

HUMANITARIAN AID IS NEVER A CRIME? THE POLITICS OF IMMIGRATION ENFORCEMENT AND THE PROVISION OF SANCTUARY

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INTRODUCTION

In September 2010, the United States Court of Appeals for the Ninth Circuit reversed the federal criminal conviction of humanitarian Daniel Millis for placing water for migrants crossing the United States-Mexico border in the Buenos Aires National Wildlife Refuge.¹ In 2008 Mr. Millis, an activist with the Sierra Club and the Tucson faith-based organization No More Deaths/No Mas Muertes,² had been found guilty of “Disposal of Waste” pursuant to 50 C.F.R. § 27.94(a), in the United States District Court for the District of Arizona.³ No More Deaths,

1. See generally *United States v. Millis*, 621 F.3d 914 (9th Cir. 2010).

2. No More Deaths/No Mas Muertes was formed in 2004, and became affiliated with the Unitarian Universalist Church of Tucson as an official church ministry in Summer 2008. See UNITARIAN UNIVERSALIST CHURCH OF TUCSON, *No More Deaths, No Más Muertes: Humanitarian Aid is Never a Crime*, <http://www.uuctucson.org/index.php/social-action/no-more-deaths-no-mas-muertes.html> (last visited Sept. 10, 2012).

3. *United States v. Millis*, No. CR 08-1211, 2009 WL 806731, at *6 (D. Ariz. Mar. 20, 2009). Mr. Millis was the driver of a vehicle containing four individuals (including himself) affiliated with No More Deaths for the purpose of placing water in the desert for

along with other faith-based organizations in Southern Arizona,⁴ have adopted the slogan “Humanitarian Aid is Never a Crime” in support of their mission to leave water for migrants crossing the desert near the United States-Mexico border.⁵ Although the district court rejected Mr. Millis’ defense that “leaving full jugs of life-sustaining water for human consumption does not constitute littering,”⁶ two judges on the three-judge panel of the Ninth Circuit that heard Mr. Millis’ case found that the term “garbage” in the regulation under which Mr. Millis was prosecuted is ambiguous, and vacated his conviction on those grounds.⁷

The Ninth Circuit’s ruling in *United States v. Millis* was lauded by immigrants’ rights groups, border activists, humanitarian and faith groups as a victory for Good Samaritans and peaceful protestors of federal immigration policy.⁸ Supporters of Mr. Millis and sympathetic

migrants. *Id.* at *1.

4. No More Deaths works closely with two other groups in Southern Arizona that provide humanitarian aid on the U.S.-Mexico border, Humane Borders and the Tucson Samaritans. *See Millis*, 2009 WL 806731, at *6.

5. *See, e.g.*, UNITARIAN UNIVERSALIST CHURCH OF TUCSON, *Numbing Numbers*, <http://www.nomoredeaths.org/Volunteer-Reflections/numbing-numbers.html> (last visited Sept. 19, 2012) (“No More Deaths adheres to the principle that Humanitarian Aid is Never a Crime.”). This stance is part of a larger international movement that asserts that the provision of humanitarian aid should not be criminalized in any situation, including armed conflict. *See generally* Joakim Dungel, *A Right to Humanitarian Assistance in Internal Armed Conflicts Respecting Sovereignty, Neutrality and Legitimacy: Practical Proposals to Practical Problems*, J. HUMANITARIAN ASSISTANCE (May 15, 2004), <http://sites.tufts.edu/jha/archives/838>.

6. *See Millis*, 2009 WL 806731, at *4. In her opinion, United States District Judge Cindy K. Jorgenson stated that

Millis’ argument that his conviction cannot stand because the water jugs were of value and would have provided life-sustaining water for human consumption fails to recognize that if every person was permitted to subjectively determine if something placed on the ground is of value, no discarded item could be the basis of a littering conviction.

Id. at *5.

7. *See Millis*, 621 F.3d at 918. In vacating Mr. Millis’ conviction due to the ambiguity of the statute, the court determined that the rule of lenity applied in this case.

(The narrow question we consider today is whether the term ‘garbage’ within the context of the regulation was sufficiently ambiguous that the rule of lenity would apply in this case. Here, given the common meaning of the term ‘garbage,’ coupled with the regulatory structure, we conclude that [50 C.F.R.] § 27.94(a) is sufficiently ambiguous in this context that the rule of lenity should apply The only question is whether the rule of lenity should be applied to the offense charged. We conclude that it does apply, and we reverse the judgment of the district court.)

8. *See, e.g.*, UNITARIAN UNIVERSALIST CHURCH OF TUCSON, *Humanitarian Action Triumphs Over Legal Action*, <http://www.uuctucson.org/index.php/social-action/humanitarian-action-triumphs-over-legal-action.html> (last visited Sep. 10, 2012)

(Attorney Bill Walker, who represented Walt Staton, Dan Millis and 13 other humanitarians on citations they got for ‘littering’ while doing humanitarian aid work

observers were buoyed by what they believed to be the implication of the Court's decision—that “we do not want to be a country that puts humanitarians in prison for giving water to people dying of thirst.”⁹ However, nowhere in the Court's opinion is there any indication—implicit or otherwise—that the Court's rejection of the Government's prosecution of Mr. Millis under 50 C.F.R. section 27.94(a) is a commentary on federal immigration policy generally. The Ninth Circuit overturned Mr. Millis' conviction because it determined that the regulation governing his conviction is ambiguous; it did not explicitly address his humanitarian defense in its holding, and did nothing to signal either its approval or disapproval of the provision of humanitarian aid to those seeking refuge within our borders.¹⁰

The Ninth Circuit's silence regarding Mr. Millis' motivation for leaving water in the desert—the desire to protect and sustain human life—belies the role that Congress, the Department of Justice, the Department of Homeland Security, and the federal courts play in creating and sustaining an immigration policy that causes hundreds of people to die in the desert on the United States-Mexico border each year, and countless more migrants to live in the shadows once their journey to the United States is complete due to our government's “enforcement only” immigration policies. Contributing to the climate of fear are recent attempts to criminalize the provision of humanitarian aid to undocumented immigrants by federal, state, and local governments,¹¹ which present a new and troubling challenge for people of faith and conscience who feel compelled to “welcome the stranger,”¹² even in the face of potential prosecution.

This Article argues that the unprecedented increase in the enforcement of immigration law—on both the border and the interior—and the politics surrounding comprehensive immigration reform has

on the Buenos Aires National Wildlife Refuge has notified us that ‘the government has abandoned their appeal in the Millis case and has asked that the Staton case be remanded to the trial court for dismissal. This is a great double victory for us. We are now three for three against the government in Humanitarian aid cases!!!’).

9. See Adam Cohen, *The Crime of Giving Water to Thirsty People*, TIME MAG., Sept. 8, 2010, <http://www.time.com/time/nation/article/0,8599,2016513,00.html>.

10. In fact, the Court pointed out that had Mr. Millis simply been charged with violating a different federal statute, it is possible that a conviction for leaving water in the desert without a permit could have been sustained on appeal. See *Millis*, 621 F.3d at 918 (“*Millis* likely could have been charged under a different regulatory section, such as abandonment of property or failure to obtain a special use permit. However, that is not the question presented here.”).

