



Arizona's 'Show Me Your Papers' Law in the U.S. Supreme Court: What's at Stake?

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Introduction

The enactment in April 2010 of Arizona's immigration enforcement law, S.B. 1070, which targets undocumented immigrants and increases the authority of local police, was an ominous sign for the direction of the immigration debate in this country. By signing into law the most restrictive anti-immigrant piece of state legislation the country has ever seen, Gov. Jan Brewer (R-AZ) declared that Arizona would pursue its own immigration policy—"attrition through enforcement."¹

This attrition policy, conjured up by hardline immigration restrictionists,² aims to make life so harsh for undocumented immigrants and their families that they would "self-deport" to their home countries. Unsurprisingly, these policies in Arizona and other parts of the country have failed in that objective—people are either staying put and going further underground or are moving to a more welcoming county or state.³ But Arizona lawmakers have succeeded in creating a deeply inhospitable climate for all people of color, citizen or not, in the state.

More than just a misguided attempt by the state to assume responsibility for immigration policy, S.B. 1070 represents legally sanctioned racial intimidation. By targeting certain groups of people living within the state, the Arizona law amounts to an ethnically divisive and deeply hostile social policy. It raises the specter of states treating people differently based solely on their appearance rather than on their actions. And it does so at a time when the face of our nation is changing dramatically, and ethnic diversity is becoming the norm—not just in isolated urban pockets but also throughout the country. By 2040 the country is projected to no longer have a single ethnic majority.⁴

Groups of citizens and law enforcement personnel who understand that these measures serve only to sow division and mistrust in increasingly diverse communities challenged Arizona's law, arguing that it would lead ineluctably to illegal racial profiling.⁵ The U.S.

Department of Justice also filed suit to block the law, arguing that the nation must speak with one voice when it comes to immigration policy and the treatment of foreign nationals present in the United States.

Specifically, the Department of Justice called for the courts to enjoin four provisions of the Arizona law that unconstitutionally interfere with federal immigration policy: (1) The requirement that all residents of the state, citizens and immigrants alike, “show their papers” if a law enforcement agent who stops them has a “reasonable suspicion” to believe that they are undocumented; (2) The provision making it a state crime if a person cannot produce the proof of their immigration status; (3) The provision making it a state crime for a person to seek work or be employed without the required papers; and (4) The provision authorizing law enforcement to arrest an individual without a warrant if the officer believes they have committed any offense, in Arizona or anywhere else, that would make them deportable.

The federal district and appeals courts agreed with the Department of Justice that these provisions in Arizona’s new law were pre-empted by federal law and therefore were temporarily barred from going into effect.⁶ Arizona fought these court decisions and appealed them to the U.S. Supreme Court, which will hear oral arguments in the case on April 25, 2012.

Meanwhile, other states—including Alabama, Georgia, South Carolina, and Utah—followed Arizona’s lead and passed “copycat” legislation. Although federal courts have put most of those measures on hold temporarily, the district judge in the Alabama case allowed some extreme measures of that state’s law, H.B. 56, to initially go into effect, including a provision that went beyond Arizona’s S.B. 1070 and required schoolchildren to verify their immigration status at enrollment.⁷

These anti-immigrant laws, even the ones currently blocked by the courts, have created a climate of fear and division within these states and have triggered a cascade of counterproductive real-world consequences. Some immigrant families decided to leave these states altogether and move to other, more welcoming states rather than accept this state-sponsored marginalization. As a result, whole sectors of these states’ economies have suffered irreparable harm as immigrant workers either stayed home or left the state and were no longer available to harvest crops or perform other needed services. Companies and organizations that didn’t want their own members to face these draconian laws withdrew their businesses from these states, further extending and deepening the negative economic impact of these ill-conceived new immigration laws.⁸

The significant social and economic harm that has already flowed from the enactment of these laws underscores the potentially monumental importance of the Supreme Court’s decision in the Arizona case. What is at stake is not merely a technical and esoteric legal argument. The ruling in this case could have profound implications, not only for the

citizens and immigrants living in states with Arizona-style laws but also for the unity of the nation and the preservation of our core values.

If the Court gives its blessing to this coordinated “attrition through enforcement” strategy and allows S.B. 1070 and its progeny to be implemented, the nation will return to a time of deep division, likely cleaved once again along regional lines, with some states passing welcoming laws, and others passing restrictive ones. Yet the ultimate objective behind the strategy—preventing the “browning” of America—is nonetheless doomed to fail because it is on a collision course with seismic demographic shifts that are already underway.

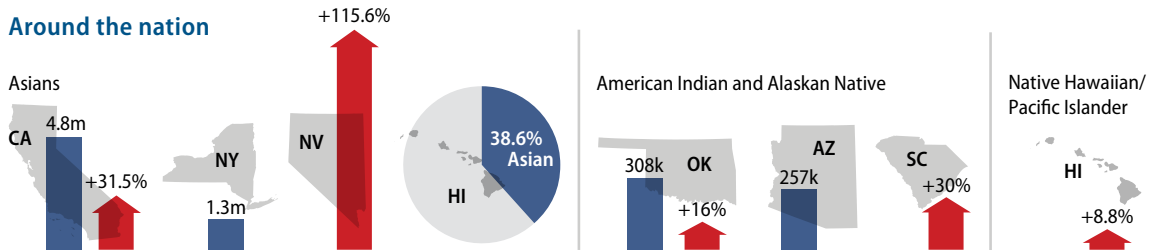
In this policy brief we look at the divisive national impact of restrictive state immigration laws and examine in greater detail the practical consequences of allowing states to implement such laws, including:

- Pitting pro-and anti-immigrant states against each other by creating hostile versus welcoming environments for immigrants
- Increasing racial profiling and ethnic division by requiring police to make investigative decisions based on appearance, not conduct
- Undermining public safety and social cohesion by making immigrant and mixed-status families afraid to report crimes, attend school, receive medical assistance, etc.
- Creating severe economic harm by driving needed workers and consumers from the states and hurting the states’ reputations
- Subverting U.S. foreign policy objectives by making foreign nationals and foreign investors feel unwelcome⁹

The New Demographics

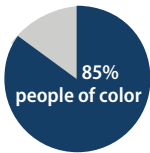
Since 2000, U.S. communities have grown exponentially and trended toward greater ethnic and racial diversity nationwide. The release of 2010 Census data has only further illustrated a definitive decade of change in the American landscape. Progress 2050, a project of the Center for American Progress that seeks to promote new ideas for an increasingly diverse America, has selected some existing facts and exciting projections from the newly released data to highlight the numerical gains communities of color have and will make in the 21st century. We believe these factoids capture the truly wide spread of change in the country.

