



**ARIZONA
HISPANIC**

CHAMBER *of* COMMERCE

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**POLICY ANALYSIS:
THE FOLLY OF
PROPOSITION 314**

INTRODUCTION

As Arizona's leading advocate for Hispanic-led businesses, and a robust supporter of all Arizona industries across our state, we monitor federal, state, and local actions that support, accelerate, or potentially harm Arizona's economy. Where necessary, we weigh in.

History tells us that well designed laws, regulations, and programs can boost entrepreneurship, employment, and innovation.

Conversely, poorly designed laws, policies, and budgets can upset stable and thriving markets.

Such is our prediction of the impact of Proposition 314: border; benefits; fentanyl; illegal entry, should it pass.

While the authors and supporters of Prop 314 seem to share our desire to address the humanitarian crisis caused by the need for an efficient, timely, and transparent system of immigration, they lack evidence that the mass arrest of victims caught in that humanitarian crisis will do anything other than worsen Arizona's budget deficit, stress our criminal justice system, and delay the real work of modernizing our immigration system.

These consequences are likely to slow Arizona's economy and cause heavy losses in business, revenue and reputation similar to the aftermath of SB1070.

Our summary analysis of the measure, alongside a literature review of what could work, illuminates the many challenges with Prop 314.

To begin, no money is provided to hire additional law enforcement, to pay for law enforcement overtime, or to account for the shift from other public safety efforts to keep communities safe.

Combined with the costs for jailing or otherwise detaining immigrants, the revenue needed is in the hundreds of millions. This number is only for apprehended adults; there is no accounting for what will happen to the children of detainees.

Unfortunately, the legislation fails to provide one penny of revenue to pay for Prop 314. Funding for the measure's provisions will have to come from other important public functions in a year when the state budget has been cut to the bone in response to a billion-dollar budget deficit. It's likely that cities or towns will pay the price.

Making matters worse, using historical evidence as our guide, the economic growth needed to recover from the current deficit conditions will slow as revenues are pulled from state and local services that support a robust economy; and as industries, tourists, and potential new residents recoil from the poor ideas in Prop 314 and spend their money elsewhere.

To the extent that there are those willing to trade the economy for Prop 314, there is bad news there as well. Even if local law enforcement had resources to deploy the theory-of-action in Prop 314, it would be money put to questionable use. One need only look at the rapid and historically significant increase of federal resources for enforcement to independently determine that enforcement alone is not the answer. This makes it unlikely that Prop 314 would deliver many of the promised border security outcomes.

Indeed, historical evidence, as well as recent events, highlight the need to modernize Customs & Border Patrol (CBP) policies and tools to improve legal crossing at ports of entry; to allow for growth in trade, supply chain, and economic demands needed to support America's economy, and to appropriately fund Immigration Courts to speed up adjudication.

These actions would improve security, decrease the influence of smugglers, and create an evidence-based regulatory structure to deal with increased immigration flows caused by political and economic upheaval; and to respond to the national demand for workers.

Why does this all matter to the Arizona Hispanic Chamber of Commerce and other business associations? Because economic expansion depends on balanced budgets, well-funded community assets, robust tourism, business productivity and job growth. Prop 314 threatens all of these.

Further, with America facing lower birth rates and the retirement of Baby Boomers—with Gen X workers not far behind—it is time to remember our roots and the role immigration has played in the story of America.

The literature supports a comprehensive approach to border surges that would protect and grow the economy, improve border security, and reduce dangerous crossing between ports.

But instead of locking arms for a solution that is a win-win for business, security hawks, and families torn apart by war, hunger, and political oppression; Prop 314 goes all in on the “enforcement” plan with no evidence to support it.

With a recent \$5B increase to border agencies, investments in federal enforcement are at their peak. However, massive global migration requires a more thoughtful response than just a show of force.

Ultimately, we predict that this measure's set of supposed solutions will be utterly ineffective, constitutionally questionable, and more expensive than is necessary.

The AZHCC is fully aware that decades of delayed actions at the federal level have fueled the conditions that make the public want to believe Prop 314 is a possible solution.