11. See *infra* Part II.

12. See *Matthew* 25:31- 46 (Self-Pronouncing ed., Meridian 1962).

given rise to a renewed need for the provision of sanctuary for undocumented immigrants, and surveys the different forms of action that can constitute sanctuary.¹³ Part I discusses Mr. Millis' case in order to examine in further detail his legal defense—and personal belief—that “humanitarian aid is never a crime,” and the Court’s discussion of whether water left in the desert for humanitarian purposes is “garbage,” “litter,” or something else entirely. Part II discusses the current effort by legislatures in states such as Alabama, Arizona, Georgia, Indiana, Oklahoma, South Carolina, and Utah to further criminalize and prosecute individuals who provide humanitarian aid for “harboring” or “transporting” undocumented immigrants at the state level, including those who provide food, shelter, and medical treatment. Part III examines previous federal prosecutions of providers of humanitarian aid to migrants, particularly those affiliated with the faith-based Sanctuary Movement of the 1980s, while also looking at the various forms of action sanctuary for undocumented immigrants can take. In doing so, this section discusses the missions of several organizations involved in the contemporary New Sanctuary Movement that has arisen in response to the immigration enforcement policies of the G.W. Bush and Obama administrations, as well as the non-cooperation policies and affirmative benefits for undocumented immigrants provided by so-called modern “sanctuary cities.”¹⁴ The Article concludes with Part IV, which discusses how the provision of sanctuary to undocumented immigrants has been linked to the unpopular political term “amnesty,” how this negative framing of the issue has hindered reasonable proposals for immigration reform such as the DREAM Act,¹⁵ and offers suggestions

13. As others have noted, the term “sanctuary” has Biblical roots, and been applied in many social and legal contexts outside the provision of humanitarian aid to undocumented immigrants, including the American anti-slavery movement and the protection of Jews and other persecuted minorities in the World War II Holocaust. Additionally, Professor Rose Cuison Villazor has suggested that in relation to sanctuary for undocumented immigrants, sanctuary can take two primary forms of action – those that occur in the “private sphere” (the provision of food, water, and shelter) and those that occur in the “public sphere” (the policies enacted by “sanctuary cities”)

([A]cknowledging the public/private dichotomy of sanctuaries is useful in analyzing and critiquing current federal government policies and practices that have ignored the boundaries between public places, where federal immigration law enforcement employees typically enjoy great regulatory and enforcement powers, and private spaces, particularly one’s home, where the power of the federal government to implement immigration laws should be balanced against other concerns such as the right to property and right to privacy.)

See Rose Cuison Villazor, *What is a “Sanctuary?”*, 61 SMU L. REV. 133, 150, n.109 (2008).

14. See *infra* Part III.D.1.

15. The Development, Relief, and Education for Alien Minors Act of 2010 (“DREAM

for how we can move toward crafting comprehensive immigration reform that puts the sanctity of human life on par with national security.

I. *UNITED STATES V. MILLIS*: IS WATER FOR THE DYING “GARBAGE” OR HUMANITARIAN AID?

The argument that people of faith and conscience are called to provide humanitarian aid to those in need, regardless of their immigration status, is not a novel one.¹⁶ Additionally, civil disobedience in the face of unjust and inhumane law is a central precept of many faiths, including Christianity.¹⁷ However, the escalation of immigration enforcement over the past several decades—particularly on the United States-Mexico border—has led to an increased tension between balancing “a responsible border policy with compassion for the alien.”¹⁸ In light of these competing interests, it has become more difficult for individuals who feel compelled by their religious and spiritual beliefs to provide assistance to undocumented immigrants to comply with both the tenets of their faith and the rule of law. As such, the choice to act and potentially subject oneself to criminal prosecution, or to refrain from acting in the face of human suffering, is an untenable position for some activists.¹⁹

Act of 2010”), S. 3992, 111th Cong. (2010), available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:SN03992:@@X>.

16. See, e.g., Cohen, *supra* note 9

(In the biblical parable, Jesus told of the Samaritan who went to the aid of a traveler who was left for dead by the side of a road. Jesus then told his followers, ‘Go and do likewise.’ But you need not be Christian, or religious at all, to know that what Millis did was fundamentally right and moral—and that it should not be against the law.).

17. See, e.g., EVANGELICAL PRESBYTERIAN CHURCH, *Pastoral Letter on Civil Disobedience* (June 1996), <http://www.epc.org/about-the-epc/pastoral-letters/civil-disobedience>

(There are times . . . when the laws of the land permit or command behavior which is clearly contrary to the will of God in Scripture. Injustice, harm to people, and oppression are of such a degrading and evil nature that the Christian as an individual or united with other Christians faces the question of breaking a civil law in order to bring about justice or preserve human life.).

18. See MATTHEW SOERENS & JENNY HWANG, *WELCOMING THE STRANGER: JUSTICE, COMPASSION & TRUTH IN THE IMMIGRATION DEBATE* 11 (2009) (quoting Reverend Richard Cizik, *Christian Groups Torn Over Illegals*, WASH. TIMES, Jan. 14, 2007, <http://www.washingtontimes.com/news/2007/jan/14/20070114-014418-1120r/>).

19. Activist Jim Corbett, a Quaker and rancher in Southern Arizona, termed this call to action “Civil Initiative,” which is defined as “[o]ur responsibility for protecting the persecuted must be balanced by our accountability to the legal order.”

UNITARIAN UNIVERSALIST CHURCH OF TUCSON, *Civil Initiative*, <http://www.nomoredeaths.org/Information/civilinitiative.html> (last visited Sept. 19, 2012). Jim Corbett is also one of the individuals affiliated with the Sanctuary Movement

This is the dilemma that Daniel Millis found himself in when he and other volunteers with No More Deaths left water for migrants in the Buenos Aires National Wildlife Refuge in 2008. The affirmation of Mr. Millis' conviction in the United States District Court for the District of Arizona for littering in 2009²⁰—and the reversal of that conviction by the Ninth Circuit Court of Appeals in 2010—sheds light on the current conflict between the politics of immigration enforcement and the duty to provide humanitarian aid to those whose lives are in danger.

A. U.S. v. Millis—*District of Arizona (2009)*

On February 22, 2008, Daniel Millis and three other individuals serving as volunteers with the faith-based humanitarian group No More Deaths/No Mas Muertes were approached by two United States Fish and Wildlife Service Officers, Allen Kirkpatrick and Scott Kozma, as they placed jugs of water in the Buenos Aires National Wildlife Refuge without the proper permits to do so.²¹ Millis was the driver of the vehicle that was transporting the No More Deaths volunteers and the water jugs they intended to place throughout the Refuge.²² After some back-and-forth between the Fish and Wildlife Service Officers and the No More Deaths volunteers about retrieving the water jugs that had already been placed in the Refuge in order to avoid receiving a citation for littering,²³ Mr. Millis was cited by Officer Kirkpatrick for Littering on a National Wildlife Refuge in violation of 50 C.F.R. section 27.94,²⁴

prosecuted by the federal government for harboring undocumented immigrants in *United States v. Aguilar*, 883 F.2d 662 (9th Cir. 1989).

20. Mr. Millis was initially tried before Magistrate Judge Bernardo P. Velasco, United States District Court for the District of Arizona on July 25, 2008, and found guilty on September 22, 2008. *See United States v. Millis*, CR 08-1211, 2009 WL 806731, at *3 (D. Ariz. Mar. 20, 2009). Pursuant to FED. R. CRIM. P. 58(g) (2006), Mr. Millis appealed the judgment of the Magistrate Judge to the District Court. *See* 18 U.S.C. § 3402 (2006) (“In all cases of conviction by a United States magistrate judge an appeal of right shall lie from the judgment of the magistrate judge to a judge of the district court of the district in which the offense was committed.”).

21. *See Millis*, 2009 WL 806731, at *1. Judge Jorgenson’s opinion states that the record reflects that another humanitarian group, Humane Borders, had been given a permit to place water for migrants in the Refuge not far from where Mr. Millis and his companions were attempting to place water. *Id.* at *3.

22. *Id.* at *1.

23. Judge Jorgenson’s opinion contains excerpts from the trial transcript of testimony given by both Officers Kirkpatrick and Kozma and Mr. Millis, which reveals that although Mr. Millis and his companions allegedly told the Officers that they would attempt to retrieve the water jugs, Officer Kirkpatrick ultimately elected to cite Mr. Millis because “he believed that they ‘had not stopped to recover any water at all’ and that ‘they were not going to comply with picking up all of the jugs.’” *Id.* at *2 (internal citation omitted).