Around the nation

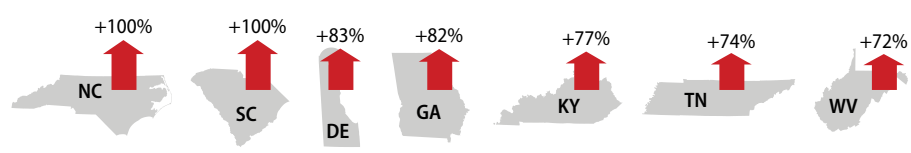


In the last decade Changes since 2000

Net population growth



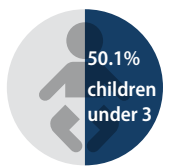
Increasing identification as multiracial



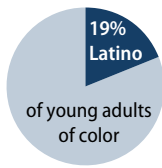
Today

Youth

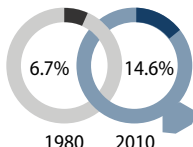
Toddlers



Young adults

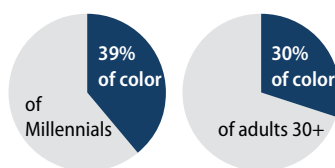


Interracial Marriage (percent of new marriages)

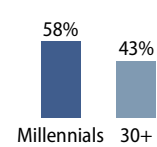


Millennials (born 1980–2000)

Percent of color

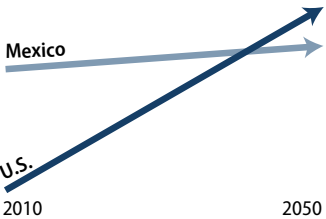


Believe immigrants strengthen the country

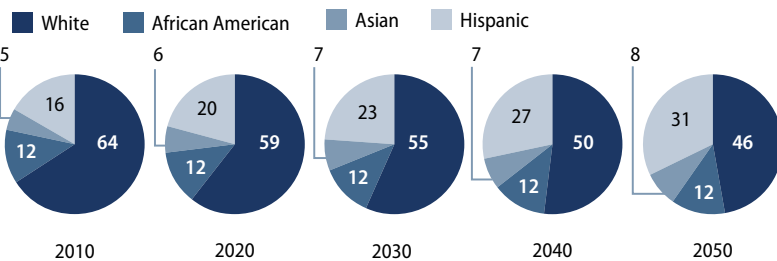


Looking ahead

Spanish speakers (global ranking by number per country)



Projected population of the United States



Most data from 2010 U.S. Census via Social Explorer. For detailed source information, see http://www.americanprogress.org/issues/2011/04/census_infographic.html

Back to the future: A nation divided

Our nation was founded on the deeply cherished belief that all persons are created equal. We fought the nation's bloodiest war in defense of that binding principle and to prevent states from making their own rules regarding how to treat people residing within their borders. In the end the Civil War was fought, and the 14th Amendment of the Constitution was ratified and signed into law to establish that states could not treat people unequally.

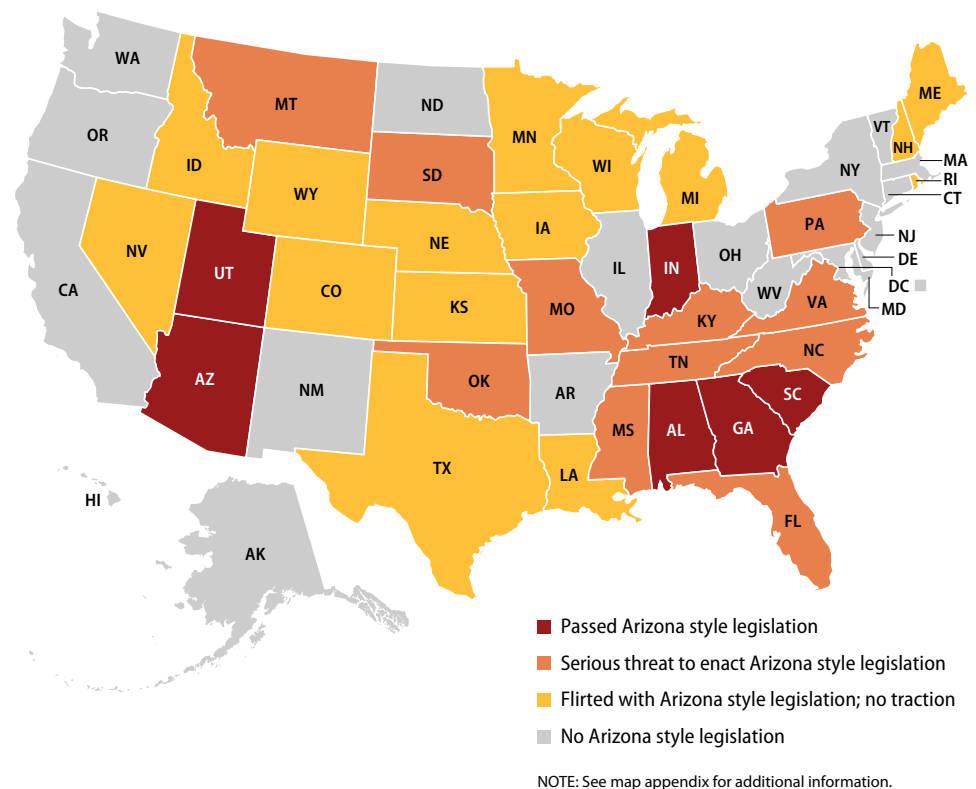
As with all social progress, the process of making good on this promise of equal treatment under the law has been slow and uneven. It took more upheaval and a constitutional amendment to guarantee women the right to vote. It took the civil rights movement and an array of federal legislation and court rulings to finally break the back of racist segregation laws and to bar discrimination and racial or ethnic intimidation.

Arizona's and other states' "show me your papers" laws turn the clocks back and flip the promise of fair treatment of all people squarely on its head. These draconian measures empower states to jail any citizen or immigrant until they can prove their citizenship or lawful status. Any person of color or anyone who speaks with a foreign accent can be required to "show papers." In other words these state laws effectively require law enforcement to engage in racial and ethnic profiling of the state's residents or visitors.

