

Immigration Conflict

Should states crack down on unlawful aliens?

Americans are very concerned about illegal immigration but ambivalent about what to do about it — especially the 11 million aliens currently in the United States illegally. Frustrated with the federal government’s failure to secure the borders, several states passed laws allowing state and local police to check the immigration status of suspected unlawful aliens. Civil rights organizations warn the laws will result in ethnic profiling of Latinos. The Obama administration is suing to block several of the laws for infringing on federal prerogatives. Advocates of tougher enforcement say undocumented workers are taking jobs from U.S. citizens, but many business and agricultural groups say migrant workers are needed to fill jobs unattractive to U.S. workers. Two years ago, the U.S. Supreme Court upheld an Arizona law providing stiff penalties for employers that knowingly hire illegal aliens. Now, the justices are preparing to hear arguments on the controversial, new Arizona law that inspired other states to crack down on illegal immigration.



Opponents of Alabama’s tough, new immigration law protest in Montgomery on Feb. 14, 2012.

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Immigration Conflict

BY KENNETH JOST

THE ISSUES

Micky Hammon minced no words when he urged his fellow Alabama legislators to enact what would become the toughest of a batch of new state laws cracking down on illegal immigrants. “This bill is designed to make it difficult for them to live here so they will deport themselves,” Hammon, leader of the Alabama House of Representatives’ Republican majority, said during the April 5, 2011, debate on the bill.¹

Immigrant-rights groups say the law, which took effect Sept. 28 after partly surviving a court challenge, is as tough as Hammon hoped — and more. “It’s been pretty devastating,” says Mary Bauer, legal director of the Southern Poverty Law Center in Montgomery, Alabama’s capital. “Tens of thousands of people have left, and the people who remain are completely terrorized by this law.”

Among other provisions, Alabama’s law requires state and local law enforcement officers to determine the immigration status of anyone arrested, detained or stopped if there is a “reasonable suspicion” that the person is an alien “unlawfully present” in the United States. Failure to carry alien-registration papers is made a state crime, punishable by up to 30 days in jail for a first offense.

Alabama, with an estimated 120,000 unlawful aliens living within its borders as of 2010, was one of five states that last year followed Arizona’s lead a year earlier in giving police new responsibilities to look for immigration law violators.* Republican-controlled



Getty Images/John Moore

Arizona residents rally in Phoenix on July 31, 2010, in support of the state’s hard-hitting immigration law, which gives police new responsibilities to look for immigration law violators. Five states last year followed Arizona’s lead. The U.S. Supreme Court will bear arguments on the disputed Arizona measure on April 25.

legislatures in each of the states said they were forced to act because the federal government was not doing enough to control illegal immigration at the border or in U.S. workplaces. Opponents warned the laws risked profiling Latinos, including U.S. citizens and aliens with legal status.

All six of the laws are being challenged in federal court, with the “stop and check” provisions blocked except in Alabama’s case. In the most important case, the Arizona measure is scheduled to be argued before the U.S. Supreme Court on April 25 after a fed-

* The others were Utah, Indiana, Georgia and South Carolina.

eral appeals court struck some of the law enforcement provisions as interfering with federal immigration policy.² (See chart, p. 235.)

Alabama’s law includes a unique provision that prohibits unlawful aliens from entering into any “business transaction” with state or local governments. Some public utilities in the state interpreted the provision to require proof of immigration status for water or electricity service. Until a federal judge’s injunction on Nov. 23, some counties were applying the law to prevent unlawful immigrants from renewing permits for mobile homes.³

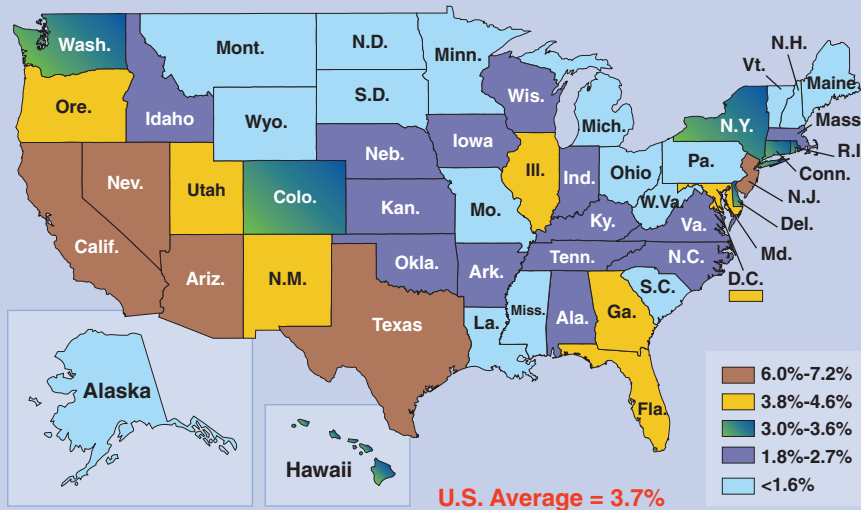
Once the law went into effect, school attendance by Latino youngsters dropped measurably in response to a provision — later blocked — requiring school officials to ascertain families’ immigration status. The fear of deportation also led many immigrants in Alabama to seek help in preparing power-of-attorney documents to make sure their children would be taken care of in case the parents were deported, according to Isabel Rubio, executive director of the Hispanic Interest Coalition of Alabama. “You have to understand the sheer terror that people fear,” Rubio says.

The law is having a palpable effect on the state’s economy as well, according to agriculture and business groups. With fewer migrant workers, “some farmers have planted not as much or not planted at all,” says Jeff Helms, spokesman for the Alabama Farmers Federation. Jay Reed, president of Associated Builders and Contractors of Alabama, says it has been harder to find construction workers as well.

West Has Highest Share of Unlawful Aliens

Undocumented immigrants comprise at least 6 percent of the population of Arizona, California, Nevada and Texas and at least 3.8 percent of the population of New Mexico, Oregon and Utah. Unlawful immigrants also make up sizable percentages of several other states' populations, including New Jersey and Florida. The nationwide average is 3.7 percent.

Unauthorized Immigrants as a Share of State Population, 2010



Source: Jeffrey Passel and D'Vera Cohn, "Unauthorized Immigrant Population: National and State Trends, 2010," Pew Research Center, February 2011, p. 29, www.pewhispanic.org/files/reports/133.pdf

Reed, co-chair of the multi-industry coalition Alabama Employers for Immigration Reform, wants to soften provisions that threaten employers with severe penalties, including the loss of operating licenses, for hiring undocumented workers. He and other business leaders also worry about the perception of the law outside the state's borders. "Some of our board members have expressed concern about our state's image and the effect on economic-development legislation," Reed says.

Reed says the state's Republican governor, Robert Bentley, and leaders in the GOP-controlled legislature are open to some changes in the law. But the two chief sponsors, Hammon and state Sen. Scott Beason, are both battling down any suggestions that the law

will be repealed or its law enforcement measures softened.

"We are not going to weaken the law," Hammon told reporters on Feb. 14 as hundreds of opponents of the measure demonstrated outside the State House in Montgomery. "We are not going to repeal any section of the law." ⁴

On the surface, Alabama seems an improbable state to take a leading role in the newest outbreak of nativist concern about immigration and immigrants. Alabama's unauthorized immigrant population has increased nearly fivefold since 2000, but the state still ranks relatively low in the proportion of unauthorized immigrants in the population and in the state's workforce.

Alabama's estimated 120,000 unauthorized immigrants comprise about 2.5 percent of the state's total population.

Nationwide, the estimated 11.8 million unauthorized immigrants represent about 3.7 percent of the population. Alabama's estimated 95,000 unauthorized immigrants with jobs represent about 4.2 percent of the workforce. Nationwide, 8 million undocumented workers account for about 5.2 percent of the national workforce. ⁵

Nationwide, the spike in anti-immigrant sentiment is also somewhat out of synch with current conditions. Experts and advocates on both sides of the immigration issues agree that the total unauthorized immigrant population has fallen somewhat from its peak in 2007, mainly because the struggling U.S. economy offers fewer jobs to lure incoming migrant workers.

"The inflow of illegals has slowed somewhat," says Mark Krikorian, executive director of the Center for Immigration Studies (CIS) in Washington. The center describes its stance as "low-immigration, pro-immigrant." ⁶

Jobs were a major focus of the debate that led to Alabama's passage of the new law. "This is a jobs bill," Beason said as the measure, known as HB 56, reached final passage in June. "We have a problem with an illegal workforce that displaces Alabama workers. We need to put those people back to work." ⁷

Today, Beason, running against an incumbent congressman for the U.S. House seat in the Birmingham area, credits the law with helping Alabama lower its unemployment rate from 9.8 percent in September to 8.1 percent in December. "I promised that the anti-illegal immigration law would open up thousands of jobs for Alabamians, and it has done that," Beason said in a Jan. 26 statement.