24. The regulation states:

a Class B Misdemeanor.²⁵

Mr. Millis was initially found guilty by Magistrate Judge Bernardo P. Velasco in the United States District Court for the District of Arizona in September 2008, and he appealed the decision of the magistrate to the District Court.²⁶ On review, District Judge Cindy K. Jorgenson affirmed Magistrate Judge Velasco's conviction of Mr. Millis, holding that the jugs of water he left in the desert are properly included within the definition of "garbage/debris" contemplated by the regulation governing the prohibition against littering/disposal of waste on the Refuge.²⁷ Judge Jorgenson dismissed Mr. Millis' argument that the jugs left by him were not garbage within the meaning of the regulation because "the dissemination of pure water in sealed jugs for consumption by humans" is not littering,²⁸ holding that the regulation is not ambiguous because "the plain language of the regulation . . . is intended to prevent the disposal of unauthorized items in the [Refuge]."²⁹ She also specifically rejected Mr. Millis' argument that the life-saving properties of the water left in the desert fundamentally altered its nature, stating that:

While each of these items may sustain life if discovered by a person needing such item, it does not change the fact that, when left in a refuge and not given to any person, the items, at the time of the disposal, have no value to anyone. While 'one man's trash is another man's treasure' . . . there is no indication in either the regulation or relevant statutes that 'value' should be considered in determining whether an item is garbage.³⁰

The littering, disposing, or dumping in any manner of garbage, refuse, sewage, sludge, earth, rocks, or other debris on any national wildlife refuge except at points or locations designated by the refuge manager, or the draining or dumping of oil, acids, pesticide wastes, poisons, or any other types of chemical wastes in, or otherwise polluting any waters, water holes, streams or other areas within any national wildlife refuge is prohibited.

50 C.F.R. § 27.94(a) (2011).

25. *See Millis*, 2009 WL 806731, at *1. Mr. Millis' companions were not cited by Officer Kirkpatrick, as Mr. Millis took "full responsibility" for the placement of the water jugs in the Refuge and "requested that [his] passengers not be cited." *Id.* at *2.

26. *See id.* at *1.

27. *See id.* at *6 (citing 50 C.F.R. § 27.94) (2011)) ("The Court finds the water jugs, left in the refuge, constitute 'garbage, refuse, sewage, sludge, earth, rocks, and other debris.'").

28. *Millis*, 2009 WL 806731, at *4.

29. *Id.* at *5. Judge Jorgenson also held that the regulation "is not truly ambiguous It is only if the Court accepts Millis' premise that subjective value may be placed on the item to avoid the item being classified as garbage that the regulation becomes truly ambiguous."

30. *Id.* at *5.

Judge Jorgenson also rejected Mr. Millis' Due Process challenge to his conviction,³¹ and he subsequently appealed to the United States Court of Appeals for the Ninth Circuit.

B. U.S. v. Millis—Ninth Circuit Court of Appeals (2010)

On September 2, 2010, a three-judge panel of the United States Court of Appeals for the Ninth Circuit reversed Mr. Millis' conviction for violating 50 C.F.R. section 27.94(a).³² Circuit Judge Sidney R. Thomas, writing for the majority,³³ concluded that the plain language of the regulation—particularly the use of the words “garbage” and “discard”—was ambiguous,³⁴ that “the structure of the regulatory scheme . . . suggests that section 27.94(a) was not intended to be a comprehensive implementation of the Congressional mandate to minimize human impact on wildlife refuges,”³⁵ and that, therefore, the rule of lenity should be applied in Mr. Millis' case as a result.³⁶

Although the Court noted at the outset of its opinion that Mr. Millis' defense was based on his belief that “humanitarian aid is never a crime,”³⁷ the majority never addressed the crux of Mr. Millis' argument that the regulation did not apply to his conduct as a matter of law—that the jugs filled with water in the desert *could not* be considered garbage or litter, because their fundamental purpose was to save human life.³⁸ In his dissent, however, Circuit Judge Bybee dismissed Mr. Millis' claim that filling the jugs with water—thereby making them things of value—transforms their very nature:

Once Millis abandoned the bottles in the wildlife refuge, they became garbage “whether useable or not” because the bottles were “deleterious” to the wildlife refuge [W]hether an item is

31. *Id.* at *6.

32. *United States v. Millis*, 621 F.3d 914, 915 (9th Cir. 2010).

33. Judge Thomas' opinion was joined by Circuit Judge M. Margaret McKeown, with Circuit Judge Jay S. Bybee dissenting. *Id.* at 194.

34. “We next turn to the language of the regulation. When construing a word, we generally construe a term in accordance with its ‘ordinary, contemporary, common meaning.’ (internal citations omitted). . . . Applying those definitions in the present context, the text of [50 C.F.R.] § 27.94(a) is ambiguous as to whether purified water in a sealed bottle intended for human consumption meets the definition of ‘garbage.’” *See id.* at 917.

35. *Id.* at 918.

36. *Id.* (“The only question is whether the rule of lenity should be applied to the offense charged. We conclude that it does apply, and we reverse the judgment of the district court.”).

37. *Millis*, 621 F.3d at 916 (“At his bench trial, Millis admitted that he had placed the bottles of water on the refuge. However, he testified that leaving water out for illegal immigrants constitutes humanitarian aid and that ‘humanitarian aid is never a crime.’”).

38. *See id.*

“intended” to be useful is not a valid basis for determining whether the item is in fact useful³⁹ Millis’s intent, as benevolent as it may have been, is irrelevant to the validity of his conviction.⁴⁰

Judge Bybee also expressed the opinion that the majority improperly applied the rule of lenity in its holding because, in his view, “the majority simply concludes that the regulation is ambiguous—presumably because the bottles were intended for human consumption—and overturns the conviction.”⁴¹ Thus, Judge Bybee also rejected the majority’s view that the regulation was ambiguous, and opined in his dissent that the rule of lenity should not apply in Mr. Millis’ case.⁴²

1. A Refuge for Wildlife, but Not for Human Beings? The Gap Between Federal Law and Humanitarian Aid

In his dissent, Judge Bybee states that the nature of items left in the Refuge is irrelevant because “[i]f the [United States Fish and Wildlife] Service did nothing to prevent the wildlife refuge from turning into an informal Goodwill donation center, it could be liable for failing to comply with the Refuge Act’s statutory requirement to protect the habitat, environmental health, and ecosystem of the area.”⁴³ This opinion sums up the essential nature of the conflict between the majority opinion and Judge Bybee’s dissent well. Does the need to protect a federal wildlife refuge compel strict compliance with a federal regulation prohibiting disposal of waste, even at the potential expense of human life? Which priority is paramount, and which interpretation of the regulation is morally and legally correct?

While the Ninth Circuit’s decision in *United States v. Millis* does not provide any clear answers to these questions, it does prompt us to reexamine the existing gap in federal law between the enforcement of immigration law and the protections provided to those who seek to migrate to the United States outside the law.⁴⁴ While some have argued that those who immigrate to the United States outside the proper channels have assumed the risk—and should therefore bear the

39. *Id.* at 922.

40. *Id.* at 923 n. 4.

41. *Id.* at 923.

42. *See Millis*, 621 F.3d at 923.

43. *Id.* at 922 n. 3.

