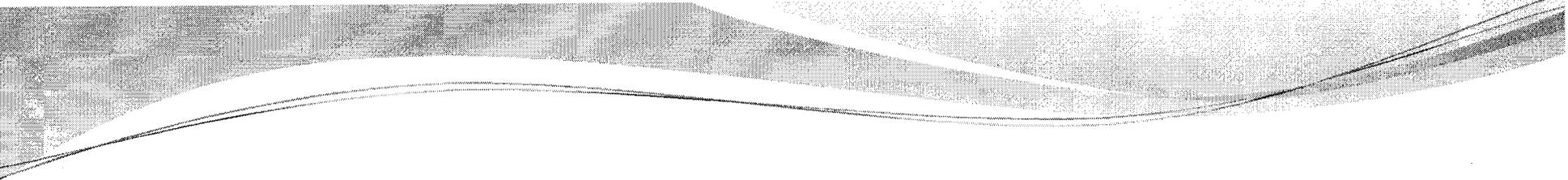
An Immigration Overview

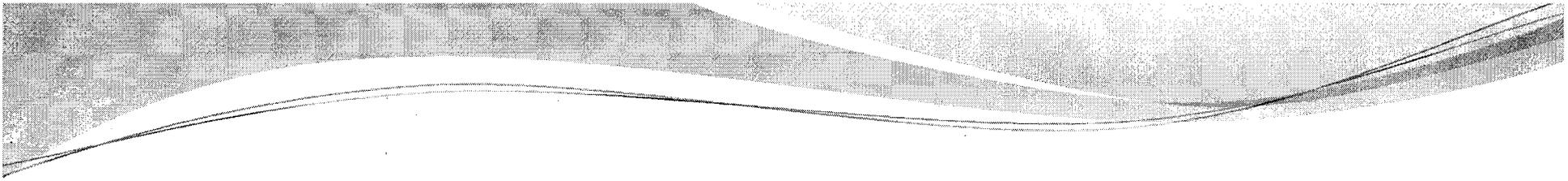
FLORIDA SENATE
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Most Experts Agree Immigration is more complicated than Tax code:

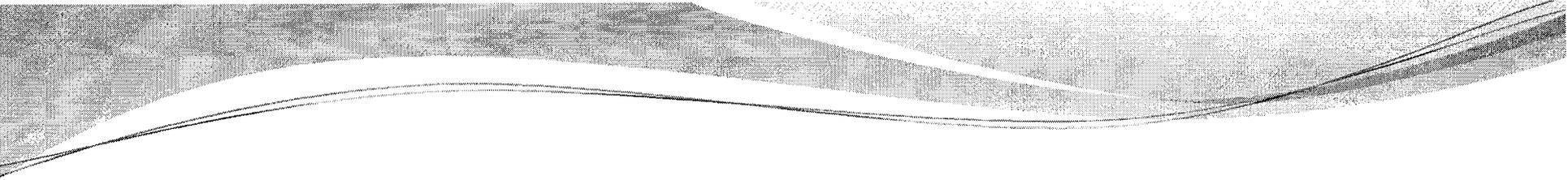
- The source for federal Immigration is the U. S. Constitution. However, nowhere in the Constitution does it provide that “Congress is in charge of Immigration.”

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- As a result, the Enumerated Powers have served to act as a source of federal immigration power. The following is a list of these powers, all of which are found in at Article 1 Sec. 8 of the Constitution:

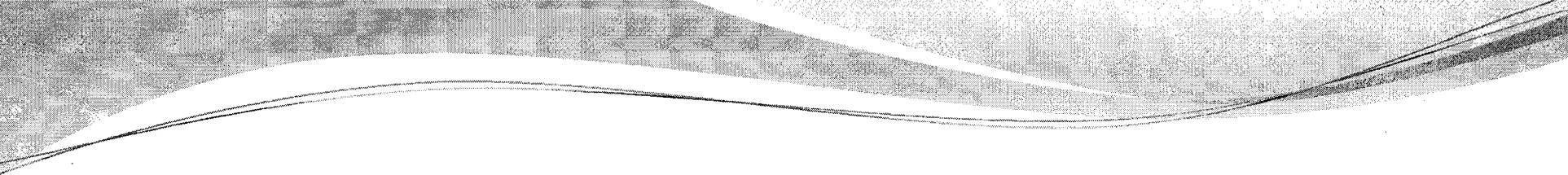
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- The Commerce Clause, clause 3;
 - The Naturalization Clause, clause 4;
 - The War Clause, clause 11;
 - The Necessary and Proper Clause, clause 18.
 - -There is also the implied constitutional powers and sovereignty Attributes.