If the Supreme Court allows Arizona's law to go into full effect, it will also essentially authorize the related measures that have been put on hold in Alabama, Georgia, Utah, and South Carolina to be implemented. Likewise, it will give the green light to states such as Oklahoma, Kansas, Mississippi, Virginia, Missouri, Tennessee, and others that are considering S.B. 1070-type laws to charge full steam ahead.

A nation united or a nation divided?

Which states might pass anti-immigrant legislation after the Supreme Court's ruling on S.B. 1070



If that is the case and these seriously flawed anti-immigrant laws are allowed to stand, America will devolve once again into a deeply divided nation. Some states will ring themselves with “Keep Out” signs, while other states will extend open arms of welcome. U.S. companies, organizations, citizens, and immigrants will all be forced to make decisions regarding which state they want to live or do business in depending on how restrictive or open that state is to an increasingly diverse population. What’s more, a patchwork of state laws will make unified federal civil rights and immigration laws all but impossible to enforce.

This disturbing scenario carries within it audible echoes of our country’s ugly past, when some states banned slavery while others condoned it. The courts during that dreadful era turned a blind eye to profound discrimination and unequal treatment, and the Supreme Court itself issued its infamous *Dred Scott* decision in 1857, effectively ruling that former slaves and their descendants were not and never would be entitled to American citizenship and the protections of the U.S. Constitution.¹⁰ While the 14th Amendment to the Constitution, ratified in 1868, eventually overruled the *Dred Scott* decision, the Supreme Court’s decision had inflamed the tensions between “free” and “slave” states and helped drive the nation to civil war.

Similarly, the Supreme Court’s decision in the Arizona case has the potential to deepen divisions within and between states today. Or, more hopefully, the Court could help lead the nation back from the brink by striking down these laws and reaffirming the exclusive power of the federal government in establishing rules about the treatment of individuals in this country.

Will the Court use *Dred Scott* as its guidepost and take the country backward? Or will it embrace a more unifying approach such as the one charted in *Brown v. Board of Education*, which repudiated the power of states to treat their residents unequally?¹¹

Will the Court turn the clock back to a time where inequality and discriminatory treatment by states taking the laws into their own hands resulted in and reflected a deeply divided nation? Or will the Supreme Court uphold the fundamental American values of equality and uniform treatment under the law?

Practical consequences of Arizona-type immigration laws

The impact of Arizona-type immigration enforcement laws is not merely theoretical. The harsh negative consequences of states taking immigration policy into their own hands have already manifested in a variety of ways. These unintended but unsurprising consequences begin to paint a picture of what our country would look like if such laws are allowed to stand. Let’s explore in more detail just how anti-immigration legislation can and will play out across this country.

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States will chart different courses: “Welcome” or “Watch out”

Dramatically different immigration enforcement regimes enacted by various states will mean that citizens and immigrants living in one state will be welcomed and provided with constitutional protections, while those living right across state lines could be exposed to daily demands to “show their papers.” The resulting patchwork of laws will pit states against one another in all manner of counterproductive ways and will undermine America’s standing in the world.

Such a patchwork is precisely the result the Supreme Court warned against in a seminal case in this field 71 years ago. In *Hines v. Davidowitz* the Court ruled that a federal immigration statute, the “Alien Registration Act,” pre-empted the commonwealth of Pennsylvania from enforcing its own more stringent state registration requirements. The Court held that federal power over immigration matters was unambiguous. Justice Hugo Black, writing for the Court, concluded, “For local interests, the several States of the Union exist, but for national purposes, embracing our relations with foreign nations, we are but one people, one nation, one power.”¹²

Divisions between states as a result of restrictive immigration laws can result in distorted competitive advantages when it comes to attracting new business. A *St. Louis Post-Dispatch* editorial foreshadowed this dynamic by soliciting business from a prominent automanufacturer whose visiting executive had been detained in Alabama because he lacked the right papers: “Hey, Mercedes, time to move to a more welcoming state. ... we are the Show-Me State, not the “Show me your papers” state. ... you’ve got two choices. Either ask your executives to carry their immigration papers at all times, or move to a state that understands *gemüchlichkeit*.”¹³

Of course, states compete with each other all the time in attempting to attract businesses. But they do so with financial incentives, not by contrasting bastions of intolerance with welcoming policies. Companies doing business in the United States must be confident that their employees will be treated with dignity and respect regardless of the state they conduct business in and regardless of the color of their skin. The alternative is a free-for-all that portends the dissolution of the union.

The argument we make is no stretch. States such as Arizona and Alabama—currently sinking into discriminatory treatment, racial profiling, and harsh and intrusive enforcement practices—could become national and international pariahs. And states such as Missouri, already trying to capitalize on the negative atmosphere in a neighboring state, could take things a step further and try to seek out their own trade arrangements and even advantageous treaties with foreign companies and countries. Economic and political disparities and divisions could deepen dramatically if every state were free to pursue its own immigration enforcement, economic, and trade agendas.

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More than 220 years ago the United States was founded in direct response to the failure of the country to speak to the international community with one voice under the Articles of Confederation. Allowing the states to develop 50 different immigration policies would return us to the chaos that preceded our nation's founding.

Increased racial profiling

Although there is no way to determine by simply observing or listening to someone whether they are undocumented or not, it is inevitable that law enforcement will use skin color and foreign accents to establish reasonable suspicion of unlawful status. That, in turn, means that U.S. citizens, lawful permanent residents, and lawful visitors will be subject to mistaken arrest and detention while the state authorities consult with the federal authorities and verify who has lawful immigration status and who does not.

In order to avoid arrest and detention, every person in Arizona would theoretically have to carry their passport, green card, or other specified photo ID at all times, even when running out to pick up a gallon of milk for their child, walking down the street, or, for that matter, sitting in the park. But in practice it will be people of color who are put in the crosshairs with these policies, and they will bear the burden of proving their immigration status.