44. It is the author’s opinion that Mr. Millis’ prosecution highlights the fact that we have an intricate system set up to protect our wildlife and ecosystems, but comparatively little protection for human beings wandering in the desert—save for strict enforcement policies designed to apprehend and remove those present without authorization—and that this dichotomy should give us pause regarding our priorities in immigration law and policy.

consequences—of their choice to “go to the front of the line,”⁴⁵ individuals on both sides of the immigration debate agree that a void exists in current federal immigration law, and that something must be done to fill it.⁴⁶ The nature of how to address the inadequacy of federal immigration law to deal with our current problem of unauthorized migration to the United States,⁴⁷ and how to balance enforcement of the law with humanitarian concerns, has led to a renewed interest among the American public in immigration reform and policy and the provision of sanctuary.⁴⁸

II. ATTRITION THROUGH ENFORCEMENT: THE CRIMINALIZATION OF AID TO IMMIGRANTS AT THE STATE LEVEL

The renewed national interest in unauthorized migration to the United States—and the perceived consequences of inaction on the part of the federal government—has led to an increase in state regulation of immigration law and policy. Beginning in the mid-2000s, state legislatures started to assert control over immigration law and policy at the local level with more regularity.⁴⁹ Of course, the argument that

45. Opponents of unauthorized migration often state that undocumented immigrants should go to the “back of the line,” rather than have their unlawful presence rewarded with what is considered to be amnesty. Pablo Manriquez, *What is ‘Back of the Line’ Citizenship for Unauthorized Immigrants in the U.S.?*, HUFFINGTON POST, Sept. 3, 2010, http://www.huffingtonpost.com/pablo-manriquez/what-is-back-of-the-line-_b_703330.html.

46. See, e.g., Lydia Saad, *Americans Value Both Aspects of Immigration Reform: Strengthening the Border and Dealing with Illegals Already Here Both Have Appeal*, GALLUP (May 4, 2010), <http://www.gallup.com/poll/127649/americans-value-aspects-immigration-reform.aspx>

(A . . . *USA Today*/Gallup poll finds Americans placing about equal importance on the two sides of the immigration policy coin. Roughly 4 in 10 Americans rate ‘controlling U.S. borders to halt the flow of illegal immigrants into the U.S.’ as extremely important for the government to deal with this year. Nearly as many, 36%, say ‘developing a plan to deal with the large number of illegal immigrants who are already living in the U.S. is extremely important.’).

47. Recent reports estimate the number of undocumented immigrants present in the United States at just over eleven million for 2009 and 2010. See Julia Preston, *11.2 Million Illegal Immigrants in the United States in 2010, Report Says; No Change from ‘09*, N.Y. TIMES, Feb. 1, 2011, at A15.

48. See, e.g., Suzannah Gonzales, *Amid Talk of ‘Sanctuary Cities,’ Austin Police, Other Agencies Say Immigration Enforcement Not Their Job*, AUSTIN AM.-STATESMAN, Jan. 14, 2011, <http://www.statesman.com/news/texas-politics/amid-talk-of-sanctuary-cities-austin-police-other-1186663.html>.

49. See generally AM. IMMIGR. LAW. ASS’N (“AILA”), NAVIGATING THE IMMIGRATION DEBATE: A GUIDE FOR STATE AND LOCAL POLICYMAKERS AND ADVOCATES 1 (2009) (“Fed by a daily drumbeat of inflammatory rhetoric on cable television and talk radio, public frustration with our broken immigration system and federal inaction is now hyper-charged.

states possess the ability to regulate immigration based on their historic police powers is not a new one.⁵⁰ However, failed proposals in Congress to strengthen immigration enforcement in 2006,⁵¹ followed by an unsuccessful attempt to pass comprehensive immigration reform in 2007,⁵² led to increased frustration with the federal government and its ability—or willingness—to enforce our immigration laws, and spurred a renewed effort by states to succeed where the federal government had failed.⁵³

Some states, such as Arizona, had already begun to fill the gap in federal immigration law enforcement by passing state laws that limited the rights, benefits, and privileges of undocumented immigrants,⁵⁴ while at the same time stepping-up enforcement of immigration law at the state and local level.⁵⁵ This strategy—known as “attrition through enforcement”⁵⁶—focused on passing laws that are so inhospitable to undocumented immigrants that persons without legal immigration status will ultimately choose to “self-deport”⁵⁷ rather than continue to remain

It has transformed immigration policy from an inside-the-beltway debate into a political flashpoint jolting state houses and town halls across the country.”)

50. See, e.g., *De Canas v. Bica*, 424 U.S. 351, 365 (1976), *superseded by statute*, Immigration Reform and Control Act, 8 U.S.C. § 1324(a)(1)(A) (2006), *as recognized in* *Chamber of Comm. v. Whiting*, 131 S. Ct. 1968 (2011), (holding that California state regulation governing employment of aliens, Cal. Labor. Code Ann. § 2805(a), was not an unconstitutional regulation of immigration because it was not preempted by the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et. seq.*).

51. In 2006, the 109th Congress considered the Comprehensive Immigration Reform Act of 2006 (CIRA), also known as S. 2611. Comprehensive Immigration Reform Act of 2006, S. 2611/S. 2612, 109th Cong. (2006). Although it had bipartisan support, and was passed in the Senate by a vote of 62-36 on May 25, 2006, the House of Representatives had previously passed the controversial Border Protection, Antiterrorism and Illegal Immigration Control Act of 2005, H.R. 4437. See *id.*; see also *infra* note 185.

52. The 110th Congress also failed to pass the bipartisan Comprehensive Immigration Reform Act of 2007. NCSL BUDGETS AND REVENUE COMMITTEE, 6-1, MANDATE MONITOR (2008).

53. See, e.g., AILA, *supra* note 49, at 1.

54. See Kristina M. Campbell, *The Road to S.B. 1070: How Arizona Became Ground Zero for the Immigrants’ Rights Movement and the Continuing Struggle for Latino Civil Rights in America*, 14 HARV. LATINO L. REV. 1 (2011) (documenting the passage of statewide anti-immigrant legislation in the state of Arizona from 2004-2010).

55. See *id.*

56. See, e.g., Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 TULSA J. COMP. & INT’L L. 153, 154 (2008) (proposing “a concerted strategy of attrition through enforcement” such that if the risk of detention, prosecution and involuntary removal increases, and the probability of obtaining employment decreases, the only rational decision for an illegal alien is to depart the United States on their own).

57. See *id.*; see also Alia Beard Rau, *Russell Pearce Stands by Service Record*, ARIZ. REPUBLIC, Oct. 12, 2011, available at

in a country that makes it nearly impossible for them and their families to live, work, or go to school without fear of apprehension and removal.⁵⁸

In November 2007, the state of Oklahoma passed its own immigration law, H.B. 1804.⁵⁹ Oklahoma's law criminalized the provision of humanitarian aid to undocumented immigrants and prohibited them from receiving services from the state.⁶⁰ However, Arizona became a national leader in initiating the enforcement of immigration law at the state level, culminating in the passage of its notorious "papers please" law, S.B. 1070, in April 2010.⁶¹ Yet despite the fact that Arizona was the first state to pass a comprehensive statewide regulation of immigration law, it would be other states—particularly those in the Deep South—that would take up the mantle of attrition through enforcement by passing laws that not only sought to encourage the self-deportation of undocumented immigrants, but would seek to criminalize the provision of the most basic necessities of life to those without legal immigration status.⁶² The harsh commands of these laws, and the repercussions of their approval, would take the debate surrounding immigration enforcement to the next level in both the federal courts⁶³ and on the streets.

A. Oklahoma H.B. 1804: The Prototype for Arizona S.B. 1070

Oklahoma H.B. 1804, also known as the Oklahoma Taxpayer and Citizen Protection Act, is one of the earliest state-level regulations of immigration to emerge following the failure of comprehensive

<http://www.azcentral.com/12news/news/articles/2011/10/12/20111012mesa-russell-pearce-stands-by-service-record.html> (discussing Sen. Pearce's self-deportation strategy for undocumented immigrants in Arizona).

58. Rau, *supra* note 57.

59. See David Harper, *H.B. 1804 In Effect*, TULSA WORLD, Nov. 1, 2007, http://www.tulsaworld.com/news/article.aspx?articleID=071101_1_A1_hJudg27278.

60. See generally Sally Kohn, *Arizona Immigration Law: Painful Lessons from Oklahoma*, CHRISTIAN SCI. MONITOR, Apr. 28, 2010, <http://www.csmonitor.com/Commentary/Opinion/2010/0428/Arizona-immigration-law-painful-lessons-from-Oklahoma>.