A University of Alabama economist, however, doubts the law's claimed effect on unemployment. Samuel Addy, director of the university's Center for Business and Economic Research in Tuscaloosa, notes that unemployment actually has increased, rather than

declined, in the four sectors in the state viewed as most dependent on immigrant labor: agriculture, construction, accommodation and food and drinking places.⁸

In a nine-page study released in January, Addy contends instead that the immigration law is likely to hurt the state's economy overall. After assuming that 40,000 to 80,000 workers leave the state, Addy calculated that the law could reduce the state's gross domestic product by \$2.3 billion to \$10.8 billion. State income and sales taxes could take a \$56.7 million to \$265.4 million hit, Addy projected, while local sales tax revenue could decline by \$20.0 million to \$93.1 million. Hammon dismissed the report as "baloney."⁹

Five months after it took effect, however, the law's impact may be ebbing. Police appear not to have enforced the law vigorously, perhaps stung by the nationwide embarrassment when a visiting Mercedes-Benz executive from Germany carrying only a German identification card was held after a traffic stop until he could retrieve his passport. With police enforcement lagging, some of the immigrants who left appear to be coming back. "Some people have returned," Rubio says.¹⁰

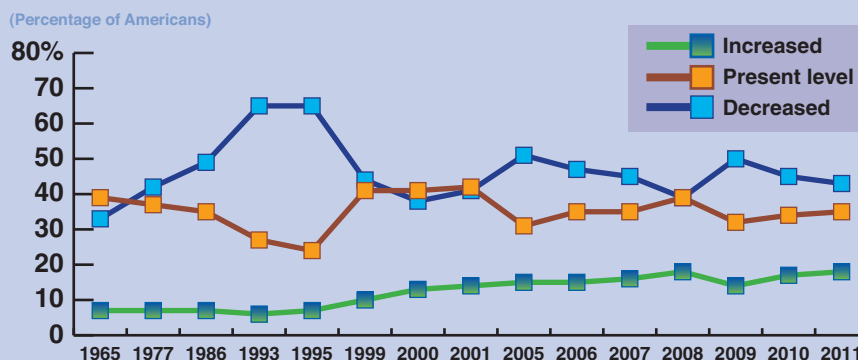
Meanwhile, attorneys for the Obama administration and the state were preparing for arguments on March 1 before the federal appeals court in Atlanta in the government's suit challenging the state law on grounds of federal pre-emption, the doctrine used to nullify state laws that conflict with U.S. laws and policies. The Hispanic Interest Coalition had challenged the law on broader grounds in an earlier suit, represented by the American Civil Liberties Union and other national groups.

In a massive, 115-page ruling, U.S. District Court Judge Sharon Blackburn upheld major parts of the law on Sept. 28 and then allowed the upheld parts to go into effect even as the government and civil rights groups

Americans Want Less Immigration

More than 40 percent of Americans say they favor a lower level of immigration, reflecting a view that has prevailed over most of the past half-century. About one in six want immigration to increase, while about one-third favor the current level.

Should immigration be kept at its present level, increased or decreased?



Sources: Jeffrey M. Jones, "Americans' Views on Immigration Holding Steady," Gallup, June 2011, www.gallup.com/poll/148154/americans-views-immigration-holding-steady.aspx; Roger Daniels, *Guarding the Golden Door*, Hill and Wang Press, December 2004, p. 233

appealed. Blackburn blocked half a dozen provisions on pre-emption grounds but found no congressional intent to prevent states from checking the immigration status of suspected unlawful aliens.¹¹

With the legal challenges continuing, the political debates over immigration are intensifying. Republican presidential candidates generally agree on criticizing the Obama administration for failing to control illegal immigration even though the administration has increased the number of immigrants deported to their home countries. The Republican hopefuls disagree among themselves on the steps to deal with the problem.

For his part, Obama concedes that Congress will not approve a broad immigration overhaul in this election year. But he used his State of the Union speech to call for passage of a bill — the so-called DREAM Act — to allow legal status for some immigrants who

have served in the U.S. military or completed college. (See "At Issue," p. 245.)

As the immigration debates continue, here are some of the major questions being considered:

Is illegal immigration an urgent national problem?

As the anti-illegal immigration bill HB 56 was being signed into law, Alabama's Republican Party chairman depicted the measure as needed to protect the state's taxpayers and the state's treasury. "Illegal immigrants have become a drain on our state resources and a strain on our taxpaying, law-abiding citizens," Bill Armistead declared as Republican governor Bentley signed it into law on June 9, 2011.¹²

Today, Republican officials continue to defend the law in economic terms. "Unemployment was sky high, especially in areas where there's high concentration of these undocumented workers," says Shana Kluck, the party's

Immigration Law Basics

Even experts find it confusing.

Immigrating legally to the United States is difficult at best for those who fit into categories defined in mind-numbing detail by federal law and impossible for those who do not. Here is a primer on a body of law that is complex and confusing even to immigration experts, and all the more so for would-be Americans.

The Immigration and Nationality Act — sets an overall limit of 675,000 permanent immigrants each year. The limit does not apply to spouses, unmarried minor children or parents of U.S. citizens, but the sponsoring U.S. citizen must have an income above the U.S. poverty level and promise to support family members brought to the United States.

Who gets visas — Out of the 675,000 quota, 480,000 visas are made available under family-preference rules, and up to 140,000 are allocated for employment-related preferences. Unused employment-related visas may be reallocated to the family-preference system.

The family-sponsored visas are allocated according to a preference system with numerical limits for each category. Unmarried adult children of U.S. citizens are in the first category, followed, in this order, by spouses and minor children of lawful permanent residents; unmarried adult children of lawful permanent residents; married adult children of U.S. citizens; and brothers and sisters of U.S. citizens. No other relatives qualify for a family preference. Again, the sponsor must meet financial and support requirements.

Visa categories — The employment-based preference system also sets up ranked, capped categories for would-be immigrants. The highest preference is given to “persons of extraordinary ability” in the arts, science, education, business or athletics; professors and researchers; and some multinational executives. Other categories follow in this order: persons with professional degrees or “exceptional” abilities in arts, science or business; workers with skills that are in short supply and some “unskilled” workers for jobs not temporary

or seasonal; certain “special immigrants,” including religious workers; and, finally, persons who will invest at least \$500,000 in a job-creating enterprise that employs at least 10 full-time workers.

In addition to the numerical limits, the law sets a cap of 7 percent of the quota for immigrants from any single country. The limit in effect prevents any immigrant group from dominating immigration patterns.

Refugees — Separately, Congress and the president each year set an annual limit for the number of refugees who can be admitted based on an inability to return to their home country because of a fear of persecution. Currently, the overall ceiling is 76,000. The law also allows an unlimited number of persons already in the United States, or at a port of entry, to apply for asylum if they were persecuted or fear persecution in their home country. A total of 21,113 persons were granted asylum in fiscal 2010. Refugees and asylees are eligible to become lawful permanent residents after one year.

Debate over the rules — An immigrant who gets through this maze and gains the coveted “green card” for lawful permanent residents is eligible to apply for U.S. citizenship after five years (three years for the spouse of a U.S. citizen). An applicant must be age 18 or over and meet other requirements, including passing English and U.S. history and civics exams. About 675,000 new citizens were naturalized in 2010, down from the peak of slightly more than 1 million in the pre-recession year of 2008.

Applying for citizenship — Immigration advocates say the quotas are too low, the rules too restrictive and the waiting periods for qualified applicants too long. Low-immigration groups say the record level of legal and illegal immigration over the past decade shows the need to lower the quotas and limit the family-reunification rules.

— *Kenneth Jost*

spokeswoman. Kluck also points to the cost on public treasuries. “The public-assistance budgets were bursting at the seams,” she says. “That’s why HB 56 was necessary.”

Nationally, groups favoring tighter immigration controls make similar arguments about immigrants’ economic impact, especially on jobs and wages for citizen workers. “We need to slow down immigration,” says Dan Stein, president of the Federation for American

Immigration Reform (FAIR), pointing to the current high levels of unemployment and underemployment.

“Immigration helps to decimate the bargaining leverage of the American worker,” Stein continues. “If you use a form of labor recruitment that bids down the cost of labor, that leads you to a society where a small number are very, very rich, there’s nobody in the middle, and everyone is left scrambling for crumbs at the bottom.”

“The longer this economic doldrum continues, the more likely you are to see some real pushback on immigration levels as such, not just illegal immigration,” says Krikorian with the low-immigration group Center for Immigration Studies. The group’s research director, Steven Camarota, said if illegal immigrants are forced to go back to their home countries, there is “an ample supply of idle workers” to take the jobs freed up.¹³

Pro-immigration groups say their opponents exaggerate the costs and all but ignore the benefits of immigrant labor. “They never take into account the contributions that undocumented immigrants make,” says Mary Giovagnoli, director of the American Immigration Council’s Immigration Policy Center.

“We’ve had an economy that depends on immigration,” says Ali Noorani, executive director of the National Immigration Forum. “It would be an economic and social disaster for 11 million people to pick up and leave.”

