



Understanding Immigration Federalism in the United States

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Introduction and summary

For nearly 150 years, the U.S. federal government has been pre-eminent in immigration policy.¹ At the same time, Congress and the Supreme Court have also granted limited room for states to regulate the lives and livelihoods of immigrants residing within their borders, such as issuing business licenses and providing health and welfare services.²

In the past decade, state and local governments have produced a flurry of legislation related to immigrants and immigration. Much of the legislation between 2004 and 2012 was restrictive in nature, making it more difficult for immigrants to reside in communities, work, and live their daily lives. Several cities, for example, imposed penalties on landlords who rented to unauthorized immigrants and employers who hired them.³

These restrictionist laws reached a fever pitch when Arizona passed its comprehensive anti-immigrant bill, S.B. 1070, in 2010, and states such as Alabama and Georgia passed copycat laws the following year.⁴ S.B. 1070 and other similar legislation pursued a stated strategy of “attrition through enforcement” by making it a crime to be without legal status and authorizing local police to check the immigration status of anyone they suspect of being in the country without authorization.⁵

Factors fueling the anti-immigrant legislative buildup

Conventional wisdom on the rise of anti-immigrant state laws argues that the movement of immigrants into new destinations, such as Kansas, North Carolina, Georgia, and beyond, sparked fears of cultural and economic threats, concerns over crime, and local challenges such as overcrowded housing. These supposedly objective changes, combined with the lack of congressional action on immigration reform, put pressure on states and localities to respond to the influx of immigrants themselves.⁶

These factors, however, are insufficient to explain why many states passed such harsh and restrictive laws. Changing demographics alone did not make the rise

of S.B.-1070-like legislation inevitable, nor were they of primary importance to their rise. Instead:

- Political context matters: Republican-leaning cities and states were much more likely to be receptive to restrictive laws, while the relative importance of agricultural interests to a state makes the potential for restrictive laws less likely.
- Issue entrepreneurs took advantage of circumstances, such as extreme political polarization after the contested 2000 presidential election and the rise of border security concerns after 9/11, to spread attrition through enforcement, or self-deportation, laws throughout the country.
- A dual strategy: These issue entrepreneurs first blocked immigration reform at the national level and then simultaneously used federal inaction as an excuse to push the attrition-through-enforcement agenda at the state and local levels.

Factors reversing the course toward integration

In the past few years, the tide has largely turned, and a growing number of states are passing more-welcoming laws aimed at integrating immigrant residents and mitigating some of the harsh consequences of immigration enforcement. These laws have taken a range of forms, from providing driver's licenses and in-state tuition to limiting cooperation with federal immigration authorities. Importantly, states and localities are enacting these welcoming laws even as Congress has failed to pass immigration reform.

Two major factors influenced the shift away from restrictive laws and toward pro-integration laws. First, the Supreme Court struck down much of Arizona's S.B. 1070 in 2012,⁷ paving the way for federal courts to place significant limitations on local enforcement of federal immigration law and much of the attrition-through-enforcement agenda.⁸

Second, the 2012 presidential election provided a turning point away from attrition-through-enforcement laws as a political strategy. Republican candidate and former Gov. Mitt Romney (R-MA), who ran on a platform of self-deportation, lost to President Barack Obama by record margins among both Latino and Asian American voters.⁹ In the aftermath of the election, major conservative pundits such as Sean Hannity and Bill O'Reilly "evolved" on the need for immigration reform.¹⁰

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And while pro-immigrant integration laws have been around for years—for example, in-state tuition laws for unauthorized immigrants—the number and scope of these laws have expanded significantly since 2012.¹¹ In the past year, for example, California and Connecticut have passed TRUST Acts, which limit state cooperation with federal immigration officials, and thirteen jurisdictions¹² now grant driver’s licenses to unauthorized immigrants.

States have moved toward more positive laws for a variety of reasons:

- As with restrictive laws, political contexts matter. Democratic-leaning cities and states are much more likely to pass such legislation than Republican-leaning areas. Municipal identification cards, for example, have only been passed in Democrat-controlled cities, while expanded driver’s licenses for the unauthorized have also generally been passed in Democratic-leaning states.
- The size of the Latino electorate, and the immigrant electorate more broadly, makes a difference, and states with more Latinos and naturalized immigrants are more likely to provide driver’s licenses, in-state tuition, and financial aid for unauthorized residents.

Beyond these state-specific circumstances, three other factors help explain the rise of pro-immigrant integration laws:

- A broader coalition of supporters: Pro-immigrant groups and coalitions have teamed up with clergy, police chiefs, labor unions, and business groups to help pass pro-integration legislation, particularly as progress on the national front has stalled.
- States are responding to ramped-up immigration enforcement by attempting to mitigate its harmful effects and ensure that only serious criminals are caught up in the immigration system, rather than, for example, people picked up for traffic violations or other low-level offenses.¹³
- Executive action, in the form of the Deferred Action for Childhood Arrivals, or DACA, program, has also made a difference. This program has pushed many states to take another look at their policies on driver’s licenses for unauthorized immigrants as they grapple with how to grant licenses to the DACA population.

With or without immigration reform at the national level, states and localities will continue to play a significant role in regulating the lives of immigrant residents.

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