61. See Randal C. Archibold, *Arizona Enacts Stringent Law on Immigration*, N.Y. TIMES, Apr. 23, 2010, <http://www.nytimes.com/2010/04/24/us/politics/24immig.html>.

62. See Staff, *Text of Alabama Immigration Law, H.B. 56*, LATIN AM. NEWS DISPATCH, June 9, 2011, <http://latindispatch.com/2011/06/09/text-of-alabama-immigration-law-hb-56/>; see also *infra* Part II.

63. The most controversial provisions of Arizona S.B. 1070 were enjoined by United States District Judge Susan Bolton prior to enforcement as preempted under federal immigration law. The United States Supreme Court ultimately agreed that three of the four provisions enjoined by Judge Bolton were preempted, declining only to enjoin Section 2(B). See *Arizona v. United States*, 132 S. Ct. 2492, 2510 (2012).

immigration reform by Congress.⁶⁴ It was signed into law by Oklahoma Governor Brad Henry in May 2007, and was hailed at the time as “the most far-reaching immigration law in the United States.”⁶⁵ H.B. 1804 was particularly draconian in its prohibitions against the provision of humanitarian aid to undocumented immigrants, including education and health care for children without legal immigration status.⁶⁶ Additionally, H.B. 1804 would have made it a felony for an individual to provide even casual transportation—such as a ride in a personal vehicle to school or church—if that individual knew or even suspected that the person was an undocumented immigrant.⁶⁷ The law also made it a felony to “harbor” undocumented immigrants within the meaning of the law.⁶⁸

An initial challenge to H.B. 1804 by religious groups was dismissed for lack of standing,⁶⁹ but a subsequent challenge to the law’s constitutionality in United States District Court blocked portions of the law and was later affirmed by the United States Court of Appeals for the Tenth Circuit.⁷⁰ However, a concurrent challenge to H.B. 1804 in Oklahoma state courts affirmed the constitutionality of the prohibitions against humanitarian aid to undocumented immigrants, including the ban on transportation and harboring.⁷¹ In June 2011, stating that “[i]t is

64. See, e.g., Harper, *supra* note 59 (discussing how H.B. 1804, which was enacted in 2007, served as a model for Arizona’s S.B. 1070); Kohn, *supra* note 60 (same).

65. See Vallery Brown, *How H.B. 1804 Came to Pass in Oklahoma*, NEWSOK, May 30, 2010, <http://newsok.com/how-hb-1804-came-to-pass-in-oklahoma/article/3464802>.

66. See Harper, *supra* note 59.

67. The pertinent language prohibiting transportation of undocumented immigrants in H.B. 1804 contains a “reckless disregard” mens rea:

It shall be unlawful for any person to transport, move, or attempt to transport within the State of Oklahoma any alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law, in furtherance of the illegal presence of the alien in the United States.

See H.B. 1804, 51st Leg., 1st Sess. (Okla. 2007).

68. See generally Harper, *supra* note 59.

69. See Nat’l Coal. of Latino Clergy, Inc. v. Henry, 07-CV-594, 2007 WL 3113427, at *6 (N.D. Okla. Oct. 22, 2007); see also Mick Hinton & Althea Peterson, *Challenge to House Bill 1804 Dismissed*, TULSA WORLD, Oct. 23, 2007, http://www.tulsaworld.com/news/article.aspx?articleID=071023_1_A1_spnc20728.

70. See Chamber of Commerce v. Edmonson, 594 F.3d 742, 771 (10th Cir. 2010) (the federal courts’ rulings only blocked enforcement of H.B. 1804’s provision regarding the employment of undocumented immigrants.); see also Robert Boczkiewicz, *H.B. 1804 Appeal Denied in Part*, TULSA WORLD, Feb. 3, 2010, http://www.tulsaworld.com/news/article.aspx?subjectid=11&articleid=20100203_11_A1_D ENVER69977.

71. See generally Thomas v. Henry, 260 P.3d 1251 (Okla. 2011); see also Michael McNutt, *Oklahoma’s High Court Upholds State’s Anti-Illegal Immigration Bill*,

not the place of the Supreme Court or any court to concern itself with a statute's propriety, desirability, wisdom, or . . . practicality[.]”⁷² the Oklahoma Supreme Court held that “such questions are plainly and definitely established by fundamental laws as functions of the legislative branch of government”⁷³ and upheld all of the provisions of H.B. 1804, save a provision denying bail to undocumented immigrants charged with felonies.⁷⁴ In making its ruling that the majority of the law was constitutional, the Oklahoma Supreme Court cited the United States Supreme Court's decision upholding Arizona's state regulation of employment, the Legal Arizona Workers Act (LAWA).⁷⁵

Despite evidence that the passage of H.B. 1804 may have negatively impacted the state's economy,⁷⁶ in early 2011, Oklahoma legislators decided once again that it would be in the best interest of their state to consider passing another comprehensive sub-federal immigration law.⁷⁷ However, none of the proposed immigration regulations ultimately became law.⁷⁸ As of this writing, it is expected that the Oklahoma legislature will once again consider passing an omnibus immigration law in its 2012 session, or placing a referendum on the 2012 ballot.⁷⁹

1. Response to Oklahoma H.B. 1804 by the Roman Catholic Diocese of Tulsa

One of the strongest criticisms of Oklahoma's 2007 state regulation of immigration, H.B. 1804, came from the Roman Catholic

OKLAHOMAN, June 15, 2011, <http://newsok.com/oklahomas-high-court-upholds-states-anti-illegal-immigration-bill/article/3577093>.

72. See *Thomas*, 260 P.3d at 1262.

73. *Id.*

74. *Id.* (“Section 5(C) of H.B.1804 (codified at 22 O.S. § 171.2(C)), which creates a presumption of flight risk, is a special law prohibited by Article 5 § 46 and is thus unconstitutional.”).

75. See *Thomas*, 260 P.3d at 1257 (citing *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011)). Note that this opinion, when you couple it with the previous U.S. Supreme Court opinions, seems to suggest that the state does in fact have a great deal of latitude to further crack down on illegal immigration if it chooses to do so.

76. See generally Staff Reports, *Report shows H.B. 1804 may cost \$1.8 billion to state's economy*, TULSA WORLD, March 25, 2008, http://www.tulsaworld.com/news/article.aspx?articleID=20080325_1_hrimg03830.

77. See generally Kate, *Where Angels Fear to Tread: Oklahoma wades back into immigration debate*, OK POL'Y BLOG (Apr. 7, 2011), <http://okpolicy.org/where-angels-fear-to-tread-oklahoma-wades-back-into-immigration-debate>.

78. See ACLU OF OKLAHOMA, *No Anti-Immigrant Laws Passed in 2011* (June 5, 2011, 10:11 p.m.), <http://acluok.org/2011/06/no-anti-immigrant-laws-passed-in-2011/>.

79. See Michael McNutt, *Oklahoma House Panel Backs Comprehensive Anti-Illegal Immigration Measure*, OKLAHOMAN, Mar. 1, 2011, <http://newsok.com/article/3544759>.