Madeleine Sumption, a senior labor market analyst with the pro-immigration Migration Policy Institute in Washington, acknowledges that immigration may have what she calls a “relatively small” impact on employment and wages for citizen workers. But the costs are more than offset, she says, by the benefits to employers, consumers and the overall economy.

The benefits can be seen particularly in sectors that employ large numbers of immigrants, according to Sumption. “The United States has a large agriculture industry,” she says. “Without immigration labor, it would almost certainly not be possible to produce the same volume of food in the country.” The health care industry also employs a high number of immigrants, especially in low-end jobs, such as home-health aides and hospital orderlies. “These are jobs for which there is a growing demand and an expectation of an even more rapidly growing demand in the future,” Sumption says.

In Alabama, Rubio with the Hispanic coalition and the leaders of the agriculture and construction groups all discount Camarota’s contention that citizen workers are available to take the jobs currently being filled by immigrants. “We did not have a tomato crop [last] summer because the immigrants who pick that crop weren’t there,” Rubio says. “This is hard work, and many people don’t want to do it.”

Major State Immigration Laws in Court

Five states have followed Arizona’s lead in giving state and local police a role in enforcing federal immigration law. With some variations, the laws authorize or require police after an arrest, detention or stop to determine the person’s immigration status if he or she is reasonably suspected of being unlawfully in the United States. In legal challenges, federal courts have blocked major parts of five of the laws; the Supreme Court is set to hear arguments on April 25 in Arizona’s effort to reinstate the blocked portions of its law.

State	Bill, date signed	Legal challenge
Arizona	S.B. 1070: April 23, 2010	<i>United States v. Arizona</i> Major parts enjoined; pending at Supreme Court
Utah	H.B. 497: March 15, 2011	<i>Utah Coalition of La Raza v. Herbert</i> Major parts blocked; suit on hold pending Supreme Court ruling in Arizona case
Indiana	SB 590: May 10, 2011	<i>Buquer v. City of Indianapolis</i> Major parts blocked; suit on hold pending Supreme Court ruling in Arizona case
Georgia	HB 87: May 13, 2011	<i>Georgia Latino Alliance v. Deal</i> Major parts blocked; on hold at 11th Circuit
Alabama	HB 56: June 9, 2011	<i>United States v. Alabama</i> Major parts upheld; on hold at 11th Circuit
South Carolina	S20: June 27, 2011	<i>United States v. South Carolina</i> Major parts blocked; suit on hold pending Supreme Court ruling in Arizona case

Sources: National Conference of State Legislatures, <http://www.ncsl.org/issues-research/immig/omnibus-immigration-legislation.aspx>; American Civil Liberties Union; news coverage.

Reed, president of the state’s builders and contractors’ organization, says construction companies similarly cannot find enough workers among the citizen labor force. “Traditionally, in our recruitment efforts we have unfortunately not found those that are unemployed are ready and willing to perform these kinds of jobs that require hard labor in extreme weather conditions,” Helms says.

The claimed costs and benefits from immigration for public treasuries represent similarly contentious issues. Low- or anti-immigration groups emphasize the costs in government services, es-

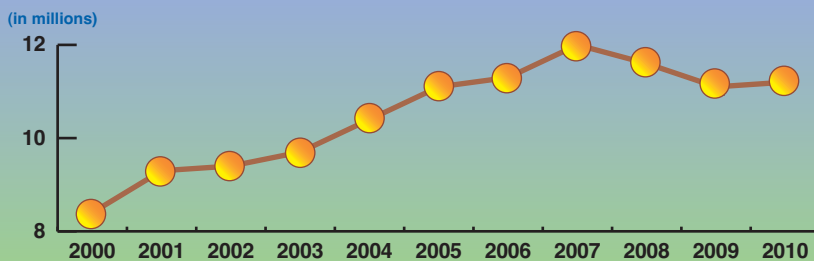
pecially education and medical care. Pro-immigration groups point to the taxes that even unlawful aliens pay and the limits on some government benefits under federal and state laws. In an independent evaluation of the issue, the nonpartisan Congressional Budget Office in 2007 found a net cost to state and local governments but called the impact “most likely modest.”¹⁴

The cost-benefit debates are more volatile in stressed economic times, according to David Gerber, a professor of history at the University of Buffalo and author of a primer on immigration. “People get angry when they feel that

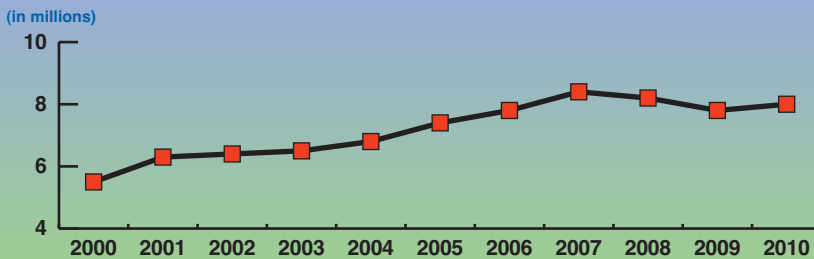
Unlawful Immigration High Despite Dip

Despite a dip beginning in 2007, an estimated 11.2 million unauthorized immigrants live in the United States, one-third more than a decade ago (top graph). An estimated 8 million are in the civilian labor force, a 45 percent increase since 2000 (bottom graph).

Estimated U.S. Unauthorized Immigrant Population, 2000-2010



Estimated Unauthorized Immigrants in U.S. Civilian Labor Force, 2000-2010



Source: Jeffrey Passel and D'Vera Cohn, "Unauthorized Immigrant Population: National and State Trends, 2010," Pew Research Center, February 2011, pp. 1, 17, www.pewhispanic.org/files/reports/133.pdf

immigrants are competing for jobs of people in the United States or when they feel that immigrants are getting access to social benefits that the majority is paying for," Gerber says. "In harder times, it makes people angrier than in times of prosperity."¹⁵

Even so, David Coates, a professor at Wake Forest University in Winston-Salem, N.C., and co-editor of a book on immigration issues, notes that fewer undocumented workers are entering the United States now than in the peak year of 2007, and the Obama administration has been deporting unlawful aliens in significantly greater numbers

than previous administrations. Asked whether illegal immigration should be less of an issue for state legislators and national politicians, Coates replies simply: "Yes, in terms of the numbers."

Should state and local police enforce immigration laws?

Alabama's HB 56 was stuffed with more provisions for state and local governments to crack down on illegal immigrants than the Arizona law that inspired it or any of the copy-cat laws passed in four other states. Along with the stop-and-check section, the law includes provisions making it a state

crime for an unauthorized alien to apply for work and barring unauthorized aliens from court enforcement of any contracts. Another provision made it illegal to conceal, harbor or rent to an illegal immigrant or even to stop in a roadway to hire workers.

Opponents harshly criticized the enforcement provisions as they were signed into law. "It turns Alabama into a police state where anyone could be required to show their citizenship papers," said Cecillia Wang, director of the ACLU's Immigrant Rights Project. Noorani, with the National Immigration Forum, called the law "a radical departure from the concepts of fairness and equal treatment under the law," adding, "It makes it a crime, quite literally, to give immigrants a ride without checking their legal status."¹⁶

Today, even with the harboring provision and several others blocked from taking effect, opponents say the law is having the terrorizing effect that they had predicted on immigrants both legal and illegal as well as U.S. citizens of Hispanic background. "We've heard numerous accounts of people who have been stopped under very suspicious circumstances, while driving or even while walking on the street," says Justin Cox, an ACLU staff attorney in Atlanta working on the case challenging the law.

The law "has had the effect that it was intended to have," Cox says, "which was to make immigration status a pervasive issue in [immigrants'] everyday lives."

Supporters of the law are defending it, but without responding to specific criticisms. "We've seen an awful lot of illegal immigrants self-deport," House Majority Leader Hammon said as opponents rallied in Montgomery on Feb. 14. "We're also seeing Americans and legal immigrants taking these jobs."¹⁷

When questioned by a Montgomery television station about critical documentaries prepared for the progressive group Center for American Progress, Hammon declined to look at the films but attacked the filmmaker. "We don't

need an activist director from California to come in here and tell us whether this law is good or not," Hammon said. "The people in Alabama can see it for themselves." ¹⁸

Nationally, immigration hawks view the new state laws as unexceptionable. "They're helping the feds to enforce immigration laws," says Center for Immigration Studies executive director Krikorian. "The question is [whether] local police use immigration laws as one of the tools in their tool kit to help defend public safety."

"Every town is a border town, every state is a border state," Krikorian continues. "Immigration law has to be part of your approach, part of your strategy in dealing with some kind of a significant problem."

FAIR president Stein strongly objects to the Obama administration's legal challenges to the state laws. "It should be a massive, industrial-strength issue that the Obama administration" has attacked the laws on grounds of federal pre-emption. But Giovagnoli with the pro-immigration American Immigration Council says the state laws should be struck down. "Congress has established that immigration enforcement is a federal matter," she says. "The more states get into the mix, the more you create a real patchwork of laws that don't make sense together."