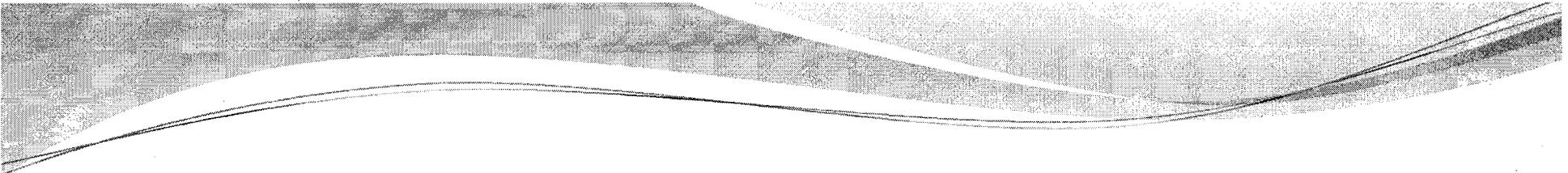
Accordingly, federal statutes that regulate immigration are a valid exercise of congressional power to regulate commerce with other nations.



The Primary federal immigration statute is the Immigration and Naturalization Act enacted in 1952. 8 U.S.C. Sec. 1101 (2000).



The Homeland Security Act is another major law bringing about many changes in the area of immigration. 6 U.S.C.A. Sec. 101 (2002).



Categories of the legal
immigrant population and
how authorization is obtained:

The following addresses the
ways in which a person can
come and stay in the United
States.

Important Definitions:

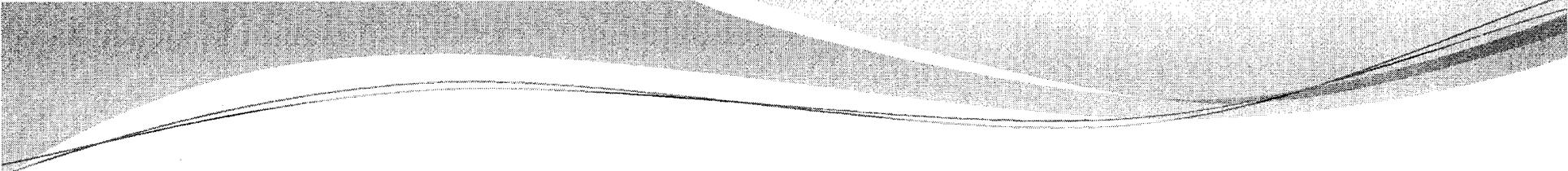
-**Admission**: Lawful Entry after inspection and authorization

-**Alien**: not a United States Citizen or national

-**Alien admitted for permanent residence**: “Green Card” holder or LPR; have right to remain

