RESOLUTION NO. 10-

A RESOLUTION OF THE TOWN COUNCIL OF FAIRFAX OPPOSING ARIZONA LAW SB 1070 AND URGING ITS IMMEDIATE REPEAL

WHEREAS, Senate Bill 1070 (SB 1070) was passed into law in Arizona and signed by Governor Jan Brewer on April 23, 2010; and

WHEREAS, SB1070 would encourage local and state law enforcement officers in Arizona to detain and arrest anyone who may be suspected of being in the United States without proper documentation; and

WHEREAS, SB 1070 does not prohibit law enforcement officers from relying upon race, ethnicity, national origin or language as a factor to consider when determining who to detain for investigation and would result in massive racial profiling and gross human rights violations; and

WHEREAS, SB 1070 violates the Fourteenth Amendment's guarantees of due process and equal protection of the law;

NOW, THEREFORE BE IT RESOLVED, that the Fairfax Town Council declares its opposition to SB 1070 and calls for its immediate repeal; and

BE IT FURTHER RESOLVED, that the Fairfax Town Council calls upon the United States Department of Justice to investigate whether SB 1070 is unconstitutional and bring a lawsuit to enjoin its implementation; and

BE IT FURTHER RESOLVED, that the Fairfax Town Council prohibits town staff from travelling to or through Arizona while on town business until SB 1070 is repealed, and further directs town staff to refrain from doing business with any company based in Arizona until SB 1070 is repealed, and to terminate, where legally possible, any current town contracts with companies based in Arizona until SB 1070 is repealed; and

BE IT FINALLY RESOLVED, that the Fairfax Town Council directs the Town Manager to send copies of this resolution to Governor Jan Brewer of Arizona, Attorney General Eric Holder and to our Congressional delegation: Representative Lynn Woolsey and Senators Barbara Boxer and Dianne Feinstein.

The foregoing Resolution was duly introduced and adopted at a regular meeting of the Town council of the town of Fairfax held in said Town on the 2nd day of June, 2010 by the following vote:

AYES:
NOES:
ABSENT:

_____
Lew Tremaine, Mayor

Attest:

_____
Judy Anderson, Town Clerk

AGENDA ITEM # 6

SENATE BILL 1070
An act

Amending Title 11, Chapter 7, Arizona Revised Statutes, by adding Article 8; amending Title 13, Chapter 15, Arizona Revised Statutes, by adding section 13-1509; amending section 13-2319, Arizona Revised Statutes; amending Title 13, Chapter 29, Arizona Revised Statutes, by adding sections 13-2928 and 13-2929; amending sections 23-212, 23-212.01, 23-214 and 28-3511, Arizona Revised Statutes; amending Title 41, Chapter 12, Article 2, Arizona Revised Statutes, by adding section 41-1724; relating to unlawfully present aliens.

S.B. 1070

Be it enacted by the legislature of the State of Arizona:

SECTION 1.
Intent

The legislature finds that there is a compelling interest in the cooperative enforce ment of federal immigration laws throughout all of Arizona. The legislature declares that the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.

SECTION 2.
Title 11, Chapter 7, Arizona Revised Statutes, is amended by adding Article 8, to read:

Article 8. Enforcement of ImmigrationLaws 11-1051. Cooperation and assistance in enforcement of immigration laws; indemnification

A. No official or agency of this state or a county, city, town or other political subdivision of this state may adopt a policy that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

B. For any lawful stop, detention or arrest made by a law enforcement official or agency of this state or a county, city, town or other political subdivision of this state in the enforcement of any other law or ordinance of a county, city or town of 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. The person's immigration status shall be verified with the federal government pursuant to United States Code Section 1373(c). A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or Arizona Constitution. A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

1. A valid Arizona driver license.
2. A valid Arizona nonoperating identification license.
3. A valid tribal enrollment card or other form of tribal identification.
4. If the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government issued identification.

C. If an alien who is unlawfully present in the United States is convicted of a violation of state or local law, on discharge from imprisonment or assessment of any fine that is imposed, the alien shall be transferred immediately to the custody of the United States Immigration and Customs Enforcement or the United States Customs and Border Protection.

D. Notwithstanding any other law, a law enforcement agency may securely transport an alien who is unlawfully present in the United States and who is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency.

E. In the implementation of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to ascertain an alien's immigration status.
2. The United States Immigration and Customs Enforcement or the United States Customs and Border Protection pursuant to 8 United States Code Section 1373(c).

