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Anna Ludwikowski
Zelnick & Erickson, P.C.
Woodbridge, VA, USA

The Role of Congress, President and the Supreme Court in Defining Immigration Policy in the United States

In the absence of comprehensive immigration reform in the US, many states and local governments have attempted to enact their own immigration policies. In 2010, Arizona legislature passed the *Support Our Law Enforcement and Safe Neighborhoods Act* (referred to as SB-1070, the version introduced in Arizona's senate) to decrease illegal immigration within the state.

A few months before the presidential elections of 2012, two issues – healthcare and immigration – became the main focus of Barack Obama's second presidential campaign, especially because the US Supreme Court agreed to review the constitutionality of both acts: federal law – *Patient Protection and Affordable Care Act,* and state law – SB-1070. The decisions of the Supreme Court were eagerly anticipated and, quite surprisingly, they brought the president a double victory in June 2012.

The Supreme Court confirmed that states lack the power to regulate immigration issues and create their own immigration policy. Its ruling preserved federal control over immigration. However, in light of the inability of Congress to pass a comprehensive immigration law, we may expect a gridlock resulting in temporary measures aimed to solve the most crucial problems with executive orders of the president, or further changes in enforcement policy.

1. Introduction

President Barack Obama made two main promises during the presidential campaign in 2008: healthcare reform and comprehensive immigration reform. Only one of these promises was fulfilled. *The Patient Protection and Affordable Care Act* – so--called "Obamacare" – was passed by Congress after one year of clashes between the two main parties, and signed by the president in March 2010. Obamacare soon triggered the opposition of 26 states opposed to the new legislation, mainly because of the so-called "individual mandate" provision, requiring uninsured persons to

purchase an insurance policy and insurance companies to comply with minimum standards of protection. As the majority of the population disapproved of the president's health reform, numerous lawsuits were filed in federal courts asserting its unconstitutionality.

During Obama's first term, Congress was not able to pass comprehensive immigration reform. The bill introduced by Democratic Senators Robert Menendez and Patrick Leahy in 2010 never received enough votes to become a law (S. 3932 (111th Congress): *CIR Act of 2010*). The proposal intended to cure the current immigration system by providing more benefits for legal immigrants (for example, reducing backlogs of employment and family-based immigrant visas, and promoting family unity by allowing more families to stay together), and by providing measures which could legalize illegal immigrants (*Comprehensive Immigration Reform*).

On the other hand, during the past decade, the US government has increased its efforts to prosecute, remove, and prevent further immigration of undocumented aliens. These efforts have included enhancing border security by increasing the number of border patrol officers, expanding the use of expedited removal and building fences along the southern border. President Obama has deported over 1 million illegal immigrants since he took office in 2008 (he has been nicknamed "Deporter in Chief" for this reason). Despite government efforts, the number of unauthorized aliens residing in the US has increased to 11.6 million. Fears of overcrowding, unemployment, and cultural fragmentation are especially visible in southern states, i.e. Arizona, Texas, New Mexico, Utah and Colorado. Economic factors, especially in the recent years of recession, also play an important role in the growing hostile attitude toward illegal immigrants. In 2009, for example, services provided to illegal aliens, including health, education, and incarceration, cost Arizona – one of the border states – an estimated $2.7 billion (Barnes).

In the absence of comprehensive immigration reform, many states and local governments have attempted to enact their own immigration policies. In 2010, Arizona legislature passed the *Support Our Law Enforcement and Safe Neighborhoods Act* (referred to as SB-1070, the version introduced in Arizona's senate) to decrease illegal immigration within the state. According to Section 1 of this statute, "the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States." The act made it a state misdemeanor for an alien to be in Arizona without carrying the required documents, and obligated police to make an attempt to verify a person's immigration status with the federal government if there is reasonable suspicion that the person is an illegal alien. Similar provisions were also enacted in other states. For example, Alabama, South Carolina, and Utah introduced new requirements for police officers to investigate the immigration status of all persons they stop if "reasonable suspicion" exists that they are in the country illegally.