Church's Diocese of Tulsa, which issued a pastoral letter condemning the law's prohibitions against the provision of sanctuary for undocumented immigrants in the state.⁸⁰ On November 25, 2007, Bishop Edward J. Slattery issued a pastoral letter on immigration titled "The Suffering Faces of the Poor are the Suffering Faces of Christ."⁸¹ Reiterating the Roman Catholic Church's commitment to the "fundamental option for the poor,"⁸² Bishop Slattery reflected on "the Church's constant teaching . . . which challenges all men and women of faith here in Oklahoma to reflect upon H.B. 1804 in the light of Christ Who clearly commands us to "welcome the stranger" and Who promises that He will judge us according to the love we show His poor."⁸³

In his pastoral letter, Bishop Slattery states that "the question of immigration is not simply a social, political, or an economic issue; it is also a moral issue because it impacts on the well-being of millions of our neighbors."⁸⁴ He also states that:

The basic intention of this law is to deny those who have entered our country illegally the right to work in Oklahoma and the right to find shelter for their families in our communities. Thus they are forced to flee our state. *I believe that the right to earn one's living and the right to shelter one's family securely are basic human rights, the fundamental building blocks of a just society, and to deny these rights is immoral and unjust.* I also believe that since the intention of HB 1804 is immoral, when it is implemented, the effects will be an intolerable increase in the suffering endured by the families of illegal immigrants, plus the spiritual suffering of those who must enforce it.⁸⁵

In addition to stating that H.B. 1804 was "[c]reating an atmosphere of terror"⁸⁶ in Oklahoma, Bishop Slattery recounts in his pastoral letter the desperate situations faced by several undocumented immigrants in the Diocese of Tulsa, and the fear and trauma they were suffering

80. *See generally* Letter from Edward Slattery, Bishop of Tulsa, to the Priests and Deacons of Diocese, *The Suffering Faces of the Poor are the Suffering Face of Christ* (Nov. 25, 2007), [available at](http://web.archive.org/web/2009121154123/http://www.dioceseoftulsa.org/images/photos/Bishop%27s%20letter%20B5B15.pdf) <http://web.archive.org/web/2009121154123/http://www.dioceseoftulsa.org/images/photos/Bishop%27s%20letter%20B5B15.pdf> [hereinafter "Letter from Edward Slattery to the Priests and Deacons of Diocese"].

81. *Id.* at 3.

82. *Id.* at 3.

83. *Id.* (quoting *Matthew* 25:40 (Self-Pronouncing ed., Meridian 1962)[sic]).

84. Letter from Edward Slattery to the Priests and Deacons of Diocese, *supra* note 80, at 5.

85. *Id.* at 6 (emphasis added).

86. *Id.*

because of the law.⁸⁷ The Bishop emphasized that the children of many undocumented immigrants are United States Citizens, and that H.B. 1804 put these families in grave danger of being separated should the parents be apprehended and deported and the children go into foster care.⁸⁸ He also touched on some of the practical consequences of H.B. 1804's prohibition against "transporting" undocumented immigrants,⁸⁹ and emphasized that the vast majority of undocumented immigrants are "hard workers . . . good neighbors . . . [and] families who are . . . eager to contribute to the well-being of our society."⁹⁰

Bishop Slattery acknowledges the need for comprehensive immigration reform, but condemns "putting children in danger" and "punishing the morally innocent" through the implementation of H.B. 1804.⁹¹ He also alludes to "a hidden motive" of racial animus underlying H.B. 1804.⁹² He concluded his pastoral letter on immigration by setting forth an action plan for the Diocese of Tulsa for dealing with implementation of H.B. 1804, directing that no one should be denied access to Church services due to lack of lawful immigration status.⁹³ Bishop Slattery also pledged to provide legal assistance and work with legal agencies to help those affected by the enforcement of H.B. 1804 by providing Catholic foster care for children whose parents are detained or deported, and promising to "pray incessantly for an end

87. *Id.* at 6-7.

88. *Id.* The Bishop shares the concerns of a young mother without lawful immigration status, who fears that her child will become a ward of the state should she come to the attention of immigration officials. Letter from Edward Slattery to the Priests and Deacons of Diocese, *supra* note 80 at 6

(Catholic Charities recently learned of the mother of a 2 month old baby who has no relatives here in the United States and will not leave the house, so terrified is she of being detained and then deported. 'I have no one here in America,' she cries. 'What would happen to my baby?')

See also id. at 6-7 ("Maria . . . fear[s] that if the police pull the driver over for a traffic citation, she would be arrested and jailed for being here illegal, while her children end up under the care of the State.").

89. *Id.*

(Maria has four American-born children, the youngest of whom suffers from cancer. Having finished his chemotherapy, this boy must now begin radiation treatments, but Maria can find no one to give her a ride to and from the clinic, since H.B. 1804 makes it a crime to knowingly transport illegals.).

90. *Id.* at 7.

91. *Id.* at 9.

92. Letter from Edward Slattery to the Priests and Deacons of Diocese, *supra* note 80 at 10 ("I cannot shake the sad feeling that H.B. 1804 has at its root a hidden motive: to break the family unity which is so naturally a part of the Hispanic cultural tradition.").

93. *Id.*

to the inhumane treatment of immigrants and their families.”⁹⁴

A. S.B. 1070 “Copycat” Legislation: Picking Up Where Arizona Left Off

Although Arizona’s S.B. 1070 was the first comprehensive state-level immigration enforcement regulation to be signed into law,⁹⁵ its most controversial provisions were enjoined by a federal judge in Phoenix before they could ever be enforced.⁹⁶ Rather than quell the effort to enforce immigration laws at the state level, however, the injunction prohibiting S.B. 1070 from taking effect mobilized other states into action.⁹⁷ Within months of S.B. 1070’s passage, no fewer than 16 states introduced their own immigration enforcement laws modeled after Arizona’s notorious law.⁹⁸ Each law has its own unique provisions; however, they all share the common thread of seeking to regulate immigration law at the state level because of the perceived failure of the government to adequately do so at the federal level.⁹⁹ This section provides an overview of the various state regulations of immigration enacted after the passage of S.B. 1070, and the legal and social repercussions of each state’s attempt to achieve “attrition through enforcement.”¹⁰⁰

1. Georgia: H.B. 87

Shortly after Arizona Governor Jan Brewer signed S.B. 1070 into law in April 2010, Georgia moved quickly to pass its own comprehensive state law regulating immigrants who live and work in that state. Georgia’s immigration law, known as H.B. 87, was passed by the Georgia legislature and signed into law by Governor Nathan Deal in May 2011.¹⁰¹ Like the Arizona immigration law, H.B. 87 would

94. *Id.* at 14-16.

95. *See* Archibold, *supra* note 61.

96. *See* *Arizona v. United States*, 132 S. Ct. 2492, 2498 (2012).

97. *See* Seth Freed Wessler, *Bills Modeled after Arizona’s S.B. 1070 Spread Through States*, COLORLINES (March 2, 2011, 10:33 AM), http://colorlines.com/archives/2011/03/sb_1070_copycat_bills.html.

98. *Id.*

99. *Id.*

100. Section 1 of Arizona S.B. 1070 states that “[t]he legislature declares that the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona.” S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010), available at <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>.

101. As in Arizona, the Governor of Georgia stated that it was necessary for his state to pass its own regulation of immigration because the federal government was not doing a sufficient job enforcing immigration law. *See* Kim Severson, *Parts of Georgia Immigration*

require local law enforcement to check the immigration status of criminal suspects, to provide specific forms of identification in order to receive public benefits, and mandates the use of E-Verify—a voluntary federal electronic work-verification system—by most employers in the state of Georgia.¹⁰² Most troubling is the provision of Georgia’s immigration law that sets forth criminal sanctions for individuals who “intentionally” transport or house undocumented immigrants, with no exceptions for those rendering humanitarian aid.¹⁰³

However, before Georgia’s immigration law took effect, United States District Judge Thomas W. Thrash, Jr. enjoined the two sections of H.B. 87 in June 2011.¹⁰⁴ Judge Thrash issued a temporary injunction staying the enforcement of the provisions that would require local law enforcement to ask suspects about their immigration status and the prohibition against transporting or housing persons without legal immigration status.¹⁰⁵ Judge Thrash ruled that these sections were likely preempted by federal law, and thus should not be allowed to take effect until the Court is able to rule on their constitutionality.¹⁰⁶

Despite the fact that Judge Thrash blocked the two most troublesome portions of H.B. 87, the rest of Georgia’s immigration was permitted to stand pending litigation.¹⁰⁷ One of the provisions of the law requiring individuals seeking professional licenses from the state of Georgia has, in the words of former Georgia Secretary of State Cathy Cox, the potential to become “catastrophic.”¹⁰⁸ This is because proper enforcement of the law—which requires persons seeking licensure to produce a “secure and verifiable” form of identification¹⁰⁹—will require the Secretary of State to attach copies of the identification provided by

Law Blocked, N.Y. TIMES, June 27, 2011, at A17 (“Beyond refusing to help with our state’s illegal immigration problem, the federal government is determined to be an obstacle.”).