-**Immigrant**: aliens, not non-immigrants or EWI’s

-**Non-immigrant**: aliens who come temporarily

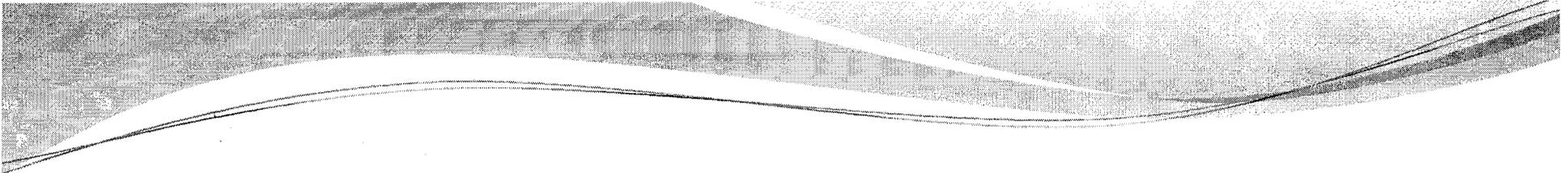


3 Main Ways to Travel To and Remain in the U.S.:

-Employment

-Family

-Humanitarian



Employment - People may enter U.S. temporarily or at times with an intent to stay permanently in order to fill an employment position that the U.S. Dept. of Labor has determined cannot be filled by an American worker.



- Under the Employment basis: person may come to **work** on a **temporary visa**. These include **H visas**, i.e., specialized workers and a small number of agricultural workers. There are other categories for professional athletes, people with exceptional ability, etc.



Family - family member may **petition** for family member to gain lawful **permanent residency** in the U.S.

Generally, only "**immediate relatives**" may apply for a green card in the U. S. as long as they entered the U. S. with permission. Contrary to popular belief a person who enters the U. S. without permission or EWI cannot gain a green card through a family member while in the United States.



Humanitarian – (a broad category)

Refugees are people who **face persecution** in their country and are allowed to enter the U.S. Their application is processed abroad.

An **asylee** is someone who **arrives** in the U. S. and claims they **will be persecuted** in the future. A person granted asylum in the U.S. is a refugee.

Temporary visas in the humanitarian

category. "U-visa" is for people who the victims of a serious crime and cooperate with the police or prosecutor. "T-visa" is for the victim of human trafficking. "S-visa" is for someone who has info. re. large criminal organization.

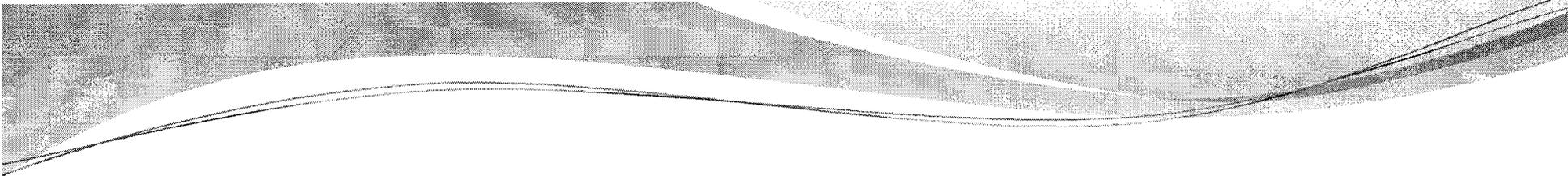
VAWA law: protects the spouse of a U.S. citizen or lawful permanent resident who is the victim of abuse. It protects the victim from remaining in an abusive marriage because they need the person for immigration status.

A Brief Comment on Enforcement

Removal, Including Expedited Removal

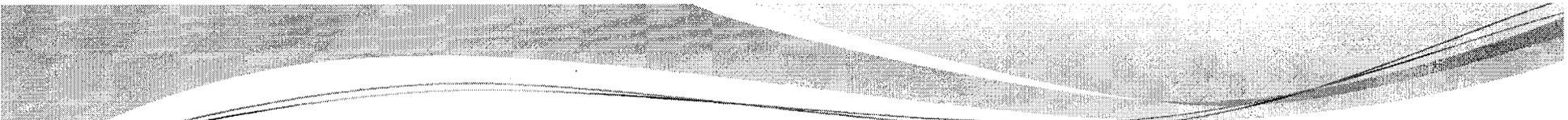
Immigration Proceedings:

- Prior to 1997, two types of proceedings: **exclusion** (noncitizens seeking to enter) and **deportation** (those already in U.S.). Now combined and **renamed removal**, but grounds for both exclusion (inadmissibility) and deportation still survive.