A few months before the presidential elections of 2012, these two issues – healthcare and immigration – became the main focus of Barack Obama's second presidential campaign, especially because the Supreme Court agreed to review the constitutionality of both acts: federal law – *Patient Protection and Affordable Care Act*, and state law – SB-1070. The decisions of the Supreme Court were eagerly anticipated and,

quite surprisingly, brought the president a double victory in June 2012. It was rather anticipated that the right wing of the Court would prevail in deciding that Obamacare was unconstitutional on the presumption that it forces people to buy healthcare insurance against their will. In *NFIB v. Sibellius* (567 US (2012)), the Supreme Court upheld the key provision of the healthcare act, so despite Republicans' efforts and promises to repeal the law, Obama could claim success in that he extended health coverage to more than 30 million uninsured Americans (it will become effective on January 1, 2014). By a vote of 5–4, the Court upheld the individual mandate component of the *Affordable Care Act* as a valid exercise of Congress's power to "lay and collect taxes" (Art. I, §8, cl. 1). In other words, it does not violate the Constitution to impose a financial penalty on individuals not obtaining health insurance because it may reasonably be characterized as a tax. The decision was written by conservative Chief Justice John Roberts, who was joined on this issue by liberal Justices Ruth Ginsburg, Elena Kagan, Sonia Sotomayor and Stephen Breyer.

Regarding the immigration law, the Court struck down three out of the four provisions of the Arizona law, demonstrating that the federal government has real control over immigration policy. This article focuses only on the second issue. Its main purpose is to show what we can expect after the ruling of the Supreme Court, and Obama's subsequent victory in the 2012 elections in terms of changing US immigration law.

2. Who decides about immigration?

Immigration law is a federal domain. Although the US Constitution does not mention explicitly that the power to regulate immigration is among the enumerated powers of Congress, it is assumed that power to establish uniform rules of naturalization, and inherent foreign policy power, also includes control over immigration. Moreover, federal authority to regulate immigration matters is implied as an incident to sovereignty, and the idea that every sovereign nation has the power to forbid the entrance of foreigners within its territory and "admit them upon such conditions as it may see fit to prescribe" (*Ekiu v. US*, 142 US 651, 659 (1892). See Kurzban: 33).

In the opinion of the Justice Department, "it is understandable that communities remain frustrated with the broken immigration system, but a patchwork of state laws is not the solution and will only create problems" (Moffett). The US government accepts that a state may adopt regulations that have an indirect or incidental effect on aliens, but a state may not establish its own immigration policy in a manner that interferes with federal immigration law. As the Supreme Court noted in 1876, "it is fundamental that foreign countries concerned about the status, safety, and security of their nationals in the United States must be able to confer and communicate on this subject with one national sovereign, not the 50 separate States" (*Chy Lung v. Freeman*, 92 US 275, 279-280 (1876)).

However, the federal law recognizes that states can take an active role in enforcement of federal regulations on their territories. *Immigration and Nationality Act* (INA) §287 (g) provides for cooperation between federal and state law enforcement agencies in immigration matters. It allows state and local police to receive expanded authority to enforce federal immigration policy by entering into agreements with

the Department of Homeland Security (DHS). US Immigration and Customs Enforcement (ICE), which is a part of the DHS, enforces immigration law inside the US and is responsible for detention and removal of non-citizens. The ICE trains state officers, and local enforcement is conducted under the supervision of the ICE. The Attorney General may enter into agreements with law enforcement agencies at the state and local level to enforce immigration laws; for example, states can receive federal funds to construct detention centers (INA §103 (a)(9)).

Proponents of Arizona SB-1070 have argued that, based on the cooperation of federal and state agencies, the state is entitled to pass a law serving better enforcement of existing federal law, and studies show that 60% of the national population favor requiring the local police to verify immigration status (Rasmussen Reports).

Opponents claimed however, that states crossed the constitutional line by trying to establish their own immigration policies, since it violated the preemption doctrine.