As such, a better use of our collective energy would be to fight together in DC to compel Congress to act. Now, we must deal with the distraction of Proposition 314 instead.

We hope this summary analysis of an extremely complicated measure shines a light on the folly that is Proposition 314.

ANALYSIS & RECOMMENDATIONS

Prop 314 appears to be designed on a set of misunderstandings regarding immigration patterns and policies that make it unlikely to deliver any of the promised outcomes.

The dozens of challenges in this poorly constructed measure can be distilled into three glaring flaws:

- *A massive unfunded mandate that could crush our economy and local law enforcement.*
- *Tactics and legal framework are disconnected from problems its supporters want to solve.*
- *It does not offer the type of reforms that would bring the United States the benefit of reasonable, efficient, and timely legal immigration. Only the Federal Government can do that.*

The waterfall effect of these flaws includes the potential to:

- *Significantly worsen our state deficit*
- *Shift our promising economy into reverse*
- *Worsen the fentanyl crisis*
- *Fill Arizona jails with non-violent immigrants*
- *Make Arizona a border detention hub: Something the supporters ironically claim to not want.*

A MASSIVE UNFUNDED MANDATE THAT PUTS ARIZONA'S ECONOMIC FUTURE IN PERIL

Costs to comply with 314

With estimates ranging in the tens of millions for individual local governments and in the hundreds of millions for the state, the unfunded costs of Prop 314 are likely to lead to either uneven compliance due to lack of funding; or robust compliance costing hundreds of millions of dollars without a clear way to reimburse local police departments and their communities; to detain children; or to pay for the numerous possible legal challenges.

Costs of encounters for crimes other than crossing between ports are already those of local law enforcement. Asking them to engage all crossers between ports, will worsen this financial burden, not lighten it, and will have to come from other places in the criminal justice system as well as local and state budgets.

Even law enforcement leaders in support of the authority to arrest for crossing between ports are very concerned about costs and the unclear scope of their responsibilities for detaining individuals encountered away from the border as well as those additional costs.

Various state lawmakers have said on record that they will help fund Prop 314 after the fact- a tact that deviates from prior practice.

However, assuming that they will try to do so, with a Fiscal Year 2025 state budget deficit exceeding \$1B, and a Prop 314 fiscal impact reasonably estimated in the hundreds of millions, where will that revenue come from?

A promise to fund 314 without the cash flow to safely do so may open catastrophic holes in a state budget already a billion dollars below the need.

If funding is appropriated, what other public priorities will suffer and what will be the long-term impact on our economy?

If state funding does not materialize, any shift in forcing local governments to fund the ballot measure by themselves could put them in the same deficit situation as the State, particularly small border communities and counties.

Economic Costs of Prop 314

Studies show that immigration intolerant laws and policies diminish the legal workforce and hit our economy through the loss of new industries, jobs, tourism, and residents.

Though Prop 314 supporters try to dismiss the parallels with SB10170, they are clear in design and intent. We should expect the same revenue impacts for Arizona and its industries as was experienced with the passage of SB1070.

In the first year alone, Arizona took a \$500M loss of business revenue that came from the combination of canceled conventions and lost tourism. We also suffered steep losses in construction employment and productivity. There is no evidence that, this time, the economy would react any differently.

DISJOINTED LEGAL FRAMEWORK IS UNLIKELY TO DELIVER RESULT OR PASS LEGAL MUSTER

While the challenges in the design of Prop 314 are many, and require more pages than we have here to dissect, the provisions attempting to address our shared fear over an uncontrolled fentanyl crisis and to undo federal parole designations seem especially egregious.

Fentanyl Crisis

The fentanyl crisis is fueled by gangs and Americans smuggling drugs through legal ports of entry. Not between ports of entry.

Yet the title, purpose, and rhetoric of the measure implies otherwise to draw in millions of worried moms, dads, and other family members hoping every day that this dangerous drug does not land on their doorstep.