-If **noncitizen has not been admitted, the inadmissibility grounds apply.** Thus, such grounds apply to those noncitizens who have entered without being admitted or to those who are seeking admission

-More recently, **Expedited Removal Procedures** used to **remove** noncitizen who is inadmissible because of **fraud** or misrepresentation or for lack of documentation



Exclusion Grounds: (Most common)

-**Health Related:** certain infectious diseases or vaccinations requirements

-**Criminal Grounds:** moral turpitude, controlled substances, or certain multiple convictions

-**Security Related:** i.e., espionage or terrorism

-**Illegal Entrants:** currently present



Deportability Grounds:

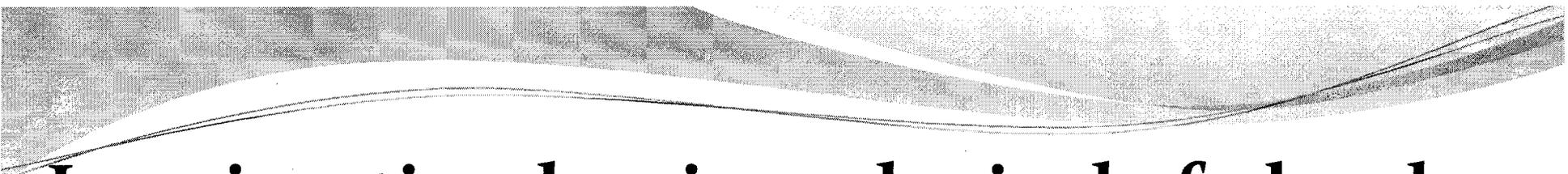
- Comparable to exclusion grounds**
- Fall into following categories: inadmissible at entry, crime related grounds, failure to register and falsification of documents, and security related grounds.



-Immigration and Customs Enforcement (ICE) is the arm of DHS responsible for carrying out the removal of aliens. ICE has **several controversial programs** that are being used in Florida. The first is known as **287(g) agreements** which allow ICE to deputize local officials to enforce immigration law. The second is Secure Communities. Under Secure Comm. anytime a person is processed through a jail their fingerprints are run through the ICE database.

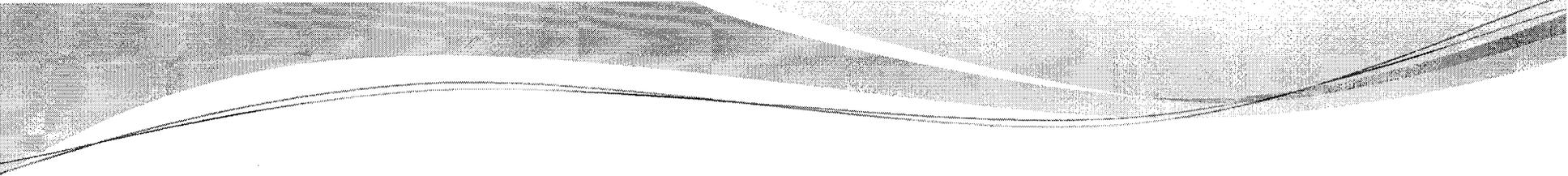
Federal/State Jurisdiction

Preemption and the Supremacy Clause

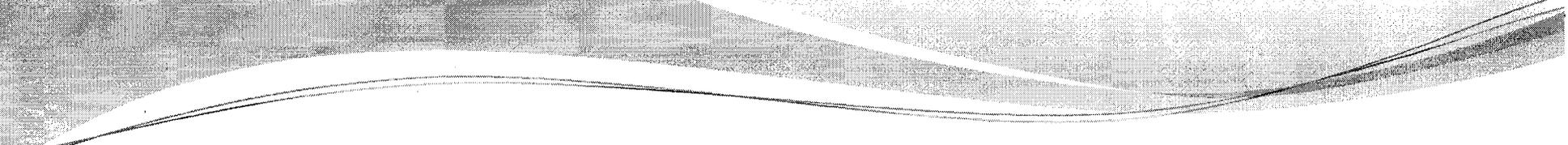


-Immigration law is exclusively federal law so state laws that regulate immigration face preemption challenges based on the Supremacy Clause, Art. VI, cl. 2.