3. Preemption doctrine

The preemption doctrine originates in the Supremacy Clause of the US Constitution (Article VI.2), according to which the Constitution, federal statutes, and all treaties are "the supreme law of the land."[1] In the event of conflict between any of these and state regulations, the federal law must prevail. The preemption principle is applicable if Congress intends to regulate a given field; if Congress chooses to legislate, its regulation supersedes any conflicting action by a state government (Gardbaum). However, if Congress does not act, the states are allowed to legislate on the basis of their general police power, derived from the Tenth Amendment. For example, before passing *The Immigration Reform and Control Act* (IRCA), the Supreme Court found that a single state had authority to pass its own laws in the area of employment of foreign nationals. Following this approach, for example, a California law imposing civil penalties on the employment of aliens who were not entitled to lawful residence in the US was upheld by the Court in *De Canas v. Bica* in 1976 (424 US 351 (1976)). The court upheld this law, since it had only an "indirect impact on immigration."

Preemption can be claimed by Congress directly in its legislation, or recognized by implication. Even without an express preemption provision, state law must yield to a congressional act if Congress intends to occupy a given field, as happened in the case *California* v. *ARC America Corp.* 490 US 93, 100 (1989) (field preemption), or if a state regulation is in actual conflict with a federal statute, as was the case in *Hines* v. *Davidowitz* 312 US 52, 67 (1941) (conflict preemption). The Court finds preemption where it is impossible for a private party to comply with both state and federal law (actual preemption) and where the state law is an obstacle to the accomplishment and execution of Congress's full purposes and objectives (obstacle preemption). Even in the absence of a direct conflict between state and federal law, a conflict exists

[1] This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

if the state law is an obstacle to the accomplishment and execution of the full purposes and objectives of Congress (*Hines v. Davidowitz,* at 67*; Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372-73 (2000)). What is a sufficient obstacle is determined by examining the federal statute and identifying its purpose and intended effects.

In *Pennsylvania v. Nelson*, the Supreme Court established 3 criteria deciding on the validity of state legislation. According to this notion, state law is preempted if any of the following scenarios takes place: 1) the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the states to supplement it; 2) the national interest is so dominant on a subject that the federal system must be assumed to preclude enforcement of state laws on the same subject; 3) enforcement of state law presents a serious danger of conflict with the administration of the federal program (350 US 497, 502, 504-505 (1956)).

The federal courts traditionally refused to recognize the states' power to regulate immigration. For example, in the previously mentioned *Hines v. Davidowitz* opinion, the Supreme Court struck down a Pennsylvania statute imposing the requirement of alien registration on a preemption basis. In *Plyler v. Doe*, 457 US 202 (1982), the same Court struck down a state law denying funding for education to illegal aliens as discriminatory, and simultaneously struck down a municipal school district's attempt to charge illegal immigrants an annual $1,000 tuition fee for each illegal alien student to compensate for the lost state funding. The court ruling was based on the XIV Amendment Equal Protection Clause. However, in most cases, the refusal to allow a state to legislate is based on the supremacy clause and preemption. The same strategy was used in the argument of *US v. Arizona*.[2] The following section will briefly describe what attempts the state of Arizona made to minimize illegal immigration on its territory, and how the Supreme Court ruled on each of the four controversial provisions of the Arizona law.

4. *US v. Arizona*

The federal district court, in response to the action brought by the United States against Arizona, issued a preliminary injunction preventing four of its provisions from taking effect. The Appellate Court for the Ninth Circuit affirmed, agreeing that the United States had established a likelihood of success on preemption grounds. The Supreme Court granted certiorari to provide the answer to whether this state regulation directly interferes with the operation of the federal scheme, and whether Arizona law stands as an obstacle for the accomplishment and execution of the full purposes and objectives of Congress.

The Obama administration's view, expressed by Donald B. Verilli Jr., Solicitor General, during the oral arguments before the Supreme Court, was that the state does not have the power to exclude from its borders a person who is there illegally because the Constitution vests exclusive authority over immigration matters in the national government. The opposite argument, visibly favored by Justice Antonin Scalia, was based on the notion of the sovereignty of states that should be able to defend their borders (Oral Arguments before the Supreme Court).

[2] The administration did not make racial profiling arguments to undermine its validity; the arguments were based solely on the preemption doctrine.

Proponents of the Arizona law claim that imposing penalties on illegal aliens seeking employment in the state would be consistent with the exercise of its police power to preserve Arizona jobs for its own lawful residents. Each state constitutes a separate sovereign economic community and should be able to make independent decisions to protect the economic vitality of its businesses.