102. See H.B. 87, 2011 Leg., Reg. Sess. (Ga. 2011), available at http://www1.legis.ga.gov/legis/2011_12/pdf/hb87.pdf.

103. *Id.*

104. See *Georgia Latino Alliance for Human Rights v. Deal*, 793 F.Supp.2d 1317, 1322 (N.D. Ga. 2011), *aff’d in part, rev’d in part & remanded by* No.11-13044, 2012 WL 3553612 (11th Cir. Aug. 20, 2012); see also Severson, *supra* note 101.

105. See *Georgia Latino Alliance for Human Rights*, 793 F. Supp. 2d. at 1340.

106. *Id.*

107. *Id.*

108. See Jeremy Redmon, *Cox: Red Tape Created by Immigration Law Could be ‘Catastrophic’*, ATLANTA J.-CONST., Nov. 7, 2011, <http://www.ajc.com/news/georgia-politics-elections/cox-red-tape-created-1219404.html>.

109. See H.B. 87, 2011 Leg., Reg. Sess. (Ga. 2011), available at http://www1.legis.ga.gov/legis/2011_12/pdf/hb87.pdf.

all applicants for state licenses.¹¹⁰ The current Georgia Secretary of State, Brian Kemp, estimates that after the law goes into effect on January 1, 2012, Georgia will need to process upwards of 250,000 license applications for accountants, nurses, and other professionals, and that the new requirements imposed by H.B. 87 could delay the issuance of professional licenses by three to four months.¹¹¹

On August 20, 2012, the Eleventh Circuit Court of Appeals upheld Judge Thrash's grant of the preliminary injunction enjoining the majority of H.B. 87.¹¹²

2. South Carolina: S.B. 20

South Carolina Governor Nikki Haley signed that state's immigration regulation, S.B. 20, into law in June 2011.¹¹³ The law, which was scheduled to take effect on January 1, 2012, was patterned after Arizona's S.B. 1070 and requires local law enforcement to ask individuals to demonstrate their citizenship or lawful immigration status if there is "reasonable suspicion" to believe that a person is undocumented.¹¹⁴ As in Georgia and Arizona, S.B. 20 also criminalizes the provision of transportation and housing to undocumented immigrants.¹¹⁵

In her signing statement, Governor Haley said that S.B. 20 would "make sure that anyone that was illegal found another state to go to."¹¹⁶

110. See Redmon, *supra* note 108 ("Kemp said the new requirement will force his staff to attach copies of these identification documents to about 256,000 applications for licenses next year.").

111. *Id.* ("Kemp said . . . [i]t now takes his office 25 to 30 days to process new licenses and about two weeks for renewals. The increased paperwork could delay turnaround times by 90 to 120 days.").

112. *Setback for Rogue Immigration Laws*, N.Y. TIMES, Aug. 21, 2012, http://www.nytimes.com/2012/08/22/opinion/setback-for-rogue-immigration-laws-in-georgia-and-alabama.html?_r=0; See *Supplemental Brief of Appellants*, Deal v. Georgia Latino Alliance for Human Rights, No. 11-13044 (11th Cir. July 7, 2012).

113. See Jim Davenport, *Gov. Haley Signs Immigration Bill into Law*, POST AND COURIER, June 28, 2011, <http://www.postandcourier.com/news/2011/jun/28/haley-signs-immigration-bill-into-law/>.

114. See Press Release, NAT'L IMMIGR. L. CTR., *Civil Rights Coalition Asks Court to Block South Carolina's Anti-Immigrant Law* (Dec. 19, 2011), <http://www.nilc.org/sb20block11.html> (The law "criminalizes South Carolinians for everyday interactions with undocumented individuals, such as driving someone to church, or renting a room to a friend.").

115. See S.B. 20, 119th Gen. Assemb., Reg. Sess. (S.C. 2011), available at <http://legiscan.com/gaits/text/337102>; see *id.* (S.B. 20 is also referred to as "Act 69").

116. See Josh Gerstein, *South Carolina Immigration Law Sparks Suit from Justice Department*, POLITICO (Oct. 31, 2011, 4:36 PM), <http://www.politico.com/news/stories/1011/67274.html>.

Governor Haley also expressed frustration with the federal government's perceived lack of enforcement of immigration law, stating that state action was necessary because of federal inaction.¹¹⁷ Governor Haley also rejected claims that South Carolina's law is anti-immigrant, emphasizing that she is "the daughter of immigrants who came to this country legally,"¹¹⁸ and insisting that S.B. 20 is about "the rule of law . . . nothing more, nothing less."¹¹⁹

However, on October 31, 2011, the United States Department of Justice filed suit against the State of South Carolina claiming that the law "directly conflicts with enforcement of federal immigration law as well as with immigration policies and priorities adopted by the federal government."¹²⁰ The lawsuit by the Department of Justice joined a previous lawsuit filed by a coalition of civil rights groups on behalf of individuals affected by S.B. 20 claiming that the law violates their Constitutional rights.¹²¹ However, unlike the challenge filed by the Civil Rights Coalition, the Federal Government's lawsuit only challenged S.B. 20 on preemption grounds.¹²² On December 22, 2011, United States District Judge Richard M. Gergel enjoined most of S.B. 20; however, following the United States Supreme Court's June 2012 decision in *Arizona v. United States*, Judge Gergel has indicated that he wants to reconsider his order enjoining the law.¹²³

117. *Id.* ("If the feds were doing their job, we wouldn't have had to address illegal immigration reform at the state level. But, until they do, we're going to keep fighting in South Carolina to be able to enforce our laws.").

118. *Id.* Haley, whose birth name is Nimrata N. Randhawa, is of Sikh heritage. *See also* Michael Scherer, *Nikki Haley: South Carolina's New Political Star*, TIME MAG. (June 9, 2010), <http://www.time.com/time/magazine/article/0,9171,1995862,00.html>.

119. *See* Gerstein, *supra* note 116.

120. *Id.*

121. United States District Judge Richard M. Gergel issued an Order in the civil rights coalition lawsuit stating that the United States might be a required party to the litigation and directed them to respond within fifteen days of his Order. *See generally* Lowcountry Immigr. Coal. v. Haley, No. 2:11-cv-02779 (D.S.C., Dec. 22, 2011) (text order).

122. *See United States v. S. Carolina*, 840 F. Supp. 2d 898 (D.S.C. 2011).

123. *See id.*; *see also* *Federal Judge Blocks Parts of South Carolina Anti-Immigration Law*, CNN (Dec. 22, 2011), http://articles.cnn.com/2011-12-22/justice/justice_south-carolina-immigration-law_1_anti-illegal-immigration-law-legal-status-nikki-haley?_s=PM:JUSTICE; Meg Kinnard, *Judge Will Review Immigration Order*, AUGUSTA CHRONICLE, July 10, 2012, at B3.