F. Except as provided in federal law, officials or agencies of this state and counties, cities, towns and other political subdivisions of this state may not be prohibited or in any way be restricted from sending, receiving or maintaining information relating to the immigration status of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

1. Determining eligibility for any public benefit, service or license provided by any federal, state, local or other political subdivision of this state.
2. Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state.
3. If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by Title ii, Chapter 7 Of the Federal Immigration and Nationality Act.
4. Pursuant to 8 United States Code Section 1373 and 8 United States Code Section 1644.

G. This section does not implement, authorize or establish and shall not be construed to implement, authorize or establish the Real ID Act of 2005 (P.L. 109-13, Division B; 119 Stat. 302), Including the use of a radio frequency identification chip.

H. A person who is a legal resident of this state may bring an action in superior court to challenge any official or agency of this state or a county, city, town or other political subdivision of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws, including 8 United States Code Sections 1373 and 1644, to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than five hundred dollars and not more than five thousand dollars for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.

I. A court shall collect the civil penalty prescribed in subsection H of this section and remit the civil penalty to the state treasurer for deposit in the Gang and Immigration Intelligence Team Enforcement Mission Fund established by section 41-1724.

J. The court may award court costs and reasonable attorney fees to any person or any official or agency of this state or a county, city, town or other political subdivision of this state that prevails by an adjudication on the merits in a proceeding brought pursuant to this section.

K. Except in relation to matters in which the officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement officer's agency against reasonable costs and expenses, including attorney fees, incurred by the officer in connection with any action, suit or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.

L. This section shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

SECTION 3.
Title 13, Chapter 15, Arizona Revised Statutes, is amended by adding section 13-1509, to read:

13-1509. Willful failure to complete or carry an alien registration document; assessment; exception; authenticated records; classification

A. 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 8 United States Code Section 1304(e) or 1306(A).

B. In the enforcement of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.

2. The United States Immigration and Customs Enforcement or the United States Customs and Border Protection pursuant to 8 United States Code Section 1373(c).

C. A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in the enforcement of this section except to the extent permitted by the United States or Arizona Constitution.

D. A person who is sentenced pursuant to this section is not ligible for suspension of sentence, probation, pardon, commutation of sentence, or release from confinement on any basis except as authorized by Section 31-233, subsection A or B until the sentence imposed by the court has been served or the person is eligible for release pursuant to section 41-1604.07.

E. In addition to any other penalty prescribed by law, the court shall order the person to pay jail costs.

F. This section does not apply to a person who maintains authorization from the federal government to remain in the United States.

G. Any record that relates to the immigration status of a person is admissible in any court without further foundation or testimony from a custodian of records if the record is certified as authentic by the government agency that is responsible for maintaining the record.

H. 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 to more than thirty days in jail.

SECTION 4.
Section 13-2319, Arizona Revised Statutes, is amended to read:
13-2319. 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 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.

D. Chapter 10 of this title does not apply to a violation of subsection C, paragraph 1 of this section.

E. Notwithstanding any other law, in the enforcement of this section a peace officer may lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion to believe the person is in violation of any civil traffic law.

F. For the purposes of this section:

1. "Family member" means the person's parent, grandparent, sibling or any other person who is related to the person by consanguinity or affinity to the second degree.

2. "Procurement of transportation" means any participation in or facilitation of transportation and includes:

(A) providing services that facilitate transportation including travel arrangement services or money transmission services.

(B) providing property that facilitates transportation, including a weapon, a vehicle or other means of transportation or false identification, or selling, leasing, renting or otherwise making available a drop house as defined in section 13-2322.

3. "Smuggling of human beings" means the transportation, procurement of transportation or use of property or real property by a person or an entity that knows or has reason to know that the person or persons transported or to be transported are not United States citizens, permanent resident aliens or persons otherwise lawfully in this state or have attempted to enter, entered or remained in the United States in violation of law.

SECTION 5.
Title 13, chapter 29, Arizona Revised Statutes, is amended by adding sections 13-2928 and 13-2929, to read:
13-2928. Unlawful stopping to hire and pick up passengers for work; unlawful application, solicitation or employment; classification; definitions

A. It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

B. It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

C. It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor in this state.

D. A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in the enforcement of this section except to the extent permitted by the United States or Arizona Constitution.