- The leading case on point is Supremacy Clause-Preemption -*DeCanas v. Bica*, 424 U.S. 351(1976)(assumed no conflict with INA policies).



-The key question: does the state or local ordinance make “a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain”?



Numerous policy grounds favor Preemption:

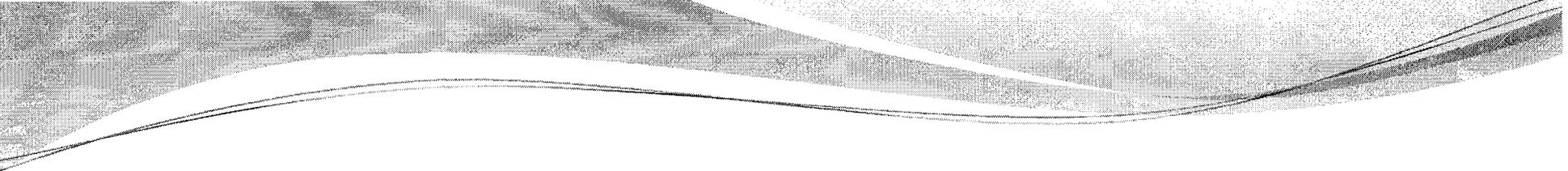
- Need to have a **uniform national policy**
- Area implicates exclusively federal concerns**, including: (1) **foreign policy**, (2) the maintenance of **uniform rules of commerce** and for acquiring U.S. citizenship, (3) **respect for treaties**, concern for reciprocity in the treatment of U.S. citizens abroad, and (4) **defense in time of war**.



The Question of the Day: The Constitutionality of Arizona's SB 1070:

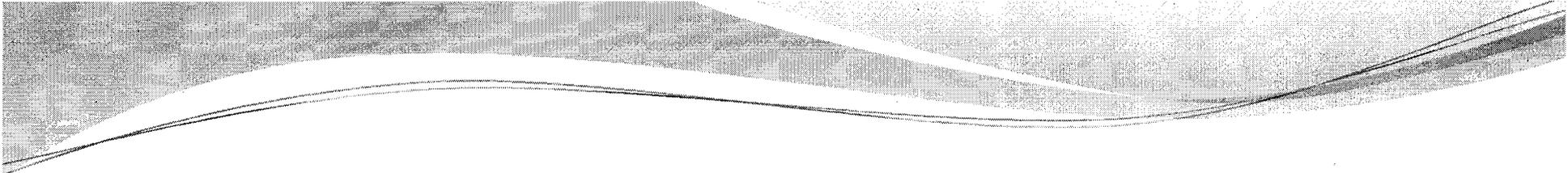
-The challenge is that it is preempted by existing federal immigration law, and therefore violates the Supremacy Clause of Article VI.

-SB 1070 aims to assist in enforcement of federal laws against illegal immigration. Thus, its stated purpose is to cooperatively assist the federal government in protecting the nation's borders.



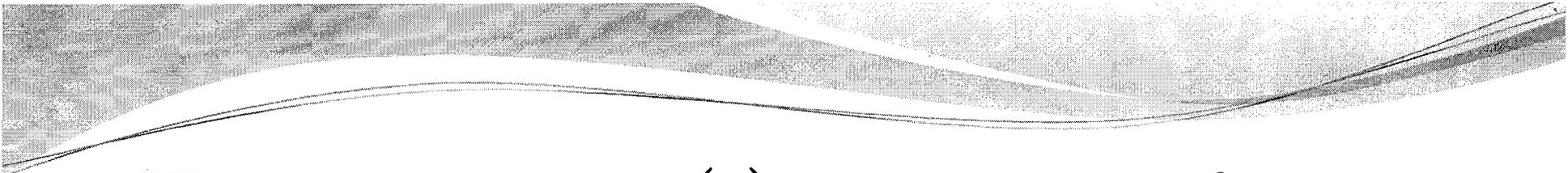
**-SB 1070 was written to be
preemption-proof by tracking
federal definitions and placing state
law enforcement officials in the
service of enforcing federal law.**

-If so, how can SB 1070 be preempted?