Just before S.B. 1070 was signed into law, a commercial truck driver in Arizona experienced firsthand the type of profiling that is intensifying in connection with these new laws. A U.S. citizen born in Arizona, the driver was asked for his papers when he pulled into a weigh station. He produced his valid commercial driver's license and Social Security card, but that was not enough. He was handcuffed and detained until his wife could leave work and drive an hour to their home and back to retrieve his U.S. birth certificate. Reacting to this affront, the U.S.-born driver had this to say: "I don't think it's correct, if I have to take my birth certificate with me all the time." His wife, also a native-born U.S. citizen, added, "It's still something awful to be targeted. I can't even imagine what he felt, people watching like he was some type of criminal."¹⁴

As the U.S. government argued in its brief to the Court of Appeals, "The enforcement regime created by S.B. 1070 ... makes every encounter with the police an occasion on which lawfully present aliens may need to demonstrate their federal status to a state or local official, who may arrest the person for a crime under state law if the person is not carrying a federal registration document."¹⁵

In November 2011 a Mercedes-Benz executive driving a rental car to visit one of the company's sites in Alabama was pulled over because there was allegedly some problem with the car's tags. His car rental papers were in order, but when he could not immediately produce proof of his lawful immigrant visitor status, he was arrested and detained until his passport and visa could be retrieved from his hotel room.¹⁶ A few weeks later a

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visiting Honda executive was stopped at a traffic checkpoint. Despite producing a valid international driver's license, a valid passport, and a U.S. work permit, he was ticketed for failing to produce an Alabama or Japanese driver's license, as required under the new Alabama law.¹⁷

Writing about the new Alabama copycat law, the American Civil Liberties Union stated that “the law results in systematic racial profiling. Because H.B. 56 requires interrogations and prolonged detention based on ‘reasonable suspicion’ of being an undocumented immigrant, even well-intentioned police officers will be put in the position of relying on stereotypes and characteristics such as race, ethnicity, or accent in deciding whom to stop and investigate.”¹⁸

The troubling assumption underlying these law enforcement decisions about whom to stop and whom to investigate is that anyone who appears foreign or speaks with a foreign accent is suspect and may be in the country illegally. But that is simply not the case. Miriam Berrouet, board member of South Carolina's Commission of Minority Affairs, warns, “We are opening up an avenue for racial profiling and harassment because, contrary to popular belief, not all immigrants are here illegally.”¹⁹

Professional law enforcement leaders understand that Arizona-type immigration laws lead to unlawful racial and ethnic profiling. Arizona's Pima County Police Chief Clarence Dupnik sums it up this way: “S.B. 1070 would force [my] deputies to adopt racial profiling as an enforcement tactic. ... it's just a stupid law. ... if I tell my people to go out and look for A, B, and C, they're going to do it. They'll find some flimsy excuse like a tail light that's not working as a basis for a stop, which is a bunch of baloney.”²⁰

Damage to public safety and social cohesion: Safety suffers when citizens are scared

Police professionals also realize that the burdens imposed by these new restrictive immigration laws will unnecessarily divert them from their core mission of ensuring public safety and arresting those who pose a real danger to the community. Sgt. Bryan Soller, president of the Fraternal Order of Police Mesa, Arizona, Lodge No. 9, says, “If we're getting hammered with calls, is a misdemeanor [trespassing by an illegal immigrant] more important than a stabbing or shooting? No. The problem with this law is that it's an unfunded mandate and could eat up a lot of manpower and cost a lot of money.”²¹

Likewise, the Arizona Association of Chiefs of Police says, “The provisions of the bill remain problematic and will negatively affect the ability of law enforcement agencies across the state to fulfill their many responsibilities in a timely manner. While AACOP recognizes immigration as a significant issue in Arizona, we remain strong in our belief that it is an issue most appropriately addressed at the federal level.”²²

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Another chilling effect of these laws is that once local police are required to “check papers,” people will be afraid to go to the police to report crimes. The Arizona Coalition Against Domestic Violence, for example, worries that victims will not report abuse because they will fear contacting the police and exposing their lack of immigration status.²³

Police chiefs from a variety of states, including North Carolina, California, and Colorado, have all weighed in on the negative public safety consequences of Arizona-type legislation. Raleigh, North Carolina, Chief of Police Harry Dolan warns that the Arizona legislation would “distract police from combating other crimes and would foster distrust among immigrants and minorities.” And San Francisco, California, Police Chief George Gascon says, “It would have a negative impact on community policing and public safety. Neighbors [in Hispanic neighborhoods] would be more hesitant to report crimes if they think their neighbors and family are here without authority.”²⁴

Further, the “attrition through enforcement” strategy reflected in these state laws seeks to instill fear in all aspects of public life, including in public schools. While the provisions of the Alabama law requiring school children to “show their papers” were later halted by the 11th Circuit Court of Appeals, a federal district court initially allowed the provisions to go into effect. Alabama education officials reported that on September 28, 2011, just before the district court ruling upholding the law was issued, 1,172 of the state’s 34,670 Hispanic students were absent from school. On October 3, 2011, less than a week after the court ruling, 2,285 Hispanic students were absent.²⁵ “This law is wrong,” says Bill Lawrence, principal at Foley Elementary School in Baldwin County, Alabama. “Children cannot learn in fear.”²⁶

Public safety and social cohesion are also undermined when residents of the state are prohibited from accessing basic services. In the months after Alabama’s immigration law was enacted, residents reported being denied water and gas hookups unless they could prove their citizenship or legal status, and U.S.-born children reported having to protect their parents from possible encounters with law enforcement by doing the family grocery shopping and other errands.²⁷ A family with young children in Alabama was forced to live without water for 40 days when they could not produce papers to document their lawful status.²⁸

Clearly, a community where individuals are afraid to come forward to report crime and where residents cannot access basic social services is a community that is unsafe. Likewise a community where children are afraid to go to school and where residents live in daily fear of being asked to “show me your papers” is a community where basic social and civic ties are deeply undermined and frayed.

People of color, citizens and immigrants alike, currently live in a climate of fear in Arizona, Alabama, Georgia, and elsewhere. If the Arizona law is allowed to fully go into effect, this fear will only broaden and deepen. As Republican commentator Michael Gerson wrote:

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This law creates a suspect class, based in part on ethnicity, considered guilty until they prove themselves innocent. It makes it harder for illegal immigrants to live without scrutiny—but it also makes it harder for some American citizens to live without suspicion and humiliation. Americans are not accustomed to the command “Your papers, please,” however politely delivered. The distinctly American response to such a request would be “Go to hell,” and then “See you in court.”²⁹

Economic harm: State laws hit all residents' wallets

While the Arizona immigration law has not been fully implemented (since key provisions were blocked pending court review) the state's economy has nonetheless been negatively impacted by the new law. Alabama and Georgia have also suffered deep economic harm as a result of their own restrictive copycat laws, and many South Carolina officials fear they are now headed down a similar path.