E. In the enforcement of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.

2. The United States Immigration and Customs Enforcement or the United States Customs and Border Protection pursuant to 8 United States Code Section 1373(c).

F. A violation of this section is a class 1 misdemeanor.

G. For the purposes of this section:

1. "Solicit" means verbal or nonverbal communication by a gesture or a nod that would indicate to a reasonable person that a person is willing to be employed.

2. "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 United States Code Section 1324a(h)(3).

13-2929. 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 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.

B. A means of transportation that is used in the commission of a violation of this section is subject to mandatory vehicle immobilization or impoundment pursuant to section 28-3511.

C. A law enforcement official or agency of this state or a county, city, town or other political subdivision of this state may not consider race, color or national origin in the enforcement of this section except to the extent permitted by the United States or Arizona Constitution.

D. In the enforcement of this section, an alien's immigration status may be determined by:

1. A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.

2. The United States Immigration and Customs Enforcement or the United States Customs and Border Protection pursuant to 8 United States Code Section 1373(c).

E. This section does not apply to a child protective services worker acting in the worker's official capacity or a person who is acting in the capacity of a first responder, an ambulance attendant or an emergency medical technician and who is transporting or moving an alien in this state pursuant to Title 36, Chapter 21.1.

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.

SECTION 6.

Section 13-3883, Arizona Revised Statutes, is amended to read:

13-3883. Arrest by officer without warrant

A. A peace officer without a warrant, may arrest a person if the officer has probable cause to believe:

1. A felony has been committed and probable cause to believe the person to be arrested has committed the felony.

2. A misdemeanor has been committed in the officer's presence and probable cause to believe the person to be arrested has committed the offense.

3. The person to be arrested has been involved in a traffic accident and violated any criminal section of Title 28, and that such violation occurred prior to or immediately following such traffic accident.

4. A misdemeanor or a petty offense has been committed and probable cause to believe the person to be arrested has committed the offense. A person arrested under this paragraph is eligible for release under section 13-3903.

5. The person to be arrested has committed any public offense that makes the person removable from the United States.

B. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace officer who serves a copy of the traffic complaint shall do so within a reasonable time of the alleged criminal or civil traffic violation.

SECTION 7.

Section 23-212, Arizona Revised Statutes, is amended to read:

23-212. Knowingly employing unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not knowingly employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

B. The attorney general shall prescribe a complaint form for a person to allege a violation of subsection a of this section. The complainant shall not be required to list the complainant's Social Security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly knowingly employs an unauthorized alien, the attorney general or county attorney shall investigate whether the employer has violated subsection a of this section. If a complaint is received but is not submitted on a prescribed complaint form, the attorney general or county attorney may investigate whether the employer has violated subsection A of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The attorney general or county attorney shall not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or any other local law enforcement agency may assist in investigating a complaint. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code Section 1373(C). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code Section 1373(c). A person who knowingly files a false and frivolous complaint under this subsection is guilty of a class 3 misdemeanor.

C. If, after an investigation, the attorney general or county attorney determines that the complaint is not false and frivolous:

1. The attorney general or county attorney shall notify the United States Immigration and Customs Enforcement of the unauthorized alien.

2. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.

3. The attorney general shall notify the appropriate county attorney to bring an action pursuant to subsection d of this section if the complaint was originally filed with the attorney general.

D. An action for a violation of subsection a of this section shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. The county attorney shall not bring an action against any employer for any violation of subsection A of this section that occurs before January 1, 2008. A second violation of this section shall be based only on an unauthorized alien who is or was employed by the employer after an action has been brought for a violation of subsection a of this section or Section 23-212.01, Subsection A.

E. For any action in superior court under this section, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

F. On a finding of a violation of subsection a of this section:

1. For a first violation, as described in paragraph 3 of this subsection, the court:

(A) shall order the employer to terminate the employment of all unauthorized aliens.

(B) shall order the employer to be subject to a three year probationary period for the business location where the unauthorized alien performed work. During the probationary period the employer shall file quarterly reports in the form provided in section 23-722.01 with the county attorney of each new employee who is hired by the employer at the business location where the unauthorized alien performed work.

(C) shall order the employer to file a signed sworn affidavit with the county attorney within three business days after the order is issued. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not intentionally or knowingly employ an unauthorized alien in this state. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county attorney within three business days after the order is issued. All licenses that are suspended under this subdivision shall remain suspended until the employer files a signed sworn affidavit with the county attorney. Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be reinstated immediately by the appropriate agencies. For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific

to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to subsection G of this section.