Unfortunately, the measure will not only draw resources away from real fentanyl enforcement programs- and from the work to catch those smuggling or attempting to illegally cross at legal ports, it releases certain dealers and fentanyl makers from the increased penalties of 314 by creating an affirmative defense for fentanyl ingredients made in America. Does it also create an actual incentive to do so?

While the Legislature could have negotiated changes to the criminal code to address their desire to increase penalties for possession and sale of fentanyl with each other, their insistence on sending this hastily designed section of Prop 314 to the ballot will make these provisions voter protected.

Much like the rest of measure, this section of Prop 314 does nothing to address root causes and instead attempts to meet problems at the finish line rather than preventing them in the first place.

Ignores Federal Parole designations

Prop 314's provision for law enforcement to arrest even those designated on federal "parole" sets up a legal mousetrap for those allowed to come in and stay by a federal agency. Aside from the legal chaos this could create, the writers of measure seem to want to take those who are essentially here with permission and designate them as illegal.

Arresting all of them and directing Arizona courts to ignore some federal designations of "parole" while honoring others not only creates a legal maze, it impacts law enforcements requirement to detain and likely lengthens the time of those detentions.

Asking law enforcement and courts to ignore federal parole designations, even if they had already been processed by a federal agency and released, simply makes it harder to timely identify, prosecute, and deport violent criminals. It also creates enormous legal challenges for Arizona, slows family reunification, and threatens the viability of industries struggling to find and keep lawful workers.

ONLY THE FEDERAL GOVERNMENT CAN OFFER AND IMPLEMENT EFFECTIVE REFORMS

Prop 314 ignores a body of evidence suggesting that its design will not only fail to improve the current nature of immigration and border crossings, but that it is likely to make things worse.

So, what will reduce crossings between legal points of entry, soften the humanitarian crisis, and decrease the power of gangs?

A comprehensive migration management program. In other words, treat enforcement as a tool, not "the" tool.

This means a transparent, efficient, and timely system of migration management that recognizes the needs of our economy and the variety of immigrants presenting themselves at the border. This should co-exist alongside enforcement.

Too much emphasis on one side of the equation and not the other is a factor in border traffic and irregular crossings between ports of entry, low employment, backed up immigration courts, and family reunifications.

It also makes it harder for border patrol to distinguish dangerous crossers from desperate crossers between ports.

Indeed, research shows that smart border policy and migration management incentivizes immigrants with valid claims to come thru legal ports of entry rather than irregularly crossing between. It also tells us that apprehend-and-arrest "deterrents" have little to no permanent impact on the overall problem of border surges for those with valid claims.

The core finding of my analysis is that offering more lawful pathways to cross the border significantly decreases the rate of unlawful crossings, with this deterrent effect growing stronger over time.

This study does not suggest that lawful channels can simply replace enforcement at the border. ... lawful channels and enforcement are better seen as complements—two necessary ingredients of the same recipe. Lawful channels increase the regulatory effectiveness of enforcement, and vice versa.

Michael A. Clemens, Peterson Institute for International Economics

While political will is a barrier to giving America an immigration toolbox, there is an established roadmap to guide those willing to engage.

At a minimum, an updated system of immigration management should include:

- Transparent and accessible tools that allow a variety of petitioners to state their claim and schedule an appointment.
- A timely response to these requests including investments in immigration courts for timely adjudication.
- Raising caps on legal immigration using methods that reflect current conditions.
- Better utilize current authority to allow workers entry, or permission to stay, for high demand, high vacancy industries.
- Prioritize reunification with family, legitimate claims for asylum, and requests for authorization to work.

Collectively, these changes would allow legitimate claims to be processed faster, create incentives to wait, and reduce incentives for crossing between ports of entry.

A good example of modernizing tools to manage traffic and be responsive to those stating a claim is the CBP One™ app launched in 2023 to help address the massive demand around the world for asylum. This app is an easy way for immigrants to schedule appointments at ports of entry.

This has increased CBP's capacity to process migrants in a more efficient and orderly manner while cutting out unscrupulous smugglers who endanger, and profit from, vulnerable migrants.