As Krikorian notes, federal law already provides for cooperative agreements between the federal government and state or local law enforcement agencies to enforce immigration laws.

U.S. Immigration and Customs Enforcement (ICE), the successor agency to the Immigration and Naturalization Service, touts the so-called 287(g) program on its website as one of the agency's "top partnership initiatives." The program, authorized by an immigration law overhaul in 1996, permits the federal agency to delegate enforcement power to state or local law enforcement after officers have received training on federal immigration law. ¹⁹



Republican Alabama Gov. Robert Bentley addresses lawmakers at the state capitol on June 9, 2011, before signing the state's new immigration law. Republican cosponsors of the law, Sen. Scott Beason (left), and state Rep. Micky Hammon (right), both oppose softening or repealing the law. But state business interests want to ease provisions that threaten employers with severe penalties for hiring undocumented workers. They also worry about the perception of the law outside the state.

AP Photo/Montgomery Advertiser/Mickey Welsh

Alabama Republicans, however, insist that the state law fulfills a 2010 campaign pledge that helped the GOP gain control of both houses of the state legislature and that it remains popular despite the criticisms and legal challenges. "We've definitely been criticized," party spokeswoman Kluck acknowledges, but she blames the criticisms on "misinformation." As for possible changes in the law, Hammon and other legislative leaders are guarding details until a bill with proposed revisions can be completed by late March.

Should Congress make it easier for illegal immigrants to become citizens?

With many Republican primary and caucus voters viewing illegal immigration as a major issue, presidential candidate and former Massachusetts Gov. Mitt Romney says he has a simple solution: Get undocumented immigrants to "self-deport" to their home countries and then get in the legal waiting line for U.S. citizenship. But one of his rivals for the Republican nomination, former

Pro-immigration groups say the training requirement distinguishes 287(g) programs from the broader roles being given state and local police by the new state laws. "State and local law enforcement officers are not trained to do this kind of work," says Cox. "Inevitably, they're going to rely on pernicious stereotypes about what an undocumented immigrant looks like." The result, Cox continues, "is a breakdown of trust between the immigrant community and law enforcement, which ultimately affects all of us. It undermines public safety."

House speaker Newt Gingrich, pushing stronger enforcement at the border, mocks Romney's belief that 11 million unlawful aliens will go back home voluntarily. Speaking to a Spanish-language television network in late January on the eve of the Florida presidential primary, Gingrich called Romney's plan "an Obama-level fantasy." ²⁰

Pro-immigration groups agree that Romney's stance is unrealistic. "It's a fantasy to think that people are going to self-deport," says the National Immigration Forum's Noorani. Unlike border-control advocates, however, Noorani and

other pro-immigration advocates and experts say the solution is “a path to legal citizenship” for the undocumented.

“We need a functioning legal immigration system, a system that has the necessary legal channels for a person to immigrate here whether for a job or his family,” Noorani says. “That doesn’t exist here.” Without “a solution,” Noorani says, “the only ones who are winning are the crooked employer who is more than happy to exploit the undocumented, poor third-country worker.”

Immigration hawks quickly denounce any broad legalization proposal as an “amnesty” that they say is neither workable nor deserved. “All amnesties attract future immigration,” says the CIS’s Krikorian. “All amnesties reward lawbreakers.” As evidence, immigration critics point to the broad amnesty granted under the 1986 immigration act to some 3 million immigrants — and its evident failure within a matter of years to stem the flow of illegal immigrants from across the country’s Southern borders.

As an alternative to broader proposals, pro-immigration groups are pushing narrower legislation that in its current form would grant conditional legal status to immigrants who came to the United States before age 16 and have lived in the United States for at least five years. The so-called DREAM Act — an acronym for the Development, Relief and Education for Alien Minors Act — had majority support in both chambers of the Democratic-controlled Congress in 2010 but failed to get a Senate floor vote in the face of Republican opposition.

The DREAM Act starts with the assumption that immigrants who came to the United States as children have grown up as Americans and are innocent of any intentional immigration violations. They would be eligible for a conditional permanent residency and could then earn a five-year period of temporary residency

by completing two years in the U.S. military or two years in a four-year college or university.

“The intent of the DREAM Act is to provide legal status for individuals who are enlisting in our armed services or pursuing higher education,” says Noorani. “Whether they came here at age 5 or 15, I think we only stand to benefit.”

“It’s a good way to show that if you provide legal status to folks like this, the world is not going to fall apart,” says Giovagnoli with the American Immigration Council. “In fact, the country would be better off if these people were in the system.”

Similar proposals have been introduced in Congress since 2001. Immigration hawks acknowledge the proposals’ appeal and argue over details. “The concept that people who have been here from childhood, that it might be prudent to legalize people in that position, is a plausible one,” says Krikorian. But, he adds, “As it exists, it is not a good piece of legislation.”

As one change, Krikorian says the eligibility age should be lowered, perhaps to age 10 or below. “The reason they pick 16 is it legalizes more,” he says. Paradoxically, Krikorian also says the bill is too narrow by allowing temporary residency only by joining the military or going to college. “What if you’re not college material?” he asks.

Krikorian also dismisses the idea of absolving those who arrived as youngsters of any responsibility for immigration violations. “The parents . . . did know what they were doing,” he says. The bill needs to be changed, he says, “to ensure that no parent would ever be able to benefit” under family-reunification rules.

Gingrich and some GOP lawmakers favor a narrower version of the DREAM Act that would extend legal status for serving in the military but not for going to college. Supporters oppose the narrower version. “If you read the bill carefully, it would actually allow a fewer number of immigrants to enlist in the military than the

original,” Noorani says. Krikorian also dismisses the alternative. He calls it “phony,” adding that it would help “only a few thousand people a year.”

The White House pushed hard for the bill in the Democratic-controlled Congress’s lame-duck session in December 2010 but fell short in the Senate. Obama continues to speak out for the bill, most prominently in his State of the Union address. “[I]f election-year politics keeps Congress from acting on a comprehensive plan, let’s at least agree to stop expelling responsible young people who want to staff our labs, start new businesses, defend this country,” Obama said near the end of the Jan. 24 speech. “Send me a law that gives them the chance to earn their citizenship. I will sign it right away.”²¹ ■

BACKGROUND

Constant Ambivalence

The United States is a nation of immigrants that has been ambivalent toward immigration through most of its history. Immigrants are alternately celebrated as the source of diversity and criticized as agents of disunity. Immigrants were recruited to till the soil, build the cities and labor in the factories, but often criticized for taking jobs from and lowering wages for the citizen workforce. The federal government reflected popular sentiment in restricting immigration in the late 19th and early 20th century, only to draw later criticism for exclusionary policies. Today, the government is drawing criticism for liberalized policies adopted in the 1960s and for ineffective border enforcement from the 1980s on.²²

African slaves were the first source of immigrant labor in America, but Congress banned importation of slaves

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Chronology

Before 1960

Congress establishes immigration quotas.

1920s

Quota Act (1921), Johnson-Reed Act (1924) establish national-origins quota system, favoring Northern European immigrants over those from Southern Europe, elsewhere.

1952

McCarran-Walter Act retains national-origins system but adds small quotas for some Asian countries.

1960s ***Congress opens door to immigration from outside Europe.***

1965

Immigration and Nationality Act of 1965 abolishes national-origins quota system dating from 1920s; allows dramatic increase in immigration from Central and South America, Asia.

1980s-1990s

Illegal immigration increases, becomes major public issue.

1986

Immigration Reform and Control Act allows amnesty for many unlawful aliens, prohibits employers from employing undocumented workers; enforcement proves elusive.

1996

Illegal Immigration Reform and Immigrant Responsibility Act seeks to strengthen border security, streamline deportation proceedings; creates optional E-Verify system for employers to electronically check

immigration status of workers and job applicants.

2000-Present

Illegal immigration increases; immigration reform falters in Congress; state laws to crack down on illegal immigration challenged in court.

2001

Al Qaeda 9/11 attacks on U.S. soil underscore national security threat from failure to track potential terrorists entering United States (Sept. 11); USA Patriot Act gives immigration authorities more power to exclude suspected terrorists (Oct. 26).

2005-2006

Immigration reform measures fail in GOP-controlled Congress despite support from Republican President George W. Bush; Congress approves Secure Fence Act, to require double-layer fence on U.S.-Mexico border.

2007

Immigration reform measure dies in Senate; three motions to cut off debate fail (June 7). . . . Arizona legislature passes employer-sanctions law; companies threatened with loss of operating license for knowingly hiring undocumented aliens, required to use federal E-Verify system; signed into law by Democratic Gov. Janet Napolitano (July 2). . . . Unauthorized immigrant population in United States peaks near 12 million.