(D) may order the appropriate agencies to suspend all licenses described in subdivision (c) of this paragraph that are held by the employer for not to exceed ten business days. The court shall base its decision to suspend under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

(I) the number of unauthorized aliens employed by the employer.

(II) any prior misconduct by the employer.

(III) the degree of harm resulting from the violation.

(IV) whether the employer made good faith efforts to comply with any applicable requirements.

(V) the duration of the violation.

(VI) the role of the directors, officers or principals of the employer in the violation.

(VII) any other factors the court deems appropriate.

2. For a second violation, as described in paragraph 3 of this subsection, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.

3. The violation shall be considered:

(A) a first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under this subsection or section 23-212.01, Subsection F for that employer's business location.

(B) a second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this subsection or section 23-212.01, Subsection f for that employer's business location.

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection f of this section and shall maintain a database of the employers and business locations that have a first violation of subsection a of this section and make the court orders available on the attorney general's website.

H. On determining whether an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 United States Code Section 1373(c). The federal government's determination creates a rebuttable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 United States Code Section 1373(C).

I. For the purposes of this section, proof of verifying the employment authorization of an employee through the e-verify program creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien.

J. For the purposes of this section, an employer that establishes that it has complied in good faith with the requirements of 8 United States Code Section 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. An employer is considered to have complied with the requirements of 8 United States Code Section 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

K. It is an affirmative defense to a violation of subsection a of this section that the employer was entrapped. To claim entrapment, the employer must admit by the employer's testimony or other evidence the substantial elements of the violation. An employer who asserts an entrapment defense has the burden of proving the following by a preponderance of the evidence:

1. The idea of committing the violation started with law enforcement officers or their agents rather than with the employer.

2. The law enforcement officers or their agents urged and induced the employer to commit the violation.

3. The employer was not predisposed to commit the violation before the law enforcement officers or their agents urged and induced the employer to commit the violation.

L. An employer does not establish entrapment if the employer was predisposed to violate subsection a of this section and the law enforcement officers or their agents merely provided the employer with an opportunity to commit the violation. It is not entrapment for law enforcement officers or their agents merely to use a ruse or to conceal their identity. The conduct of law enforcement officers and their agents may be considered in determining if an employer has proven entrapment.

SECTION 8.

Section 23-212.01, Arizona Revised Statutes, is amended to read:

23-212.01. Intentionally employing unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not intentionally employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer intentionally contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

B. The attorney general shall prescribe a complaint form for a person to allege a violation of subsection a of this section. The complainant shall not be required to list the complainant's Social Security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly intentionally employs an unauthorized alien, the attorney general or county attorney shall investigate whether the employer has violated subsection a of this section. If a complaint is received but is not submitted on a prescribed complaint form, the attorney general or county attorney may investigate whether the employer has violated Subsection A of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The attorney general or county attorney shall not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or any other local law enforcement agency may assist in investigating a complaint. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code Section 1373(C). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code Section 1373(c). A person who knowingly files a false and frivolous complaint under this subsection is guilty of a class 3 misdemeanor.

C. If, after an investigation, the attorney general or county attorney determines that the complaint is not false and frivolous:

1. The attorney general or county attorney shall notify the United States Immigration and Customs Enforcement of the unauthorized alien.

2. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.
3. The attorney general shall notify the appropriate county attorney to bring an action pursuant to subsection d of this section if the complaint was originally filed with the attorney general.

D. An action for a violation of subsection a of this section shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. The county attorney shall not bring an action against any employer for any violation of subsection a of this section that occurs before January 1, 2008. A second violation of this section shall be based only on an unauthorized alien who is or was employed by the employer after an action has been brought for a violation of subsection a of this section or Section 23-212, Subsection A.