On June 26, 2012, the Court struck down three provisions of the controversial Arizona law, and upheld only one of them by a 5-3 vote.[3] Out of the 76 pages of Court opinion, 24 pages constitute a dissenting opinion delivered by Justice Scalia. One of the provisions was found by the Court unconstitutional because of field preemption, and two others because of obstacle preemption.

The Court agreed that Arizona bears many of the consequences of illegal immigration, as hundreds of thousands of deportable aliens, responsible for rising safety risks and crime rates, are apprehended in that state each year (567 US __ (2012), slip op. at 6). However, it concluded that the states may not pursue policies that undermine federal law, and explained why three of the four provisions are preempted by federal law:

Section 3 of SB 1070 created a new state misdemeanor: willful failure to complete or carry an alien registration document, in violation of 8 USC 1304 (e) or 1304(a). The Court confirmed that the state may make the violation of federal law a state crime in some instances, but cannot do it in a field that has been occupied by federal law. Based on its former precedent, *Hines v. Davidowitz*, in *US v. Arizona* the Supreme Court repeated that where Congress occupies an entire field – in this case, the field of alien registration – even complementary state regulation is not permissible (567 US __(2012), Slip op., at 10). The Court rejected the argument of the counsel for Arizona – Paul Clement – who argued for differences between *Hines v Davidowitz* and *US. v. Arizona*: "In Hines, Pennsylvania passed its statute before Congress passed the alien registration statute, and there was a conflict between the provisions of the Pennsylvania registration law and the subsequent Federal registration law. […] Here it's quite different. Arizona looked at the precise provisions in the Federal statute and adopted those standards as its own, and then it imposed parallel penalties for the violation of the State equivalent" (Oral arguments before the Supreme Court: 30). The Court decided that even if the provision has the same aim as the federal and adopts its substantive standards, the field preemption doctrine does not allow such actions in the areas the federal government reserved for itself.

Section 5 (c) of SB 1070 created a state criminal prohibition where no federal regulation on this issue exists; it made a state misdemeanor for "an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor." It should be noted that the Court, for the second time, decided to rule on the constitutionality of the Arizona regulations of illegal employment. The previously mentioned *Immigration Reform and Control Act* (IRCA) established sanctions against employers for "hiring, recruiting or referring for a fee" foreign nationals not authorized to work in the US. Employers who knowingly hire such aliens are subject to both civil and criminal sanctions. The IRCA includes express prohibition for states to regulate the same activities, providing that

[3] Justice Elaine Kagan took no part in the consideration and decision of this case because of her former involvement with issues presented while she served as a Solicitor General.

its "provisions […] preempt any State or local law imposing civil or criminal sanctions (other than through licensing or similar laws" (8 USC §§ 1324A(h)(2)). In 2007, Arizona passed the *Legal Arizona Workers Act*, which provided that the licenses of state employers that knowingly or intentionally employ unauthorized aliens may be, and in certain circumstances must be, suspended or revoked. In *Chamber of Commerce v. Whiting*, the Supreme Court found that Arizona's licensing fell within the confines of the authority Congress chose to leave to the States, and therefore was not expressly preempted. The Court concluded that Arizona's procedures simply implement the sanctions that Congress expressly allowed the States to pursue through licensing laws (563 US (2011), 15). The decision made clear that the states can revoke or suspend business licenses of companies hiring illegal workers; however, they are prevented by federal law from imposing any civil or criminal penalties on these companies.

In *US v. Arizona*, the Supreme Court once again reviewed Arizona's efforts to curb illegal employment. Under US immigration law, a foreign national cannot work in the United States without a valid work authorization document such as an employment authorization document (EAD), valid for general employment, or non-immigrant visa (for example H-1B or L-1), allowing an employer specific employment. However, only employers are subject to penalties for knowingly hiring unauthorized aliens. Arizona, in Section 5(c) of SB 1010, tried to impose criminal sanctions on employees, as well. Proponents of this provision pointed to the previously mentioned decision, *De Canas v. Bica*, in which the Supreme Court upheld California law imposing civil penalties on the employment of aliens "not entitled to lawful residence in the US" against the preemption challenge. In *US v. Arizona*, the Supreme Court distinguished the previous California case from the situation in Arizona because of one important aspect: lack of a federal scheme at the time of the ruling in *De Canas*. IRCA, enacted by the Congress in 1986, does not mention any additional penalties that could be imposed against the employees themselves. The legislative history and structure of this enactment reveals, however, that it would be inappropriate to impose criminal penalties on aliens who seek or engage in unauthorized employment – as these penalties would be "unnecessary and unworkable" (567 US (2012), slip op.: 14). Accordingly, the Court ruled that contradicting Arizona law is an obstacle to the regulatory system chosen by Congress (567 US (2012), slip op.: 15).