2008

Democrat Barack Obama elected president after campaign with little attention to immigration issues (Nov. 4); Obama carries Hispanic vote by 2-1 margin.

2009

Obama endorses immigration reform, but without specifics; issue takes back seat to economic recovery, health care.

2010

Arizona enacts law (S.B. 1070) to crack down on illegal immigrants; measure requires police to check immigration status if suspect or detainee is reasonably believed to be unlawful alien; makes it a crime to fail to carry alien registration papers; signed by Republican Gov. Jan Brewer (April 23); federal judge blocks parts of law (July 28). . . . DREAM Act to allow legal status for unlawful aliens who entered U.S. as minors approved by House of Representatives (Dec. 8) but fails in Senate: 55-41 vote is short of supermajority needed for passage (Dec. 18).

2011

Utah, Indiana, Georgia follow Arizona's lead in giving state, local police immigration-enforcement powers (March, May). . . . Federal appeals court upholds injunction against parts of Arizona's S.B. 1070 (April 11). . . . Supreme Court upholds Arizona's employer-sanctions law 5-3 (May 21). . . . Alabama enacts nation's toughest state law on illegal immigrants, HB 56 (June 9). . . . Federal judge blocks some parts of HB 56, allows others to take effect (Sept. 28).

2012

Immigration is flashpoint for Republican presidential candidates. . . . Obama urges passage of DREAM Act (Jan. 24). . . . Alabama, Georgia laws argued before U.S. appeals court (March 1). . . . Supreme Court to hear arguments on Arizona's S.B. 1070 (April 25); ruling due by end of June.

Journalist Reveals His Immigration Secret

“There’s nothing worse than being in limbo.”

When journalist-turned-immigration rights activist Jose Antonio Vargas traveled to Alabama with a documentary filmmaker, he found a Birmingham restaurant patron who strongly supported the state law cracking down on undocumented aliens. “Get your papers or get out,” the patron said.

“What if I told you I didn’t [have papers]?” Vargas is heard asking off camera. “Then you need you get your ass home then,” the patron rejoined.¹

Vargas says he is home — in America, where he has lived since his Filipina mother sent him, at age 12, to live in California with his grandparents in 1993. “I’m an American without papers,” says Vargas, who came out as an undocumented immigrant in dramatic fashion in a 4,300-word memoir in *The New York Times Magazine* in June 2011.²

In the story, Vargas recounts how he learned at age 16 that he was carrying a fake green card when he applied for a driver’s license. The DMV clerk let him go. Back home, Vargas confronted his grandfather, who acknowledged the forgery and told Vargas not to tell anyone else.

For the next 14 years, Vargas kept his non-status secret from all but a handful of enablers as he completed high school and college and advanced rapidly from entry-level newspaper jobs to national-impact journalism at *The Washington Post*, *Huffington Post* and glossy magazines. His one attempt at legal status ended in crushing disappointment in 2002 when an immigration lawyer told him he would have to return to the Philippines and wait for 10 years to apply to come back.

Vargas was inspired to write about his life by the example of four undocumented students who walked from Miami to Washington, D.C., in 2010 to lobby for the DREAM Act, the status-legalizing proposal for immigrants who came to the United

States as minors. Vargas’s story, published by *The Times* after *The Washington Post* decided not to, quickly went viral in old and new media alike.

In the eight months since, Vargas has founded and become the public face for a Web-based campaign, Define American (www.defineamerican.org). “Define American brings new voices into the immigration conversation, shining a light on a growing 21st century Underground Railroad: American citizens who are forced to fill in where our broken immigration system fails,” the mission statement reads. “Together, we are going to fix a broken system.”

The DREAM Act fell just short of passage in Congress in December 2010 and has gotten little traction since. Broader proposals to give legal status to some of the 11 million unlawful aliens are far off the political radar screen. Vargas is critical of Alabama’s law cracking down on illegal immigration but acknowledges the states’ frustration with federal policies. “At the end of the day, the federal government hasn’t done anything on this issue,” he says.

In the meantime, Vargas waits. “There’s nothing worse than being in limbo,” he says. In the story, he cited some of the hardships for the undocumented. As one example, he cannot risk traveling to the Philippines, so he has yet to meet his 14-year-old brother. But Vargas says he has no plan to “self-deport.” “I love this country,” he says.

— Kenneth Jost



Getty Images/Justin Sullivan

Journalist Jose Antonio Vargas disclosed in *The New York Times* in June 2011 that he was an undocumented immigrant.

¹ “The Two Faces of Alabama,” <http://isthisalabama.org/>. The films by director Chris Weitz were prepared under the auspices of the Center for American Progress. Some comments from Vargas are from a Feb. 15, 2012, screening of the videos at the center.

² Jose Antonio Vargas, “Outlaw,” *The New York Times Magazine*, June 26, 2011, p. 22. Disclosure: the author is a professional acquaintance and Facebook friend of Vargas.

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in 1808. Otherwise, the United States maintained an open-door policy on immigration until the late 19th century. Europe’s mid-century agricultural crisis drove waves of German and Irish peasants to the United States in the

1840s and ’50s. Many were met by ethnic and anti-Catholic hostility, embodied in the first nativist political movement: the American or so-called Know-Nothing Party. The party carried one state in the 1856 presidential election and then faded from history.

Significant Chinese immigration began with the California Gold Rush of 1849 and increased with the post-Civil War push to complete the transcontinental railroad. Stark warnings of the “Yellow Peril” led to a series of restrictions at the federal level — most notably, the

Chinese Exclusion Act of 1882, which suspended immigration of Chinese laborers and barred citizenship for those already in the United States. Significantly for present-day debates, efforts to deport those in the country or to seal the borders against new Chinese immigrants were no more than partly successful.²³

Congress laid the basis for present-day immigration law and policy in a series of increasingly restrictive enactments from the 1890s through the early 1920s that coincided with the great waves of immigration from Europe, including regions previously unrepresented in the American polity. The Immigration Act of 1891 established the Bureau of Immigration, then under the Treasury Department, and provided for border inspections and deportation of unlawful aliens. Additional laws prescribed admission procedures, created categories of inadmissible immigrants and tightened the exclusion of immigrants from Asia.

The restrictive policies drew support from nativists worried about assimilation, pro-labor groups concerned about the impact on jobs and wages and progressive leaders fearful of the impact on the urban environment. The restrictions culminated in the passage of the first and second Quota Acts in 1921 and 1924, which established the first quantitative limitation on immigration (350,000, lowered to 150,000) and a national-origins system that favored immigrants from Northern and Western Europe. In reporting the bill in 1924, a House committee stated: "If the principle of liberty . . . is to endure, the basic strain of our population must be preserved."²⁴

The Quota Acts' exception for Western Hemisphere immigrants combined with the unrest associated with the Mexican Revolution (1910-1929) to produce what Stanford historian Albert Camarillo calls "a tsunami" in immigration across the United States' Southern border. Camarillo says 1.5 million Mexicans — one-tenth of the country's population — relocated to the United States by the end of the 1930s.²⁵ The

influx fueled ethnic prejudice embodied in the derogatory term "wetback" to refer to the Mexican immigrants, most of whom actually entered by crossing arid regions rather than fording the Rio Grande River.

During the Great Depression of the 1930s, the federal and state governments — concerned about the impact on jobs for Anglo workers — sent tens of thousands of Mexicans back to their home country, sometimes with force and little regard for due process. During World War II, however, the government worked with Mexico to establish the so-called bracero program to use temporary immigrant labor for agricultural work. The "temporary" program continued into the 1960s.

Congress liberalized immigration law with a 1952 statute that included restrictionist elements as well and then, dramatically, with a 1965 law that scrapped the Eurocentric national-origins system and opened the gate to increased immigration from Latin America and Asia.

The 1952 law preserved the national-origins system but replaced the Chinese Exclusion Act with very small quotas for countries in the so-called Asia-Pacific Triangle. The act also eliminated discrimination between sexes. Over the next decade, immigration from European countries declined, seemingly weakening the rationale for the national-origins system. Against the backdrop of the civil rights revolution, the national-origins system seemed to many also to be antithetical to American values. The result was the Immigration Act of 1965, which replaced the national-origins system with a system of preferences favoring family reunification or to lesser extents admissions of professionals or skilled or unskilled workers needed in the U.S. workforce.

Quickly, the demographics of immigration shifted — and dramatically. Immigration increased overall under the new law, and the new immigrants came mostly from Latin America and Asia. By 1978, the peak year of the decade, 44 percent

of legal immigration came from the Americas, 42 percent from Asia and only 12 percent from Europe.²⁶

Cracking Down?

Immigration to the United States increased overall in the last decades of the 20th century, and illegal immigration in particular exploded to levels that fueled a public and political backlash. Congress and the executive branch tried to stem the flow of undocumented aliens first in 1986 by combining employer sanctions with an amnesty for those in the country for several years and then a decade later by increasing enforcement and deportations.