In the first year after S.B. 1070 was enacted, Arizona spent more than \$1.9 million fighting legal challenges to the law. It will certainly spend significantly more as the lawsuits move their way through the courts.³⁰ Meanwhile the economic boycotts, along with the cancellation of conventions and other events in Arizona facilities, cost the state an estimated \$141 million in the first year following the law's enactment.³¹ The impact on the tourist industry in Arizona in the first year since the law went on the books include the loss of an estimated 2,761 jobs, \$253 million in economic output, and \$9.4 million in tax revenues.³² This is just a sliver of the economic damage resulting from the state's tarnished brand.

The impact of Arizona's immigration law on the state's economy doesn't stop with tourism—it reaches into the high-tech and education sectors as well. Employers fear, and rightfully so, that immigrants with temporary high-skilled work visas will decline to accept jobs in the state because they fear being caught in public without their paperwork.³³ Higher-education leaders have said that their colleges and universities have already lost students, including out-of-state honors students, who don't want to be subject to the “show me your papers” law.³⁴ According to Arizona's Maricopa Community College Chancellor Rufus Glasper, “the many Latino citizens and lawful immigrants who attend college now face the offensive and discriminatory prospect of incessant demands to show their documents. ... we can expect that some will find this prospect discouraging and will discontinue their pursuit of education and training as well.”³⁵

In Alabama the Association of Departments of Family Medicine recently notified the city of Mobile that it was canceling its winter 2013 meeting at the Mobile Convention Center because it did not want to subject its members to the requirements of H.B. 56 that would require them to “show their papers” upon demand at any time.³⁶ A recent study by an economist at the University of Alabama determined that the new immigration law would cost the state nearly \$11 billion annually.³⁷ While the courts have

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temporarily halted parts of South Carolina's new immigration law, certain provisions did go into effect on January 1, 2012. Already businesses are deeply concerned that the new law could sink the state's \$18-billion-per-year tourism industry.³⁸

But it is perhaps in the agricultural sector where the economic losses have already been most profound in both Alabama and Georgia. Even before the new Georgia law was scheduled to take effect on July 1, 2011, an estimated 30 percent of both documented and undocumented farmworkers had fled the state. The Georgia Agribusiness Council estimates that the state faces a \$1 billion loss from a shortage of immigrant labor that resulted in spoiled and unpicked produce rotting in the fields in 2011. This loss does not include losses from the state pecan, cotton, and peanut crops.³⁹ In Alabama, where the agricultural sector brings in a whopping \$5.5 billion per year, damages to the \$1.6 billion tomato sector are already mounting. Chad Smith, an Alabama tomato farmer, estimates that he will lose \$300,000 this year alone due to rotten fruit from the lack of workers to pick the ripe produce.⁴⁰

The economic impact of these harsh new immigration laws can also be measured in population loss to the states that enact them. Not only does population loss result in fewer workers for the state's economy, but it also results in lower tax revenues, lower property values, less consumption, and fewer customers for local businesses and services. Arizona's new immigration law has already resulted in a drop in population for the state. While some sponsors of the bill applaud this result, it is clear that it is not only the undocumented who are fleeing but also those citizens and lawful residents who are part of mixed-status families or who simply don't want to undergo the scrutiny mandated under the new law.

Overall, the economic losses that have resulted from restrictive state immigration laws are profound. One recent study estimated the economic impact on the state of Arizona if S.B. 1070 were fully implemented and all undocumented immigrants were driven from the state: Employment would be decreased by 17.2 percent, 581,000 jobs would be eliminated for immigrant and native-born workers alike, the state economy would shrink by \$48.8 billion, and state tax revenues would be reduced by 10.1 percent.⁴¹

Negative foreign policy consequences

The foreign policy consequences of Arizona's law are not theoretical. Already the Mexican government has postponed review of an agreement with the United States on cooperative emergency management of natural disasters as a result of the Arizona law, and several Mexican governors declined to travel to Arizona to participate in a binational governors conference.⁴² Furthermore, Mexican President Felipe Calderon issued a travel warning to all Mexican nationals, stating that if they visited, lived in, or studied in Arizona, they could be "bothered or questioned without motive at any moment."⁴³

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The impact of Arizona's immigration law and its many copycats on relations with Mexico has both political and economic consequences for both the United States and Mexico. As the government of Mexico points out in its "friend of the court" brief in the 9th Circuit Court of Appeals in the Arizona case, a patchwork of disparate state immigration laws "would create an environment of uncertainty and would make it nearly impossible for Mexican nationals to understand their rights and obligations in each U.S. state. This result would significantly affect the ability of the federal government of both nations to address issues of international importance."⁴⁴

The government of Mexico further notes the potential negative economic consequences of such uncertainty. Mexican citizens comprise the highest percentage of tourists, business travelers, specialty workers, and students admitted into the United States in recent years. "Each day approximately 65,000 Mexicans are admitted into Arizona, where they spend an average of \$7.35 million daily,"⁴⁵ continues the Mexican government in its brief. The devastating economic impact of a downturn in this trade and tourism as the result of laws such as Arizona's are readily apparent.

The additional negative consequences to U.S. foreign policy interests include potential complications and impediments to international cooperation on efforts to combat terrorism, drug trafficking, weapons smuggling, and human trafficking. Efforts by the United States to combat these serious criminal enterprises have been aided and strengthened by cooperative agreements at many levels with the Mexican government and by joint cooperative agreements such as those entered into by the U.S. Conference of Western Attorneys General and the National Conference of Mexican Attorneys General.⁴⁶

It is cooperative efforts such as these that are put at risk by Arizona's law, causing Mexican government officials to cancel travel to the state and compromising their participation in bilateral meetings and consultations. As former Deputy Secretary of State James B. Steinberg stated, "S.B. 1070 necessarily antagonizes foreign governments and their populations, both at home and in the U.S., likely making them less willing to negotiate, cooperate with, or support the United States across a broad range of important foreign policy issues."⁴⁷

Many other foreign countries have also added their voices in criticizing Arizona's law, which threatens to further complicate U.S. political, social, and economic relations with those countries.⁴⁸ In fact, in briefs filed in U.S. District Court against Alabama's restrictive immigration law, Mexico and 15 other nations expressed their desire to have their own citizens treated fairly in the United States. "They want to make sure their citizens are treated correctly," says Edward Still, the Birmingham, Alabama, attorney who filed the briefs. "They have a sovereign interest in the way in which immigration law is carried out by the United States."⁴⁹

The negative foreign policy consequences of restrictive immigration laws are not confined to this hemisphere. In a world of international travel, work, and education,

Many other foreign countries have also added their voices in criticizing Arizona's law, which threatens to further complicate U.S. political, social, and economic relations with those countries.