Another provision of SB 1070 struck down by the Court was Section 6, authorizing state officers arresting a person without a warrant when the officer has a reasonable cause to believe that the person has committed a public offense that makes him removable from the United States. The Court noted that this provision attempts to provide state officers with even greater authority to arrest aliens on the basis of possible removability than Congress has given to trained federal immigration officers, which, as a result, would allow the state to achieve its own immigration policy. Decisions on removability require a determination whether it is appropriate to allow a foreign national to continue living in the US. Such decisions touch on foreign relations and, as such, should be made with one voice (567 (2012), sl. op. at 18). Accordingly, unilateral decisions of state officers to arrest an alien for being removable exceed the scope of federal-state cooperation provided in INA 287 g.

The only provision left in force by the Supreme Court is Section 2(B). The Court did not find any conflict and decided that it was too early to enjoin it before the courts had an opportunity to apply it – the Court avoided a too early review of the constitutionality of the state law, and expressed the opinion that the language of the controversial provision 2 (B) can be read to avoid concerns about unconstitutionality. As some commentators noted, the Court put states on notice that it could soon revisit the "show me your papers" issue, and gave state governments a narrow path under which it would be considered legal for state police to check immigration status (Lee).

As far as other states' efforts to make a separate state crime or misdemeanor for actions already regulated by federal law, or to create a brand-new class of state misdemeanors (for example, a proposed rule in Alabama to make it a felony for an alien not legally present in the US to enter or attempt to enter into a business transaction with a state or its subdivision), they most likely will be found unconstitutional by the courts following the US Supreme Court's recent decision.

5. After the ruling in *US v. Arizona*

The decision of the Court in this controversial case was not unanimous. Three justices wrote separate dissenting opinions, with Justice Scalia being the most condemning of the Court's reasoning. According to this conservative Justice, Arizona, by enacting SB 1070, was just enforcing federal law, since state law criminalizes the same thing that the federal law already does. Accordingly, it is not an issue of lawmaking, as the state is only securing the methods of enforcing federal regulation in the absence of federal enforcement. He argued that it is misleading by the Court to say that Arizona contradicts federal law; it is only enforcing the existing federal law while the president declines to enforce it (567 US (2012), opinion of Scalia, slip op. at 21). His view represents how deeply American society is divided on the issue of regulating immigration.

The first reaction of state enforcement officers in Arizona was that the new law was rather confusing. Section 2(B) requires police to inquire about immigration status, yet this mandate applies only when an officer has cause for suspicion, and it may be ignored if enforcement is not "reasonably practicable" (Hensley, Wagner). The important issue, not addressed by the Supreme Court, is what factors police officers may consider to build "reasonable suspicion" that a person is in the country illegally. Once they have this suspicion, they are required to contact ICE agents to verify the immigration status. Section 2 h introduces the procedure for non-compliance with this requirement – the police officer may face a civil penalty from $500 to $5,000.

In addition, once the person is arrested, it cannot be released until his/her status is confirmed by federal authorities. Section 2(B) states that officers may not consider as "a reasonable factor" race, color or national origin, "except to the extent permitted by the United States' and Arizona's constitutions." So, formally and generally, racial profiling is prohibited. The question remains, however, of what factors the police can take into account to develop "reasonable suspicion" about someone's illegal status. How are they going to enforce this provision without discrimination based on someone's appearance or accent?