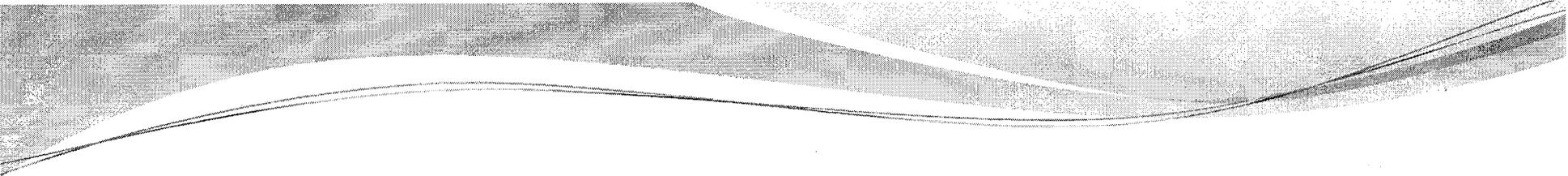


-The answer: As I have mentioned in numerous interviews months before the Dist Ct decision, **SB 1070**, while purporting to be helpful, it actually **interferes** with the federal government by engaging in over-zealous draconian measures.

-While purporting to be of assistance to federal immigration authorities, what appears to be at play is the state is saying “ **We will address immigration since the federal government has failed.**”



-SB 1070 creates (1)new state crimes with different elements than similar federal crimes, (2) it creates mandatory penalties that are different than the discretionary penalties in the federal statute, and (3)removes the policing and prosecutorial discretion that is inherent in federal immigration enforcement.



-Judge Susan Bolton, U.S. Dist. Ct. in Phoenix, Arizona, in United States v. Arizona issued a preliminary injunction barring key provisions (Portion of Sections 2, Section 3, Portion of Section 5, and Section 6)) of Arizona SB 1070.

-Judge Bolton found, among other things, SB 1070 placed undue burdens on legal immigrants and the federal immigration authorities, and was not uniform with federal law.

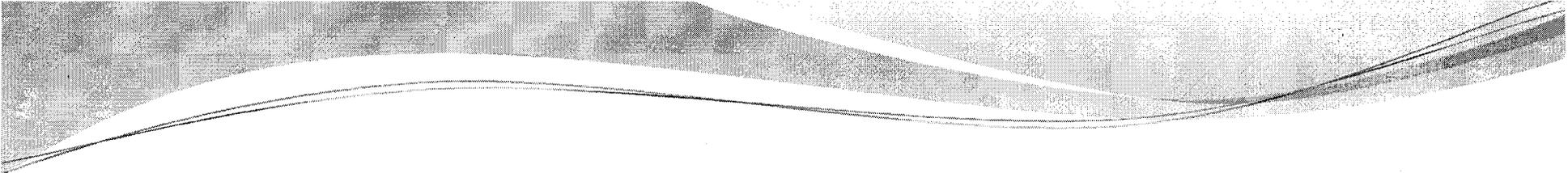


AZ Type-Law is Bad for Florida: Arizona's problem on Steroids!

1) **Foreign tourists**. Florida's economy thrives on foreign tourists—an Arizona type law can obviously hurt us in terms of public relations, but also real dollars.

2) **Florida's population is much different than Arizona**. There are tens of thousands of **Cubans** who have been ordered deported from the United States and do not have valid immigration documents. However, the U.S. cannot remove these individuals to Cuba. Local law enforcement officials will literally be wasting their time in trying to determine a Cuban's status.

3) **Haitians** were recently granted Temporary Protected Status. They too will not have a permanent resident card. They will only have a work permit. A work permit, on its own, is not permission to live in the U.S....it is only permission to work.



The other Arizona Case: Chamber of Commerce v. Whiting, (some impact)

- Arizona required state employers to check immigration status of job applicants through a federal computer database, although the federal law creating the database makes its use voluntary. The 9th Cir. held that LAWA was not preempted. Sup. Ct. heard Arg.