U.S. citizens visiting, working, and studying abroad have a direct interest in cordial and reciprocal relations and treatment. If foreign nationals in the United States are deprived of rights and respect, what treatment can U.S. citizens expect and demand from other governments abroad?

Will Ford and GM auto company executives visiting their operations in Mexico, South Korea, Thailand, or Japan be pulled over and jailed until they can produce their passports, visas, and home country driver's licenses, as Mercedes and Honda personnel were required to do in Alabama?⁵⁰ As former Deputy Secretary Steinberg warns, "S.B. 1070 risks reciprocal and retaliatory treatment of U.S. citizens abroad, whom foreign governments may subject to equivalently rigid or otherwise hostile immigration regulations, with significant potential harm to the ability of U.S. citizens to travel, conduct business, and live abroad."⁵¹

The negative foreign policy consequences of states such as Arizona passing restrictive immigration laws are extensive—from discouraging cooperative efforts to combat cross-border crime and violence, to discouraging international travel and commerce and provoking potentially retaliatory treatment of U.S. nationals abroad. Undeniably, Arizona's law undermines U.S. diplomatic and foreign policy initiatives and goals.

Conclusion

The upcoming Supreme Court decision in the Arizona case has the potential to put a halt to misguided state immigration enforcement laws, or to take our country back to a time rife with the echoes of the dark days of slavery and Jim Crow laws, where every state made its own laws about the legal status and rights of human beings.

A united nation of states—speaking with one voice on matters fundamental to national security and foreign relations—is the bedrock foundation of our Constitution and the basis for our nation's strength and cohesiveness.

A fractured nation of states—some putting up a welcome sign to citizens and immigrants and others putting up a "show me your papers or keep out" sign—is a nation where disunity will grow and discontent will fester, breeding conditions where the very fabric of the country will be torn apart.

The Supreme Court must provide a decision rooted in core American values and restore unity to the nation. Anything less will be a disservice to the Constitution and to this nation of immigrants that continues to be a hopeful example of the strength of openness and diversity in this fractured world.

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Map appendix

Red: Passed Arizona-style legislation

Alabama

Alabama legislators passed H.B. 56, currently the nation's toughest immigration law, in June 2011. Though a federal court has put a temporary hold on many of the most severe provisions of the law, an Alabama district judge allowed some extreme measures to go into effect this past fall, causing much damage to the state's economy, society, and reputation. If the Supreme Court allows Arizona's S.B. 1070 to go into effect, it will essentially authorize the implementation of many provisions of H.B. 56.

Arizona

Arizona Gov. Jan Brewer signed S.B. 1070, the most restrictive piece of immigrant legislation our country had ever seen, in April 2010. The federal district and appeals courts concurred with the U.S. Department of Justice that provisions in S.B. 1070 were pre-empted by federal law and temporarily blocked those provisions from going into effect. Arizona appealed those decisions to the U.S. Supreme Court, which will hear oral arguments in the case on April 25, 2012. The state of Arizona has also enacted a law that bans undocumented students from receiving in-state tuition.

Georgia

Georgia enacted H.B. 87 in April 2011. The law, which mirrors Arizona's S.B. 1070, has already caused severe labor shortages, as workers and their families avoid the unwelcoming state. Key provisions of the law were blocked by a federal judge and the state has appealed the decision to the 11th Circuit Court of Appeals, whose judges have said they are awaiting the ruling from the U.S. Supreme Court in the *AZ v. U.S.* case before deciding whether the injunction should remain in place. Georgia's state legislature has also enacted a law that bans undocumented students from receiving in-state tuition. S.B. 458, a bill that would ban Georgia's undocumented students from attending public colleges, as well as prevent undocumented residents from getting marriage licenses and having access to water and sewage services, has cleared both the Georgia Senate and House committees.

Indiana

In 2011 Indiana's governor signed S.B. 590 into law. S.B. 590 outlaws "sanctuary cities" in the state, requires employers to use E-Verify, and bars undocumented students from receiving in-state tuition. A U.S. District Court judge granted a preliminary injunction on the S.B. 590 provision allowing local police to arrest any person ordered to be deported by an immigration court and the provision outlawing the use of consular ID cards as a valid form of identification. This year, a Republican member of the Indiana State Senate has included an amendment in H.B. 1326, an education bill, to restore in-state tuition for qualifying students.

South Carolina

South Carolina's anti-immigrant law passed in June 2011, though a federal judge blocked the most controversial aspects of the law before it took effect in January 2012. The state currently prohibits undocumented students from enrolling in South Carolina public colleges and universities. A 2008 law requires public employers and contractors to use the E-Verify system, the federal government's error-prone work-eligibility system.

Utah

In March 2011 a package of immigration bills were signed into law. The measure included H.B. 497, an Arizona-style enforcement bill, and H.B. 116, a bill to enable Utah to issue work permits to its undocumented residents and create a temporary worker program. A district court judge granted a temporary injunction against the Arizona-style measure two months later and extended that order in February 2012, pending the ruling by the Supreme Court. Utah has allowed qualified undocumented students to pay in-state tuition in Utah's public colleges since 2002. Undocumented immigrants in the state can obtain a driving privileges card, but S.B. 170, a bill seeking to repeal the card, may threaten that ability.

Orange: Serious threat to enact Arizona-style legislation

These are the states that are close to passing an Arizona-type law. A Supreme Court decision declaring Arizona-style immigration laws legal would likely provide the needed boost for additional legislative action.