In just the last year, CBP estimates nearly 500,000 asylum seekers have used the app to schedule appointments. This simple addition to CBPs toolbox has created an incentive to wait and to legally cross at a point of entry. According to recent analysis by the Petersen Institute for International Economics, it is likely that even this large initial impact will continue to increase and improve over time.

Invasions, civil war, violent gangs, socialism, dictatorship, and famine are driving millions of migrants to the borders of dozens of countries around the world, not just ours. Being agile and responsive to real world conditions can help us respond to events out of our control as well as capitalize on economic signals within our own borders.

Unfortunately, immigration flows and adjudications are not being managed to the degree that they could.

In the last 20 years, spending for immigration courts has been **\$1 for every \$24 in ICE and border patrol funding. Indeed, this spending analysis by the American Council on Immigration goes on to say,**

“In other words, the United States spent nearly three times as much on immigration detention alone than it did on the entire adjudication system for removal and asylum claims. This, consequently—leads to skyrocketing case backlogs and years of delay.”

When there is a process to lawfully cross at a port of entry that is transparent, responsive to the economic needs of our country, and when those who could be approved are not waiting decades to hear back, more immigrants will legally cross and the influence of traffickers will diminish.

CONCLUSION

The true danger of Prop 314 is that it asserts itself as a solution but will only blunt pressure on Congress to act.

Prop 314 cannot and does not provide solutions to address current volume or surges along the border; only disproven strategies to try to deal with the effects of outdated federal policies.

It is a measure driven by emotion and will neither fix the challenges of unlawful crossings such as human trafficking nor the fentanyl crisis playing out at legal ports of entry.

Requiring local law enforcement to chase everyone rather than focusing on crimes and encounters with immigrants who commit crimes other than crossing between ports, will only dilute a needed focus on criminal activity such as trafficking humans and smuggling drugs.

The expense, legal chaos, and lack of connection to strategies that would help at the border, make Prop 314 a problem for Arizonans. How big remains to be seen.

At best, it is a giant waste of time that will sow division and frustration. At worst, Prop 314 is a tool of economic destruction that will bring an ugly end to a historic period of economic expansion.

Regardless of what happens with Proposition 314, we call on state and national leaders to come together and immediately begin the work of modernizing the federal immigration system.

You can read more on the challenges of prop 314 below: Claim Reality Check

CLAIM: REALITY CHECK

Claim:

Mass arrests of immigrants crossing between legal ports of entry will stem the fentanyl crisis.

Reality check:

More than 90 percent of fentanyl comes to America thru legal ports of entry by Americans. Not immigrants seeking a better life.

An uncomfortable truth is that this measure could pull resources away from the source of the problem by asking law enforcement to chase families rather than focusing their limited resources on the dangerous and violent criminals contributing to the deadly fentanyl crisis.

Further, Prop 314 could let a large group of fentanyl dealers escape Prop 314's increased penalties.

“IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE BROUGHT UNDER THIS SECTION THAT THE FENTANYL AND ITS PRECURSOR CHEMICALS WERE EITHER MANUFACTURED IN THE UNITED STATES OR WERE LAWFULLY IMPORTED INTO THE STATES.” (text from Prop 314)

Claim:

Proponents have claimed in debate that the legal framework to mass arrest anyone crossing anywhere other than at a legal port of entry will be a deterrent and that immigrants will simply quit coming.

Reality Check:

This is huge financial gamble given that studies, based on immigration patterns over time, show that criminal justice “deterrents” do not stem the tide of unauthorized crossings.

Simply put, most of the crossers come from areas without reliable communications infrastructure and a lack of understanding of the legal framework in the United States and its individual jurisdictions.

That information void is filled with a flood of inaccurate information circulated online, in social media, and locally by traffickers and gangs. This will not change because Arizona is adding lines of legal code that require local officers to arrest immigrants already at risk of arrest, detention, and deportation.