SB 1070 does not define "reasonable suspicion." In the criminal procedure context, it is a legal standard, first articulated in *Terry v. Ohio*, 392 US 1 (1985), which is defined "as specific and articulable" facts that disclose unusual conduct which leads police to conclude that criminal activity may be afoot (392 US 1, at 30). The Supreme Court allows police officers to stop the suspect if such a conclusion is made, in contrast to a full arrest that can be allowed only if the higher standard – "probable cause" – is met. The Supreme Court, itself, admitted that "articulating precisely what 'reasonable suspicion' and 'probable cause' mean is not possible" (*Ornelas v. United States*, 517 U.S. 690 (1996): 695). On the other hand, there are numerous decisions by the Court trying to define the proper scope of this issue. Someone can get some instructions from this caselaw. For example, flight from the police, which alone does not have to objectively constitute reasonable suspicion, may be sufficient for conducting an investigatory stop in drug trafficking areas (*Illinois v. Wardlow*, 582 US 119 (2000)). However, these conclusions cannot be generalized. Most of these decisions are quite ambiguous plurality opinions, and it is not very clear how the standards used by the courts in these cases can be transferred to the field of immigration law, and what conduct may lead a police officer to suspect that someone is in the country illegally.

In addition, the phrase "except to the extent permitted by the federal or state constitutions" creates even more ambiguity, because federal courts in the past upheld the use of race or ethnicity in determinations of reasonable suspicion for stops and inquiries. For example, in 1975, in *US v. Brignoni-Ponce*, although the Supreme Court did not allow race to be considered the only factor in immigration enforcement, it added that "the likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor" (422 U.S. 873, 887). The Arizona Supreme Court in *State v. Graciano* reaffirmed this approach, concluding that enforcement of immigration laws often involves a relevant consideration of ethnic factors.[4]

It remains to be seen how the police force is going to handle its obligation under 2(B). It can be predicted that many lawful permanent residents or even US citizens will be stopped in order to check their status. Those unable to show immediately their Arizona driver's license can be taken into custody until their status is verified. During the oral arguments, the justices of the Supreme Court spent a lot of time analyzing this provision, and generally did not know how this provision would be enforced. Justices pointed out that it is a critical issue how long a person could be detained in order for a police officer to contact federal authorities and check the person's immigration status. However, in the end, the majority of the Court reached the conclusion that "it is not clear at this stage and on this record that the verification process would result in prolonged detention. […] At this stage, without the benefit of a definitive interpretation from the state courts, it would be inappropriate to assume 2(B) will be construed in a way that creates a conflict with federal law" (567 US (2012), slip op. at 23, 24).

The meaning of *US v. Arizona*'s political aspect is quite clear: despite the fears of Democrats, the Supreme Court confirmed that the states lack the power to regulate

[4] See Chin, Johnson. For a more detailed analysis see: Chin, Byrne Hessick, Massaro, Miller.

immigration issues and create their own immigration policy. The majority of justices agreed with Solicitor General Verilli, who argued that it is not realistic to assume that the aggressive enforcement of sections 3 and 5 in Arizona was going to lead to a mass migration back to countries of origin. In his opinion, a far more likely outcome would be migration of illegal immigrants to other states within the United States – which is why this power should be exercised at the national level (Oral arguments before the Supreme Court: 68, 70).

6. Collecting the votes: The impact of federal immigration policy on the 2012 elections

The government of Arizona was eager to start enforcing SB-170 to the limited degree allowed by the Supreme Court by instructing law enforcement officers to perform immigration checks, although the federal government made efforts to limit deportations during the election campaign. Shortly after the Supreme Court's ruling, the Obama administration suspended existing agreements with Arizona police over the enforcement of federal immigration laws, and issued a directive telling federal authorities to decline many of the calls reporting illegal immigrants that the Department of Homeland Security may get from Arizona police (Dinan).

Although the 2012 presidential elections were dominated by economic and job creation issues, President Obama, following the above-mentioned changes in his priorities, became very active on the immigration law front in his campaign. First, he decided to concentrate deportation efforts on removing undocumented immigrants with criminal records and to be more lenient toward aliens whose only offense was violating immigration laws such as overstaying. As a result, the number of removal orders in the first quarter of 2012 dropped significantly (Track Immigration, Track Reports, Inc.). Second, on June 15, 2012, the Department of Homeland Security announced *Deferred Action for Childhood Arrivals* (DACA), according to which certain young people who were brought to the United States as young children, and who do not present a risk to national security or public safety, will be considered for relief from removal from the country or from entering into removal proceedings. Specifically, the potential beneficiaries of this presidential action are illegal immigrants who are not older than 30, who came to the United States before age 16, who have lived there for at least five years, and are in school, are high school graduates or are military veterans in good standing. According to the presidential executive order, those who demonstrate that they meet the criteria will be eligible to receive "deferred action" for a period of two years (subject to renewal), and will be eligible to apply for work authorization (US Department of Homeland Security, DHS Press Release).