E. For any action in superior court under this section, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

F. On a finding of a violation of subsection a of this section:
1. For a first violation, as described in paragraph 3 of this subsection, the court shall:
(A) order the employer to terminate the employment of all unauthorized aliens.
(B) order the employer to be subject to a five year probationary period for the business location where the unauthorized alien performed work. During the probationary period the employer shall file quarterly reports in the form provided in section 23-722.01 With the county attorney of each new employee who is hired by the employer at the business location where the unauthorized alien performed work.
(C) order the appropriate agencies to suspend all licenses described in subdivision (d) of this paragraph that are held by the employer for a minimum of ten days. The court shall base its decision on the length of the suspension under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:
(I) the number of unauthorized aliens employed by the employer.
(II) any prior misconduct by the employer.
(III) the degree of harm resulting from the violation.
(IV) whether the employer made good faith efforts to comply with any applicable requirements.
(V) the duration of the violation.
(VI) the role of the directors, officers or principals of the employer in the violation.
(VII) any other factors the court deems appropriate.
(D) order the employer to file a signed sworn affidavit with the ounty attorney. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not intentionally or knowingly employ an unauthorized alien in this state. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county attorney within three business days after the order is issued. All licenses that are suspended under this subdivision for failing to file a signed sworn affidavit shall remain suspended until the employer files a signed sworn affidavit with the county attorney. For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to Subsection G of this section.
2. For a second violation, as described in paragraph 3 of this subsection, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.
3. The violation shall be considered:
(A) a first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under this subsection or section 23-212, Subsection F for that employer's business location.
(B) a second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this subsection or section 23-212, Subsection F for that employer's business location.

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection f of this section and shall maintain a database of the employers and business locations that have a first violation of subsection a of this section and make the court orders available on the attorney general's website.

H. On determining whether an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 United States Code Section 1373(c). The federal government's determination creates a rebuttable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 United States Code Section 1373(C).

I. For the purposes of this section, proof of verifying the employment authorization of an employee through the e-verify program creates a rebuttable presumption that an employer did not intentionally employ an unauthorized alien.

J. For the purposes of this section, an employer that establishes that it has complied in good faith with the requirements of 8 United States Code Section 1324a(b) establishes an affirmative defense that the employer did not intentionally employ an unauthorized alien. An employer is considered to have complied with the requirements of 8 United States Code Section 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

K. It is an affirmative defense to a violation of subsection a of this section that the employer was entrapped. To claim entrapment, the employer must admit by the employer's testimony or other evidence the substantial elements of the violation. An employer who asserts an entrapment defense has the burden of proving the following by a preponderance of the evidence:
1. The idea of committing the violation started with law enforcement officers or their agents rather than with the employer.
2. The law enforcement officers or their agents urged and induced the employer to commit the violation.
3. The employer was not predisposed to commit the violation before the law enforcement officers or their agents urged and induced the employer to commit the violation.

L. An employer does not establish entrapment if the employer was predisposed to violate subsection a of this section and the law enforcement officers or their agents merely provided the employer with an opportunity to commit the violation. It is not entrapment for law enforcement officers or their agents merely to use a ruse or to conceal their identity. The conduct of law enforcement officers and their agents may be considered

in determining if an employer has proven entrapment.

SECTION 9.
Section 23-214, Arizona Revised Statutes, is amended to read:
23-214. Verification of employment eligibility; e-verify program; economic development incentives; list of registered employers

A. After december 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.

B. In addition to any other requirement for an employer to receive an economic development incentive from a government entity, the employer shall register with and participate in the e-verify program. Before receiving the economic development incentive, the employer shall provide proof to the government entity that the employer is registered with and is participating in the e-verify program. If the government entity determines that the employer is not complying with this subsection, the government entity shall notify the employer by certified mail of the government entity's determination of noncompliance and the employer's right to appeal the determination. On a final determination of noncompliance, the employer shall repay all monies received as an economic development incentive to the government entity within thirty days of the final determination. For the purposes of this subsection:

1. "Economic development incentive" means any grant, loan or performance-based incentive from any government entity that is awarded after September 30, 2008. Economic development incentive does not include any tax provision under title 42 or 43.

2. "Government entity" means this state and any political subdivision of this state that receives and uses tax revenues.

C. Every three months the attorney general shall request from the United States department of homeland security a list of employers from this state that are registered with the e-verify program. On receipt of the list of employers, the attorney general shall make the list available on the attorney general's website.

SECTION 10.
Section 28-3511, Arizona Revised Statutes, is amended to read:
28-3511. Removal and immobilization or impoundment of vehicle

A. A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that a person is driving the vehicle while any of the following applies:

1. The person's driving privilege is suspended or revoked for any reason.

2. The person has not ever been issued a valid driver license or permit by this state and the person does not produce evidence of ever having a valid driver license or permit issued by another jurisdiction. This paragraph does not apply to the operation of an implement of husbandry.