Florida

Florida's state legislature rejected H.B. 7089 and S.B. 2040 in 2011. Similar to Arizona's S.B. 1070, the proposed bills would have required police to check the immigration status of those they "reasonably suspect" are in the country without legal status and would have required employers to use E-Verify. Currently, the immigration status of a student's parents—regardless of the student's own status—determines whether the student can receive in-state tuition rates. In March 2012 the Florida's Senate Judiciary Committee voted against S.B. 106, a bill that would have allowed undocumented students and students with unauthorized parents to pay in-state tuition.

Kentucky

In 2011 an Arizona copycat bill, S.B. 6, passed the Senate but was rejected by the House Local Government Committee after a fiscal-impact statement estimated that the bill would cost Kentucky \$89 million per year. In March 2012 the Kentucky Senate passed S.B. 118, a proposal that would bar undocumented immigrants in the state from receiving welfare benefits.

Oklahoma

Despite repeated attempts to pass additional immigration legislation, lawmakers have failed to pass an Arizona-style law. In 2007, Oklahoma passed H.B. 1804, which was

at the time the most anti-immigrant bill in the nation. H.B. 1804 includes provisions requiring public employers, contractors, and subcontractors to participate in E-Verify.

Mississippi

The Mississippi House passed H.B. 488, a punitive anti-immigration law, in March 2012, but the bill died in the state Senate in April 2012. Mississippi legislators learned from the legal challenges brought against Alabama, and designed the law to circumvent such challenges by leaving out provisions such as H.B. 56's requirement to verify the legal status of students and their parents before they are enrolled in public schools. The state's senate and governor are likely to support the bill. A law enacted in 2008 requires all employers, both public and private, to use E-Verify by July 2011.

Missouri

Missouri's S.B. 590, an Alabama H.B. 56 copycat, requires police to determine the immigration status of people they reasonably suspect are unauthorized, makes it a misdemeanor to not carry papers, and requires parents to present proof of citizenship when enrolling their children in school. This anti-immigration omnibus passed out of the Senate General Laws Committee in January. H.B. 1549, a law enacted in 2008, requires public employers, contractors, and subcontractors to use E-Verify.

North Carolina

The General Assembly of North Carolina considered and rejected S.B. 1070-style bills in the past two sessions. In 2011 a bill requiring all businesses with more than 25 employees to use E-Verify by 2013 became law. A recently formed House Select Committee on the State's Role in Immigration Policy has met a handful of times since its inception in December 2011 and is considering how to strengthen existing laws against undocumented immigrants.

Tennessee

Republican legislators in Tennessee have introduced a number of anti-immigrant laws in 2012. Among them is H.B. 2191, a bill that makes it a felony to transport or harbor an undocumented immigrant. The Tennessee state House advanced an Arizona style bill in 2011 until a fiscal note revealed the prohibitively high costs of the legislation. In 2011 a bill was signed into law that requires most employers to check the immigration status of their employees through the E-Verify system. Currently, individual systems can decide whether to allow unauthorized immigrants to attend public colleges and pay in-state tuition.

Virginia

Virginia's H.B. 1060, a bill that would have required police to inquire about the immigration status of people arrested, was defeated in the Senate Courts of Justice Committee in February 2012. A bill that would require state police to enter into 287(g) agreements, held over into 2013 by the same committee. The 287(g) program gives local government the authority to carry out federal immigration law compliance.

Yellow: Flirted with Arizona-style legislation but failed to gain traction

These states have considered anti-immigrant bills but the measures failed to advance far in the legislative process.

Colorado

In 2011, Colorado Representative Randy Baumgardner withdrew his own Arizona style bill from consideration. The Colorado legislature enacted a law banning undocumented students from receiving in-state tuition in 2008. But S.B. 15, a tuition-equity bill, has passed in the Senate and moved to the State House for consideration where passage seems likely.

Iowa

Although two anti-immigration bills, H.F. 27 and S.F. 102, failed to emerge from committee in 2011, a mandatory E-Verify bill has been introduced this year and approved by a subcommittee of the House Judiciary Committee.

Kansas

Kansas state legislators introduced H.B. 2372, an Arizona copycat bill, in 2011. The legislation did not gain sufficient traction to get out of the House Committee, but Kansas legislators are trying again in 2012. The state's agriculture secretary has asked for a federal waiver that would allow companies to hire undocumented immigrants. In 2004 Kansas enacted an in-state tuition law. A repeal effort has been underway since 2011, though it has not been successful in the State Senate.

Louisiana

A Louisiana legislator introduced his own Arizona-style bill in the summer of 2011 but withdrew the bill from consideration when a fiscal note revealed H.B. 411 would cost the state \$11 million. Two separate state laws require state contractors to use E-Verify and make it optional for private employers to use the status-verification system.

Maine

In 2011 an Arizona copycat law, L.D. 1496, was withdrawn by its sponsor before making it through the committee process.

Michigan

H.B. 4305, introduced in 2011, would require police and state agencies to check the immigration status of everyone stopped for an offense and people they suspect of being in the country without papers. The bill was mothballed in June 2011 when Gov. Rick Snyder (R) forcefully came out against all anti-immigrant legislation. H.B. 4355, which would require state and local government agencies to use E-Verify, has been introduced every year since 2005 but has never made it out of committee.

Minnesota

H.F. 3830, an Arizona-style bill, was introduced in 2010 but the bill was buried. H.F. 358, which would force cooperation between law enforcement agencies and immigration enforcement agencies, was introduced in the Minnesota House in 2011. The bill was revived in March 2012.

Nebraska

In 2011 an Arizona copycat bill, L.B. 48, did not make it out of committee. The state began granting in-state tuition to its qualifying undocumented students in 2006. Efforts to repeal the law began in 2010 but none has been successful. In 2009 Nebraska passed a law making E-Verify mandatory for all state and local governments and contractors.

Nevada

In 2010 the Nevada Assembly tried to have a referendum on an Arizona-style law, but the “Nevada Immigration Reform Initiative” failed to get on the ballot after the American Civil Liberties Union and other groups filed a lawsuit to block the proposed initiative.

New Hampshire

H.B. 1494, an Arizona-style bill was introduced in February 2012, but the bill did not make it out of committee. A similar bill also failed to get out committee in 2011.

Pennsylvania

Pennsylvania legislators attempted to pass H.B. 738, an Arizona copycat bill, in 2011, as well as bills to restrict birthright citizenship and make E-Verify mandatory. In 2006 the state enacted a law that provides safe harbor to employers enrolled in the E-Verify program from state penalties.