Then, in the wake of the Sept. 11, 2001, terrorist attacks on the United States, Congress and President George W. Bush joined in further efforts to tighten admission procedures and crack down on foreigners in the country without authorization.

Estimates of the number of immigrants in the United States illegally are inherently imprecise, but the general upward trend from the 1980s until a plateau in the 2000s is undisputed. As Congress took up immigration bills in the mid-1980s, the Census Bureau estimated the number of those undocumented at 3 million to 5 million; many politicians used higher figures. The former Immigration and Naturalization Service put the number at 3.5 million in 1990 and 7.0 million a decade later. Whatever the precise number, public opinion polls registered increasing concern about the overall level of immigration. By the mid-1990s, Gallup polls found roughly two-thirds of respondents in favor of decreasing the level of immigration, one-fourth in favor of maintaining the then-present level and fewer than 10 percent for an increase.²⁷

The congressional proposals leading to the Immigration Reform and Control Act in 1986 sought to stem illegal immigration while recognizing the

reality of millions of undocumented immigrants and the continuing need for immigrant labor, especially in U.S. agriculture. The law allowed legal status for immigrants in the country continuously since 1982 but aimed to deter unauthorized immigration in the future by forcing employers to verify the status of prospective hires and penalizing them for hiring anyone without legal status. Agricultural interests, however, won approval of a new guest worker program. Some 3 million people gained legal status under the two provisions, but illegal immigration continued to increase even as civil rights groups warned that the employer sanctions would result in discrimination against Latino citizens.

The backlash against illegal immigration produced a new strategy for reducing the inflows: state and federal laws cutting off benefits for aliens in the country without authorization. California, home to an estimated 1.3 million undocumented aliens at the time, blazed the path in 1994 with passage of a ballot measure, Proposition 187, that barred any government benefits to illegal aliens, including health care and public schooling. The education provision was flatly unconstitutional under a 1982 ruling by the U.S. Supreme Court that guaranteed K-12 education for school-age alien children.²⁸

The measure mobilized Latino voters in the state. They contributed to the election of a Democratic governor in 1998, Gray Davis, who dropped the state's defense of the measure in court in his first year in office. In the meantime, how-

ever, Congress in 1996 had approved provisions — reluctantly signed into law by President Bill Clinton — to deny unauthorized aliens most federal benefits, including food stamps, family assistance and Social Security. The law allows states to deny state-provided benefits as well; today, at least a dozen states have enacted such further restrictions.

The centerpieces of the 1996 immigration law, however, were measures to beef up enforcement and toughen de-

portation proceedings backlogged and E-Verify optional and — according to critics — unreliable. And illegal immigration continued to increase.

The 9/11 attacks added homeland security to the concerns raised by the nation's porous immigration system. In post-mortems by immigration hawks, the Al Qaeda hijackers were seen as having gained entry into the United States with minimal scrutiny of their visa applications and in many cases having overstayed because of inadequate follow-up.²⁹ The so-called USA Patriot Act, enacted in October 2001 just 45 days after the attacks, gave the INS — later renamed the U.S. Citizenship and Immigration Service and transferred to the new Department of Homeland Security — greater authority to exclude or detain foreigners suspected of ties to terrorist organizations. The act also mandated information-sharing by the FBI to identify aliens with criminal records. Along with other counterterrorism

measures, the act is viewed by supporters today as having helped prevent any successful attacks on U.S. soil since 2001. Illegal immigration, however, continued to increase — peaking at roughly 12 million in 2007.

Getting Tough

Congress and the White House moved from post-9/11 security issues to broader questions of immigration policy during Bush's second term, but bipartisan efforts to allow



AFP/Getty Images/Mark Ralston

A Maricopa County deputy arrests a woman following a sweep for illegal immigrants in Phoenix on July 29, 2010. The police operation came after protesters against Arizona's tough immigration law clashed with police hours after the law went into effect. Although the most controversial parts of the law have been blocked, five other states — Utah, Indiana, Georgia, Alabama and South Carolina — last year enacted similar laws.

portation policy. The Illegal Immigration Reform and Immigrant Responsibility Act authorized more money for the Border Patrol and INS, approved more funding for a 14-mile border fence already under construction and increased penalties for document fraud and alien smuggling. It sought to streamline deportation proceedings, limit appeals and bar re-entry of any deportee for at least five years. And it established an Internet-based employer verification system (E-Verify) aimed at making it easier and more reliable for employers to check legal status of prospective hires. The law proved to be tougher

legal status for unlawful aliens fell victim to Republican opposition in the Senate. As a presidential candidate, Democrat Obama carried the Hispanic vote by a 2-1 margin over Republican John McCain after a campaign with limited attention to immigration issues. In the White House, Obama stepped up enforcement in some respects even as he urged Congress to back broad reform measures. The reform proposals failed with Democrats in control of both the House and the Senate and hardly got started after Republicans regained control of the House in the 2010 elections.

Bush lent support to bipartisan reform efforts in the Republican-controlled Congress in 2005 and 2006 and again in the Democratic-controlled Congress in his final two years in office. Congress in 2006 could agree only on authorizing a 700-mile border fence after reaching an impasse over a House-passed enforcement measure and a Senate-approved path-to-citizenship bill. Bush redoubled efforts in 2007 by backing a massive, bipartisan bill that would have allowed “earned citizenship” for aliens who had lived in the United States for at least eight years and met other requirements. As in the previous Congress, many Republicans rejected the proposal as an unacceptable amnesty. The bill died on June 7 after the Senate rejected three cloture motions to cut off debate.³⁰

Immigration played only a minor role in the 2008 presidential campaign between Obama and McCain, Senate colleagues who had both supported reform proposals. Both campaigns responded to growing public anger over illegal immigration by emphasizing enforcement when discussing the issue, but the subject went unmentioned in the candidates’ three televised debates. McCain, once popular with Hispanics in his home state of Arizona, appeared to have paid at the polls for the GOP’s hard line on immigration. Exit polls indicated that Obama won 67 percent of a record-size Hispanic

vote; McCain got 31 percent — a significant drop from Bush’s 39 percent share of the vote in 2004.³¹

With Obama in office, Congress remained gridlocked even as the president tried to smooth the way for reform measures by stepping up enforcement. The congressional gridlock had already invited state lawmakers to step into the vacuum. State legislatures passed more than 200 immigration-related laws in 2007 and 2008, according to a compilation by the National Conference on State Legislatures; the number soared to more than 300 annually for the next three years.³²

The numbers included some resolutions praising the country’s multi-ethnic heritage, but most of the new state laws sought to tighten enforcement against undocumented aliens or to limit benefits to them. Among the earliest of the new laws was an Arizona measure — enacted in June 2007, two weeks after the Senate impasse in Washington — that provided for lifting the business licenses of companies that knowingly hired illegal aliens and mandated use of the federal E-Verify program to ascertain status of prospective hires. Business and labor groups, supported by the Obama administration, challenged the law on federal preemption grounds. The Supreme Court’s 5-3 decision in May 2011 to uphold the law prompted several states to enact similar mandatory E-Verify provisions.³³

The interplay on immigration policy between Washington and state capitals is continuing. In Obama’s first three years in office, the total number of removals increased to what ICE calls on its website “record levels.” Even so, Arizona lawmakers and officials criticized federal enforcement as inadequate in the legislative debate leading to SB 1070’s enactment in April 2010. Legal challenges followed quickly — first from a Latino organization; then from a broad coalition of civil

rights and civil liberties groups; and then, on July 6, from the Justice Department. The most controversial parts of the law have been blocked, first by U.S. District Court Judge Susan Bolton’s injunction later that month and then by the Ninth Circuit’s decision affirming her decision in April 2011. The legal challenges did not stop five other states — Utah, Indiana, Georgia, Alabama and South Carolina — from enacting similar laws in spring and early summer 2011. Civil rights groups and the Justice Department followed with similar suits challenging the new state enactments.

As the 2012 presidential campaign got under way, immigration emerged as an issue between Republican candidates vying for the party’s nomination. The issue posed difficulties for the GOP hopefuls as they sought to appeal to rank-and-file GOP voters upset about illegal immigration without forfeiting Latino votes in the primary season and in the general election. Presumed front-runner Mitt Romney took a hard stance against illegal immigration in early contests but softened his message in advance of winning the pivotal Jan. 31 primary in Florida with its substantial Hispanic vote.

Despite differences in details and in rhetoric, the three leading GOP candidates — Romney, Newt Gingrich and Rick Santorum — all said they opposed the DREAM Act in its present form even as Obama called for Congress to pass the bill in his State of the Union speech. ■

CURRENT SITUATION

Obama’s Approach

The Obama administration is claiming success in increasing border

enforcement and removing unlawful aliens while injecting more prosecutorial discretion into deportation cases. But the mix of firm and flexible policies is resulting in criticism from both sides of the issue.