Additionally, families that are ravaged by war, crime, hunger, and other life-threatening forms of violence and poverty are willing to take their chances with our criminal justice and immigration systems for the sake of the safety of their children and families

This theory of deterrence relies on a system of information that does not exist and a lack of acceptance on how world events impact immigration flows around the world.

The Federal Government has started to address their communication failures. Accelerating this work promises a more profound impact than mass detentions.

Prop 314 designers do, however, attempt to shift the responsibility of apprehension of millions of crossers from Customs & Border Patrol to local law enforcement. In this case, that shift is mandated without any money to hire officers, pay overtime, or reimburse communities for apprehending, processing, jailing and deporting.

This public policy mess will ironically leave the Prop 314 supporters with more immigrant residents than less. Immigrants from around the world, regardless of where they cross, mostly move on to be reunited with family, to seek permission to work, and to pay taxes. Instead, we seek to keep them in Arizona and run up a massive criminal justice tab.

Evidence shows that the only real deterrent to illegally crossing between ports of entry is to have an accessible common-sense system for requesting lawful entry and then adjudicating those requests with some alacrity.

By creating smart application systems and reasonable wait times, more well-meaning immigrants will cross at ports of entry thus making it easier for law enforcement to identify true criminals from desperate crossers.

Claim:

Another such claim of deterrence in the Purpose of the measure is to eliminate financial incentives such as public benefits and jobs.

Reality Check:

There is a long-standing legal framework at both the state and federal levels that makes it illegal to apply for or receive public benefits based on immigration status, or to hire immigrants not legally authorized to work. Consider:

- Public agencies administering state and federal benefits are already required to use the Systematic Alien Verification for Entitlements, or SAVE, system mandated in Prop 314. This includes cash assistance, SNAP, medical assistance and unemployment benefits.
- Arizona employers have been required to use E-Verify for more than 15 years. E-Verify is a ***“web-based system through which employers electronically confirm the employment eligibility of their employees.”***

A 2017 study of the four states that were, at the time, required to use E-Verify, showed that Arizona employers had the highest compliance rate at 75%. Criminal and economic disincentives already exist for employers who ignore the E-Verify requirement.

Because a legal framework already exists in Arizona for these types of fraud, not even the Legislature’s budget office could quantify any net revenue saved, or collected, due to these provisions.

Claim:

Detention and the resulting expenses can be avoided if immigrants simply agree to go back where they came from. One supporter claimed local law enforcement can cut that deal with crossers.

Reality Check:

For starters, not all countries will take back immigrants who have left. For those crossers, we cannot simply fill a plane, fly into their airspace and drop them off.

Nor can law enforcement negotiate returning versus detaining. Only the courts have that authority.

Further, the U.S. government already takes dozens of flights a week to carry immigrants back to their country of origin or, for certain immigrants, to Mexico instead. Are the authors of this measure implying Arizona should take on that responsibility after we process immigrants who should instead be processed by federal immigration authorities? Or do we think the federal government will come get them? The real answer, versus the assumed answer is one more potentially devastating financial liability for Arizona.

Assume the federal government will reimburse us? Try asking four decades of Arizona's governors how those reimbursement requests panned out for them.

Further, given what many desperate immigrants went thru to get to America, there is no evidence that Prop 314 will act as a major deterrent from coming or that immigrants caught will "choose" to go back where they came from. It seems unreasonable to assume that those who have escaped war, famine, domestic violence, gang violence, hunger and other atrocities will not decide to take their chances in American court.

Claim:

Supporters of 314 want voters to believe they have built a legal framework to supersede the federal government that catches crossers without a legal claim to stay.

Reality Check:

Prop 314 instructs Arizona's courts to ignore federal orders of parole and to allow their arrest and deportation.

However, there are multiple parole categories some of which give immigrants permission to be here. By trying to make those who are here legally suddenly illegal, Prop 314 contradicts itself.

It claims to want more legal entry to reduce chaos and the burden on our communities and public safety. But if we are arresting, jailing, and deporting those already provided permission to stay as a parolee, Arizona is vastly exceeding its authority and illuminating a potentially different purpose.

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