This action definitely helped the president to get more Latino votes, as Congress was unable to pass the *Development, Relief, and Education for Alien Minors Act* ("Dream Act") introduced in 2001 and re-introduced during Obama's first term. In the absence of this law, the reaction of the opposition was predictable and, in fact, Obama received an angry response from Republicans claiming that the president had bypassed the Congress, and had thus violated the law (Preston, Cushman). Also, by August 2012, governors of three states – Arizona, Nebraska and Texas – made

official statements denying certain state benefits, including driver's licenses, to the beneficiaries of the DACA program. Nevertheless, during 4 months – from August to December 2012 – the USCIS received 367,903 petitions for deferred action (258,708 from Mexicans alone), out of which approximately 1/3 was already approved (AILA Infonet, Doc. 12121458, posted 14 Dec. 2012).

In the 2012 elections, Latinos voted for Barack Obama over Republican Mitt Romney 71% to 27% (in 2008, Obama received 67% Latino votes). This victory is generally explained by the inability of Republicans to connect with Hispanic minorities. Obama's political maneuvers ensured that even his failure to achieve immigration reform could not result in swinging Hispanic votes to Mitt Romney (Rodriguez).

The commitments of the president to the Latino community – or, more generally, to American immigrants – were obvious, and their expectations seemed to be quite justified by the electoral performance. In fact, Obama is trying now not to disappoint his supporters. Shortly after his re-election, he re-confirmed that comprehensive immigration reform will be the primary goal during his second term. In the meantime, he made another decision to ease visa requirements for illegal immigrants who have a spouse, parent or child with US citizenship. Based on his new executive order, hundreds of thousands of undocumented aliens will be able to legalize their status without the fear of being separated for years from their American relatives (Nakamura, Bahrampour).

In June 2013, the Senate passed the bipartisan immigration bill "Security, Economic Opportunity, and Immigration Modernization Act," in a 68-32 vote (fourteen Republican Senators joined all Democrats in favor of the reform). However, it is expected that the bill will not get enough support in the House of Representatives, where it faces great opposition from Republicans, who object to creating a path to citizenship for about eleven million illegal immigrants.

7. Conclusion

To sum up, the decision in *US v. Arizona* was a victory for Obama's administration, as it preserved federal control over immigration. Until Congress passes a comprehensive immigration law, we may expect a gridlock resulting in temporary measures attempting to heal the most crucial problems with executive orders of the president, or further changes in federal enforcement policy. Also, other states can be tempted to pursue a policy that maximizes the apprehension of unlawfully present aliens so they can be imprisoned as criminals within the state unless the federal government agrees to direct its enforcement resources to remove these people. On the other hand, any state actions can be tempered by the federal government. As a result, we do not have a patchwork of federal and state law, but rather a patchwork of legislative enactments and executive measures either circumventing them, or blocking state efforts to engage in immigration law issues.

It is important to note that Obama's re-election of 2012 may eliminate some components of this vicious circle. During the fight over the fiscal cliff, some commentators expected that tough negotiations between the Congress and the White House may focus solely on tax-related issues and could sideline immigration reforms.

However, this did not prove true. Almost the very next day after voting on the fiscal cliff-related deal, it became clear that the Obama administration had learned a lesson from immigrants. Obama's speech on January 1, 2013, confirmed that the fiscal cliff talks would not affect immigration reform ("Obama Plans to Push Immigration Reform by End of January"). Furthermore, the reform may get bipartisan support in the future as many Republican leaders (Senators Marco Rubio and Paul Ryan, among others) are willing to cooperate with Democrats to move quickly on the issue that may be a key to a presidential victory in 2016.

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