U.S. Immigration and Customs Enforcement (ICE) counted a record 396,906 “removals” during fiscal 2011, including court-ordered deportations as well as administrative or voluntary removals or returns. The number includes a record 216,698 aliens with criminal convictions.³⁴

Meanwhile, Homeland Security Secretary Janet Napolitano says illegal border-crossing attempts have decreased by more than half in the last three years. In a Jan. 30 speech to the National Press Club in Washington, Napolitano linked the decline to an increase in the number of Border Patrol agents to 21,000, which she said was more than double the number in 2004.

“The Obama administration has undertaken the most serious and sustained actions to secure our borders in our nation’s history,” Napolitano told journalists. “And it is clear from every measure we currently have that this approach is working.”³⁵

Immigration hawk Krikorian with the Center for Immigration Studies gives the administration some, but only some, credit for the removal statistics. “They’re not making up the numbers,” Krikorian says. But he notes that immigration removals increased during the Bush administration and that the rate of increase has slowed under Obama.

In addition, Krikorian notes that new figures compiled by a government information tracking service indicate the pace of new immigration cases and of court-processed deportations slowed in the first quarter of fiscal 2012 (October, November and December 2011). A report in early February by Syracuse University’s Transactional Records Access Clearinghouse (TRAC) shows 34,362 court-ordered removals or “voluntary departures” in the period, compared to

35,771 in the previous three months — about a 4 percent drop.

A separate TRAC report later in the month showed what the service called a “sharp decline” in new ICE filings. ICE initiated 39,331 new deportation proceedings in the nation’s 50 immigration courts during the first quarter of fiscal 2012, according to the report, a 33 percent decline from the 58,639 new filings in the previous quarter.³⁶

“The people in this administration would like to pull the plug on enforcement altogether,” Krikorian complains. “They refuse to ask for more money for detention beds and then plead poverty that they can’t do more.”

From the opposite perspective, some Latino officials and organizations have been critical of the pace of deportations. When Obama delivered a speech in favor of immigration reform in El Paso, Texas, in May 2011, the president of the National Council of La Raza tempered praise for the president’s position with criticism of the deportation policy.

“As record levels of detention and deportation continue to soar, families are torn apart, innocent youth are being deported and children are left behind without the protection of their parents,” Janet Murguía said in a May 10 press release. “Such policies do not reflect American values and do little to solve the problem. We can do better.”³⁷

Latinos disapprove of the Obama administration’s handling of deportations by roughly a 2-1 margin, according to a poll by the Pew Hispanic Center in December 2011. Overall, the poll found 59 percent of those surveyed opposed the administration’s policy while 27 percent approved. Disapproval was higher among foreign-born Latinos (70 percent) than those born in the United States (46 percent).³⁸

Napolitano and ICE Director John Morton are both claiming credit for focusing the agency’s enforcement on the most serious cases, including criminal aliens, repeat violators and

recent border crossers. Morton announced the new “prosecutorial discretion” policy in an agency-wide directive in June 2011.³⁹

TRAC, however, questions the claimed emphasis on criminal aliens. The 39,331 new deportation filings in the first quarter of fiscal 2012 included only 1,300 against aliens with convictions for “aggravated felonies,” as defined in immigration law. “Even this small share was down from previous quarters,” the Feb. 21 report states. Aliens with aggravated felony convictions accounted for 3.3 percent of deportations in the period, compared to 3.8 percent in the previous quarter.⁴⁰

The administration is also being questioned on its claim — in Obama’s El Paso speech and elsewhere — to have virtually completed the border fence that Congress ordered constructed in the Secure Fence Act of 2006.⁴¹ The act called for the 652-mile barrier to be constructed of two layers of reinforced fencing but was amended the next year — with Bush still in office — to give the administration more discretion in what type of barriers to use.

As of May 2011, the barrier included only 36 miles of double-layer fencing, according to PolitiFact, the fact-checking service of the *Tampa Bay Times*. The rest is single-layer fencing or vehicle barriers that critic Krikorian says are so low that a pedestrian can step over them. PolitiFact calls Obama’s claim “mostly false.”⁴²

Meanwhile, the administration is preparing to extend nationwide its controversial “Secure Communities” program, which tries to spot immigration law violators by matching fingerprints of local arrestees with the database of the Department of Homeland Security (DHS). A match allows U.S. Immigration and Customs Enforcement (ICE) to issue a so-called detainer against violators, sending their cases into the immigration enforcement system. The administration

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Should Congress pass the DREAM Act?



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the Development, Relief and Education for Alien Minors Act is rooted in common sense. To begin with, it would benefit a group of unauthorized young people who, in most cases, did not come to this country of their own accord. Rather, they were brought here by their parents. The DREAM Act would also enable its beneficiaries to achieve higher levels of education and obtain better, higher-paying jobs, which would increase their contributions to the U.S. economy and American society. In short, the DREAM Act represents basic fairness and enlightened self-interest.

More than 2 million young people would benefit from the DREAM Act, and their numbers grow by roughly 65,000 per year. They came to the United States before age 18, many as young children. They tend to be culturally American and fluent in English. Their primary ties are to this country, not the countries of their birth. And the majority had no say in the decision to come to this country without authorization — that decision was made by the adult members of their families. Punishing these young people for the actions of their parents runs counter to American social values and legal norms. Yet, without the DREAM Act, these young people will be forced to live on the margins of U.S. society or will be deported to countries they may not even know.

Assuming they aren't deported, the young people who would benefit from the DREAM Act face enormous barriers to higher education and professional jobs because of their unauthorized status. They are ineligible for most forms of college financial aid and cannot work legally in this country. The DREAM Act would remove these barriers, which would benefit the U.S. economy.

The College Board estimates that over the course of a working lifetime, a college graduate earns 60 percent more than a high school graduate. This higher income translates into extra tax revenue flowing to federal, state and local governments.

The DREAM Act is in the best interest of the United States both socially and economically. It would resolve the legal status of millions of unauthorized young people in a way that is consistent with core American values. And it would empower these young people to become better-educated, higher-earning workers and taxpayers. Every day that goes by without passage of the DREAM Act is another day of wasted talent and potential.



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the appeal of the DREAM Act is obvious. People brought here illegally at a very young age and who have grown up in the United States are the most sympathetic group of illegal immigrants. Much of the public is open to the idea of amnesty for them.

But the actual DREAM Act before Congress is a deeply flawed measure in at least four ways:

- Rather than limiting amnesty to those brought here as infants and toddlers, it applies to illegal immigrants who arrived before their 16th birthday. But if the argument is that their very identity was formed here, age 7 would be a more sensible cutoff. That is recognized as a turning point in a child's psychological development (called the "age of reason" by the Catholic Church, hence the traditional age for First Communion). Such a lower-age cutoff, combined with a requirement of at least 10 years' residence here, would make a hypothetical DREAM Act 2.0 much more defensible.

- All amnesties are vulnerable to fraud, even more than other immigration benefits. About one-fourth of the beneficiaries of the amnesty granted by Congress in 1986 were liars, including one of the leaders of the 1993 World Trade Center bombing. But the DREAM Act specifically prohibits the prosecution of anyone who lies on an amnesty application. So you can make any false claim you like about your arrival or schooling in America without fear of punishment. A DREAM Act 2.0 would make clear that any lies, no matter how trivial, will result in arrest and imprisonment.

- All amnesties send a signal to prospective illegal immigrants that, if you get in and keep your head down, you might benefit from the next amnesty. But the bill contains no enforcement provisions to limit the need for another DREAM Act a decade from now. That's why a serious proposal would include measures such as electronic verification of the legal status of all new hires, plus explicit authorization for state and local enforcement of immigration law.

- Finally, all amnesties reward illegal immigrants — in this case including the adults who brought their children here illegally. A credible DREAM Act 2.0 would bar the adult relatives of the beneficiaries from ever receiving any immigration status or even a right to visit the United States. If those who came as children are not responsible, then those who are responsible must pay the price for their lawbreaking.

Continued from p. 244

touts the program as “a simple and common sense” enforcement tool. Critics note, however, that it has resulted in wrongful detention of U.S. citizens in a considerable but unknown number of cases. One reason for the mistakes: The DHS database includes all immigration transactions, not just violations, and thus could show a match for an immigrant with legal status.⁴³

Supreme Court Action

All eyes are on the Supreme Court as the justices prepare for arguments on April 25 in Arizona’s effort to reinstate major parts of its trend-setting law cracking down on illegal immigrants.

The Arizona case is the furthest advanced of suits challenging the six recently enacted state laws that give state and local police responsibility for enforcing federal immigration laws. After winning an injunction blocking major parts of the Arizona law, the Obama administration filed similar suits against Alabama’s HB 56 as well as the Georgia and South Carolina measures.

The ACLU’s Immigrants Rights Project, along with Hispanic and other civil rights groups, has filed separate challenges on broader grounds against all six laws. Federal district courts have blocked parts of all the laws, though some contentious parts of Alabama’s law were allowed to take effect.