3. The person is subject to an ignition interlock device requirement pursuant to chapter 4 of this title and the person is operating a vehicle without a functioning certified ignition interlock device. This paragraph does not apply to a person operating an employer's vehicle or the operation of a vehicle due to a substantial emergency as defined in section 28-1464.

4. In furtherance of the illegal presence of an alien in the United States and in violation of a criminal offense, the person is transporting or moving or attempting to transport or move an alien in this state in a vehicle 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.

5. The person is concealing, harboring or shielding or attempting to conceal, harbor or shield from detection an alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien has come to, entered or remains in the United States in violation of law.

B. A peace officer shall cause the removal and impoundment of a vehicle if the peace officer determines that a person is driving the vehicle and if all of the following apply:

1. The person's driving privilege is canceled, suspended or revoked for any reason or the person has not ever been issued a driver license or permit by this state and the person does not produce evidence of ever having a driver license or permit issued by another jurisdiction.

2. The person is not in compliance with the financial responsibility requirements of Chapter 9, Article 4 of this title.

3. The person is driving a vehicle that is involved in an accident that results in either property damage or injury to or death of another person.

C. Except as provided in subsection d of this section, while a peace officer has control of the vehicle the peace officer shall cause the removal and either immobilization or impoundment of the vehicle if the peace officer has probable cause to arrest the driver of the vehicle for a violation of section 4-244, paragraph 34 or section 28-1382 or 28-1383.

D. A peace officer shall not cause the removal and either the immobilization or impoundment of a vehicle pursuant to Subsection C of this section if all of the following apply:

1. The peace officer determines that the vehicle is currently registered and that the driver or the vehicle is in compliance with the financial responsibility requirements of Chapter 9, Article 4 of this title.

2. The spouse of the driver is with the driver at the time of the arrest.

3. The peace officer has reasonable grounds to believe that the spouse of the driver:

(A) has a valid driver license.

(B) is not impaired by intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances.

(C) does not have any spirituous liquor in the spouse's body if the spouse is under twenty-one years of age.

4. The spouse notifies the peace officer that the spouse will drive the vehicle from the place of arrest to the driver's home or other place of safety.

5. The spouse drives the vehicle as prescribed by Paragraph 4 of this subsection.

E. Except as otherwise provided in this article, a vehicle that is removed and either immobilized or impounded pursuant to Subsection A, B or C of this section shall be immobilized or impounded for thirty days. An insurance company does not have a duty to pay any benefits for charges or fees for immobilization or impoundment.

F. The owner of a vehicle that is removed and either immobilized or impounded pursuant to Subsection A, B or C of this section, the spouse of the owner and each person identified on the department's record with an interest in the vehicle shall be provided with an opportunity for an immobilization or poststorage hearing pursuant to section 28-3514.

SECTION 11.
Title 41, Chapter 12, Article 2, Arizona Revised Statutes, is amended by adding section 41-1724, to read:
41-1724. Gang and Immigration Intelligence Team Enforcement Mission Fund

The Gang and Immigration Intelligence Team Enforcement Mission Fund is established consisting of monies deposited pursuant to section 11-1051 and monies appropriated by the legislature. The department shall administer the fund. Monies in the fund are subject to legislative appropriation and shall be used for gang and immigration enforcement and for county jail reimbursement costs relating to illegal immigration.

SECTION 12.
Severability, implementation and construction

A. If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

B. The terms of this act regarding immigration shall be construed to

have the meanings given to them under federal immigration law.

C. This act shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

D. Nothing in this act shall implement or shall be construed or interpreted to implement or establish the Real ID Act of 2005 (P.L. 109-13, Division B; 119 stat. 302) including the use of a radio frequency identification chip.

SECTION13.
Short title
This act may be cited as the "Support Our Law Enforcement andSafe Neighborhoods Act."

SECTION 14.
Immigration legislation challenges

A. Notwithstanding Title 41, Chapter 1, Arizona Revised Statutes, and any other law, through December 31, 2010, the attorney general shall act at the direction of the governor in any challenge in a state or federal court to laws 2010, chapter 113 and any amendments to that law.

B. Notwithstanding Title 41, Chapter 1, Arizona Revised Statutes, and any other law, through December 31, 2010, the governor may direct counsel other than the attorney general to appear on behalf of this state to defend any challenge to laws 2010, chapter 113 and any amendments to that law.