Rhode Island

Rhode Island enacted a law that allows undocumented students to pay in-state tuition at public colleges in 2011. In 2010 an Arizona-style bill was tabled after the House speaker opposed it.

South Dakota

In February 2012, the House State Affairs Committee rejected H.B. 1198, an Arizona-style bill.

Texas

In 2011 the Texas Senate passed S.B. 9 during a special session, a law that would abolish “sanctuary cities,” would mandate Secure Communities, and would require Department of Transportation employees to inquire about legal status before issuing a driver’s license. The special session ended and the House version of the bill was left pending in a House Committee. That same year, Texas Rep. Debbie Riddle (R) introduced H.B. 17, a bill that would criminalize the presence of undocumented immigrants in the state

and allow police officers to arrest them without a warrant. H.B. 17 was left pending in committee. In 2001, Texas became the first state in the nation to enact a law that allows eligible undocumented students to pay in-state tuition.

Wisconsin

A.B. 173, an Arizona-style bill that would authorize state and local police to determine the status of people stopped for violations including minor traffic offenses, was introduced in 2011 but it failed to gain traction.

Wyoming

Wyoming's House Committee struck down a bill in the legislature that would have been an S.B. 1070 copycat.

Gray: No Arizona-style legislation

These states have either adopted pro-immigrant measures or, at a minimum, have not actively considered broad immigration enforcement legislation.

Alaska

Alaska's H.B. 3, introduced in 2011, would require those applying for a driver's license show proof of legal residency in Alaska. The bill has passed in the State House.

Arkansas

Arkansas Republican legislators introduced H.B. 1292 in 2011, a bill that would prohibit undocumented immigrants from accessing government services except in life-threatening emergencies. The bill was rejected in the House Committee. H.B. 1428 was enacted in March 2011, mandating that a person eligible for child-only health insurance benefits be able to prove they are an authorized immigrant.

California

California's DREAM Act, passed in 2011, allows undocumented students to compete for private scholarships and grants, and to pay in-state tuition. The state also prohibits cities and counties from enacting their own laws requiring employers to use E-Verify and restricts police from impounding the vehicles of unauthorized immigrants whose only offense is their lack of a driver's license.

Connecticut

Connecticut passed a bill in 2011 to allow undocumented students to pay in-state tuition.

Delaware

In 2011 the Delaware State Senate passed S.B. 15 to make E-Verify mandatory for all workers in the state. The House did not act on the measure.

Hawaii

In March 2012 Hawaii state senators introduced a state version of the DREAM Act, which would grant in-state tuition to eligible undocumented students and allow these students to apply for state-funded financial aid.

Idaho

In December 2006 Gov. Jim Risch (R) issued an executive order requiring all state agencies to use E-Verify. In May 2009 Gov. Butch Otter (R) signed a similar order. In March 2010 S.B. 1217, a bill that would have increased the penalties for using false documentation, passed out of committee but was never voted on in the full Senate.

Illinois

The Illinois legislature enacted legislation that permits undocumented students to pay in-state tuition in 2003. As of 2011 qualifying students can also compete for private scholarships in the state. The state legislature also created privacy and antidiscrimination protections for workers if their E-Verify-participating employers are not following the program's procedures.

Maryland

Maryland became the 10th state to offer in-state tuition to qualifying undocumented students in April 2011. But the law was successfully petitioned to a statewide referendum, and until voters decide the fate of the law in November, in-state tuition for these students is on hold.

Massachusetts

S.B. 2061—a bill that would require police to run immigration status checks for those arrested, would implement the Secure Communities program across the state, would mandate that proof of citizenship be presented before immigrants can access subsidized housing and other services, and would increase penalties for those driving without a license and employers who hire undocumented workers—is being reviewed by the Massachusetts State House.

Montana

In April of 2011 Montana's governor signed H.B. 178, a bill requiring state DMVs to electronically verify the legal presence of immigrants before issuing a Montana driver's license or ID card, into law. A referendum (N.121) will be held in November 2012 to determine if Montana residents should be required to show proof of citizenship to receive state services. A bill to deny workers' compensation to undocumented workers stalled in the Montana Senate committee in 2011 after passing in the Montana House.

New Jersey

Legislation that would have allowed qualifying unauthorized students to pay in-state tuition in New Jersey failed to garner enough support from state legislators in 2010.

New Mexico

Similar to Washington State, New Mexico allows eligible undocumented immigrants to apply for driver's licenses. Gov. Susana Martinez (R) is fighting to get the 2003 driver's license law overturned, and H.B. 103, the repealing bill, passed in the State House in February 2012. The New Mexico Senate is expected to once again stop the bill in its tracks. The state legislature also passed an in-state tuition bill in 2005, but undocumented students are not eligible for financial aid under the law.

New York

New York enacted a law that allows undocumented students to pay in-state tuition at public colleges in 2002. The New York DREAM Act, S. 4179, was introduced in 2011. The bill would allow qualifying undocumented students to apply for financial aid.

North Dakota

No action on immigration.

Ohio

In Ohio a referendum for an Arizona-style law, the "Ohio Immigration Reform Initiative," lacked the support to make the ballot.

Oregon

No action on immigration.

Vermont

No action on immigration.

Washington

Similar to New Mexico, Washington state allows qualified undocumented immigrants to obtain driver's licenses. Attempts to restrict access to driver's licenses for undocumented immigrants have failed. The state enacted an in-state tuition law in 2003.

Washington, D.C.

Mayor Vincent Gray signed an executive order in 2011 prohibiting D.C. police from checking immigration status during routine business checks or arrests.

West Virginia

No action on immigration.

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- 49 The nations filing briefs included Mexico, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, and Uruguay. See: South Union Street, "Mexico, 15 other nations filed briefs against Alabama immigration law," August 3, 2011, available at <http://madvertiserblogs.com/southunionstreet/?p=1706>.
- 50 "Alabama governor attempts to cool the embers after state's tough immigration law arrest Mercedes and Honda execs" *The Daily Mail*, December 6, 2011, available at <http://www.dailymail.co.uk/news/article-2070442/Alabamas-tough-immigration-laws-arrests-Mercedes-Honda-exec.html>.
- 51 Steinberg, "Declaration for the U.S. District Court for the District of Arizona."