District court judges in the Indiana, South Carolina and Utah cases put the litigation on hold pending the Supreme Court’s decision in the Arizona case. Alabama and Georgia asked the Eleventh U.S. Circuit Court of Appeals to postpone the scheduled March 1 arguments in their cases, but the court declined.

Judge Charles R. Wilson opened the Atlanta-based court’s March 1 session, however, by announcing that the three-judge panel had decided to withhold

its opinion until after the Supreme Court decides the Arizona case. “Hopefully, that information will help you in framing your arguments today,” Wilson told the assembled lawyers.⁴⁴

Wilson and fellow Democratic-appointed Circuit Judge Beverly B. Martin dominated the questioning during the three hours of arguments in the cases. Both judges pressed lawyers defending Alabama and Georgia on the effects of their laws on the education of children, the ability of illegal aliens to carry on with their lives while immigration courts decided their cases and what would happen if every state adopted their approach to dealing with immigration violations. The third member of the panel, Richard Voorhees, a Republican-appointed federal district court judge, asked only three questions on technical issues.

Opening the government’s argument in the Alabama case, Deputy Assistant U.S. Attorney General Beth Brinkmann said the state’s law attempts to usurp exclusive federal authority over immigration. “The regulation of immigration is a matter vested exclusively in the national government,” Brinkman said. “Alabama’s state-specific regulation scheme violates that authority. It attacks every aspect of an alien’s life and makes it impossible for the alien to live.”

Alabama Solicitor General John C. Neiman Jr. drew sharp challenges from Wilson and Martin even before he began his argument. Wilson focused on the law’s Section 10, which makes it a criminal misdemeanor for an alien unlawfully present in the United States to fail to carry alien registration papers.

“You could be convicted and sent to jail in Alabama even though the Department of Homeland Security says, ‘You’re an illegal alien, but we’ve decided you’re going to remain here in the United States?’ ” Wilson asked.

Neiman conceded the point. “If the deportation hearing occurred after the violation of Section 10, then yes,”

Neiman said. “Someone could be held to be in violation of Section 10 and then later be held not removable.”

Wilson also pressed Neiman on the potential effects on the federal government’s ability to control immigration policy if states enacted laws with different levels of severity. “These laws could certainly have the effect of making certain states places where illegal aliens would be likely to go,” the state’s attorney acknowledged.

Representing the ACLU in the separate challenge, Immigrants Rights Project director Wang sharply attacked the motive behind the Alabama law. The law, she said, was written to carry out the legislature’s stated objective “to attack every aspect of an illegal immigrant’s life so that they will deport themselves.” *

In Washington, lawyers for Arizona filed their brief with the Supreme Court defending its law, SB 1070, in early February. Among 20 *amicus* briefs filed in support of Arizona’s case is one drafted by the Michigan attorney general’s office on behalf of 16 states similarly defending the states’ right to help enforce federal immigration law. A similar brief was filed by nine states in the Eleventh Circuit in support of the Alabama law.

The government’s brief in the Arizona case is due March 19. Following the April 25 arguments, the Supreme Court is expected to decide the case before the current term ends in late June.

Meanwhile, legal challenges to other parts of the state’s law are continuing in federal court in Arizona. In a Feb. 29 ruling, Bolton blocked on First Amendment grounds a provision prohibiting people from blocking traffic when they offer day labor services on the street.⁴⁵ ■

* The appeals court on March 8 issued a temporary injunction blocking enforcement of two provisions, those prohibiting unlawful aliens from enforcing contracts in court or entering into business transactions with state or local government agencies.

OUTLOOK

A Broken System

The immigration system is broken. On that much, the pro- and low-immigration groups agree. But they disagree sharply on how to fix it. And the divide defeats any attempts to fix it even if it can be fixed.

Pro-immigration groups like to talk about the “three-legged stool” of immigration reform: legal channels for family- and job-based immigration; a path to citizenship for unlawful aliens already in the United States; and better border security. Low-immigration groups agree on the need for better border controls but want to make it harder, not easier, for would-be immigrants and generally oppose legal status for the near-record number of unlawful aliens.

Public opinion is ambivalent and conflicted on immigration issues even as immigration, legal and illegal, has reached record levels. The nearly 14 million new immigrants, legal and illegal, who came to the United States from 2000 to 2010 made that decade the highest ever in U.S. history, according to the low-immigration Center for Immigration Studies. The foreign-born population reached 40 million, the center says, also a record.⁴⁶

Some public opinion polls find support for legal status for illegal immigrants, especially if the survey questions specify conditions to meet: 66 percent supported it, for example, in a Fox News poll in early December 2011. Three weeks earlier, however, a CNN poll found majority support (55 percent) for concentrating on “stopping the flow of illegal immigrants and deporting those already here” instead of developing a plan for legal residency (42 percent).⁴⁷

Other polls appear consistently to find support for the laws in Arizona and other states to crack down on illegal immi-

grants — most recently by a 2-1 margin in a poll by Quinnipiac University in Connecticut.⁴⁸ “Popular sentiment is always against immigration,” says Muzaffar Chishti, director of the Migration Policy Institute’s office at New York University School of Law and himself a naturalized U.S. citizen who emigrated from his native India in 1974.

Pro-immigration groups say the public is ahead of the politicians in Washington and state capitals who are pushing for stricter laws. State legislators “have chosen to scapegoat immigration instead of solving tough economic challenges,” says Noorani with the National Immigration Forum. “There are politicians who would rather treat this as a political hot potato,” he adds, instead of offering “practical solutions.”

From the opposite side, the Federation for American Immigration Reform’s Stein says he is “pessimistic, disappointed and puzzled” by what he calls “the short-sighted views” of political leaders. Earlier, Stein says, “politicians all over the country were touting the virtues of engagement in immigration policy.” But now he complains that even Republicans are talking about “amnesty and the DREAM Act,” instead of criticizing what he calls the Obama administration’s “elimination of any immigration enforcement.”

Enforcement, however, is one component of the system that, if not broken, is at least completely overwhelmed. In explaining the new prosecutorial discretion policy, ICE director Morton frankly acknowledged the agency “has limited resources to remove those illegally in the United States.”⁴⁹ The nation’s immigrant courts have a current backlog of 300,225 cases, according to a TRAC compilation, double the number in 2001.⁵⁰

Employers’ groups say the system’s rules for hiring immigrants are problematic at best. In Alabama, Reed with the contractors’ group says employers do their best to comply with the status-verification requirements but find the pro-

cedures and paperwork difficult. The farm federation’s Helms says the same for the rules for temporary guest workers. “We’re working at the national level to have a more effective way to hire legal migrant workers to do those jobs that it’s hard to find local workers to do,” he says.

The rulings by the Supreme Court on the Arizona law will clarify the lines between federal and state enforcement responsibilities, but the Center for Immigration Studies’ Krikorian says the decision is likely to increase the politicization of the issue. A ruling to uphold the law will encourage other states to follow Arizona’s lead, he says, but would also “energize the anti-enforcement groups.” A ruling to find the state laws pre-empted, on the other hand, will mobilize pro-enforcement groups, he says.

The political and legal debates will be conducted against the backdrop of the nation’s rapidly growing Hispanic population, attributable more to birth rates than to immigration.⁵¹ “Whoever the next president is, whoever the next Congress is, will have to address this issue,” says Giovagnoli with the American Immigration Council. “The demographics are not going to allow people to ignore this issue.

“I do believe we’re going to reform the immigration system,” Giovagnoli adds “It’s going to be a lot of work. Even under the best of circumstances, it’s a lot of work.” ■

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FOR MORE INFORMATION

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American Immigration Council, 1331 G St., N.W., 2nd floor, Washington, DC 20005; 202-507-7500; www.americanimmigrationcouncil.org. Supports sensible and humane immigration policies.

America's Voice, 1050 17th St., N.W., Suite 490, Washington, DC 20036; 202-463-8602; <http://americasvoiceonline.org/>. Supports "real, comprehensive immigration reform," including reform of immigration enforcement practices.

Center for Immigration Studies, 1522 K St., N.W., Suite 820, Washington, DC 20005-1202; 202-466-8185; www.cis.org. An independent, nonpartisan research organization that supports what it calls low-immigration, pro-immigrant policies.

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Federation for American Immigration Reform, 25 Massachusetts Ave., N.W., Suite 330, Washington, DC 20001; 202-328-7004; www.fairus.org. Seeks "significantly lower" immigration levels.

Migration Policy Institute, 1400 16th St., N.W., Suite 300, Washington, DC 20036; 202-266-1940; www.migrationpolicy.org. A nonpartisan, nonprofit think tank dedicated to analysis of the movement of people worldwide.

National Council of La Raza, 1126 16th St., N.W., Suite 600, Washington, DC 20036-4845; 202-785-1670; www.nclr.org. The country's largest national Hispanic advocacy and civil rights organization.

National Immigration Forum, 50 F St., N.W., Suite 300, Washington, DC 20001; 202-347-0040; www.immigrationforum.org. Advocates for the values of immigration and immigrants to the nation.

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