3. *Indiana: S.B. 590*

The state of Indiana enacted its immigration law, S.B. 590, in May 2011 after it was signed into law by Governor Mitch Daniels.¹²⁴ Although the version of S.B. 590 eventually enacted by Indiana was not as strict as the law initially introduced by Indiana State Senator Mike Delph,¹²⁵ the law mandates use of E-Verify by Indiana employers, prohibits undocumented immigrants from receiving financial aid for college and other public benefits, and outlaws the establishment of “sanctuary cities” in the state of Indiana.¹²⁶ S.B. 590 also contains troubling provisions regarding the authority of local law enforcement to arrest and detain individuals in immigration removal proceedings, and prohibits the acceptance of commonly used foreign documents (such as the Mexican Matricula Consular) as a form of identification by Indiana state officials.¹²⁷

Shortly after Governor Daniels signed S.B. 590 into law on May 10, 2011 the American Civil Liberties Union (ACLU) and the National Immigration Law Center (NILC) challenged the law on constitutional grounds in the United States District Court for the Southern District of Indiana.¹²⁸ On June 24, 2011, United States District Judge Sarah Evans Barker enjoined the portions of the law giving local law enforcement the power to arrest and detain immigrants in removal proceedings, as well as the prohibition against the use of foreign government documents as identification.¹²⁹

Again, as with the other states that passed immigration regulations in the past several years, the Indiana politicians in favor of S.B. 590 claim that the law is necessary because the federal government has

124. See *Governor Signs Indiana Immigration Law*, EXPONENT (July 1, 2011, 10:00 AM), http://www.purdueexponent.org/city/article_aa9b584e-a37e-11e0-9f00-0019bb30f31a.html.

125. See Julianne Hing, *Lawsuit: Indiana's Immigration Law's No S.B. 1070, Still Unconstitutional*, COLORLINES (May 26, 2011 9:32 AM), http://colorlines.com/archives/2011/05/lawsuit_indianas_immigration_law_may_not_be_sb_1070_still_unconstitutional.html.

126. See generally S.B. 590, 117th Gen. Assemb., Reg. Sess., (Ind. 2011), available at <http://www.in.gov/legislative/bills/2011/PDF/IN/IN0590.1.pdf>.

127. *Id.*

128. See *Buquer v. City of Indianapolis*, 797 F. Supp. 905 (S.D. Ind. 2011); see also Jenny Montgomery, *ACLU of Indiana Files Suit Against Immigration Legislation*, IND. LAW., May 25, 2011, <http://www.theindianalawyer.com/aclu-of-indiana-files-suit-against-immigration-legislation-/PARAMS/article/26442>.

129. See *Buquer*, 797 F. Supp. 2d at 295; see also *Federal Judge Blocks New Indiana Immigration Law*, FOX NEWS (June 24, 2011), <http://www.foxnews.com/politics/2011/06/24/federal-judge-blocks-new-indiana-immigration-law/> [hereinafter “*Indiana Immigration Law*”].

failed to do an adequate job enforcing its own laws.¹³⁰ While to date the United States Department of Justice has not filed suit against Indiana for its immigration law—as it has in Alabama, Arizona, and South Carolina—the law remains enjoined as of this writing and has yet to be enforced.¹³¹

4. *Utah: H.B. 497*

Of all the post-S.B. 1070 state regulations of immigration, it can be argued that Utah's H.B. 497 and its companion legislation are the most moderate, as they contain some unique provisions that other laws patterned after Arizona's do not.¹³² H.B. 497, signed into law by Utah Governor Gary R. Herbert in March 2011, was promoted by its sponsors as “an effort . . . to crack down on illegal immigration while avoiding the costly legal challenges and polarizing political furor that followed” the passage of S.B. 1070 in 2010.¹³³ Although H.B. 497 is, like Arizona's S.B. 1070, a state-level immigration enforcement law, proponents of the law contend that the law differs from other so-called “show me your papers” laws because it was allegedly drafted in a manner that addresses the racial profiling concerns expressed by critics by limiting the circumstances under which law enforcement officials may check the citizenship of individuals under arrest.¹³⁴

130. *Indiana Immigration Law*, *supra* note 129. The Indiana Attorney General's Office argued that Judge Barker's injunction against S.B. 590 is not a criticism of the Indiana law, so much as it is a reminder of the lack of immigration enforcement at the federal level. “Today's ruling can be seen as an indictment of the federal government on their failure to enact and enforce immigration policy,” [Attorney General Greg] Zoeller said in a statement Friday. “It underscores the challenge to Indiana and other state lawmakers who have tried to respond to Washington's failure.” *Id.*

131. See Chris Sikich, *Decision Casts Doubt on Fate of Indiana Law*, INDIANAPOLIS STAR, June 26, 2012, <http://www.indystar.com/article/20120625/NEWS/120625031/Ruling-Arizona-immigration-case-casts-doubts-fate-Indiana-law>.

132. H.B. 497 is one of several immigration regulations signed into law by Governor Herbert that are collectively known as the “Utah Solution.” In addition to the immigration enforcement provisions of H.B. 497, Utah enacted a state guest worker law, H.B. 116. See Dennis Romboy, *‘Utah Solution’ to Immigration to be Put on the Test*, DESERT NEWS (Mar. 11, 2011), <http://www.deseretnews.com/article/705368494/Utah-Solution-to-immigration-to-be-put-to-the-test.html?pg=all>.

133. Julia Preston, *Class-Action Lawsuit Says Utah Immigration Law Violates Civil Rights*, N.Y. TIMES, May 4, 2011, at A20.

134. The Utah Attorney General's Office has argued that “the Utah Legislature took ‘painstaking efforts to avoid the constitutional infirmities of the Arizona law.’” See David Montero, *Utah Attorneys Defend Immigration Enforcement Law*, SALT LAKE TRIB., July 22, 2011, <http://www.sltrib.com/sltrib/politics/52235704-90/argued-brief-court-enforcement.html.csp>; see also *Judge Blocks Utah Immigration Law*, L.A. TIMES, May 11, 2011, at A9.

Despite the claims that H.B. 497 is constitutional and would not lead to racial profiling, United States District Judge Clark Waddoups issued a temporary restraining order barring enforcement of the law less than twenty-four hours after it went into effect in May 2011.¹³⁵ The law was challenged by the ACLU and the NILC – the same groups that challenged the Indiana and South Carolina laws—who argued that Utah’s immigration regulation is preempted by federal law and violates the Fourth Amendment of the United States Constitution.¹³⁶ In November 2011, the United States Department of Justice filed a separate lawsuit challenging H.B. 497 on preemption grounds.¹³⁷ The government lawsuit was consolidated with the challenge filed by the civil rights groups, and a final decision by the Court remains pending as of this writing.¹³⁸

i. The Utah Compact

An interesting dimension to Utah’s H.B. 497 that other recent state-level regulations of immigration do not have is the existence of The Utah Compact, which is “[a] declaration of five principles to guide Utah’s immigration discussion.”¹³⁹ The Compact is endorsed by the Church of Jesus Christ of Latter-Day Saints (“LDS”)¹⁴⁰—of which 68%

135. See Utah Coal. of La Raza v. Herbert, No. 2:11-CV-401, 2011 WL 7143098 (D. Utah May 11, 2011); see also Mariano Castillo, *Judge Blocks Enforcement of Utah Immigration Law*, CNN (May 11, 2011), http://articles.cnn.com/2011-05-11/politics/utah.immigration.bill_1_utah-law-gary-herbert-utah-gov?_s=PM:POLITICS.

136. Castillo, *supra* note 135

(Opponents of the law argued that it violated the Constitution’s supremacy clause, which states that federal law has precedence when federal and state laws conflict. They also argued for a stay of the law on the grounds that it violated the Fourth Amendment, which protects from unreasonable search and seizure, and the ‘fundamental constitutional right to travel.’).

137. See Complaint, United States v. Herbert, No. 2:11-CV-01072, at *2 (D. Utah Nov. 22, 2011), ECF No. 2; see also Robert Gehrke, *Feds Sue To Block Utah Immigration Law*, SALT LAKE TRIB., Nov. 23, 2011, <http://www.sltrib.com/sltrib/politics/52972971-90/497-attorney-bill-department.html.csp>.

138. See ACLU OF UTAH, *Court Decision in H.B. 497 “Show Me Your Papers Law” Postponed* (Feb. 23, 2012), <http://www.acluutah.org/HB497LawsuitUpdate022212.html>.

139. See UTAH COMPACT, <http://www.theutahcompact.com> (last visited Aug. 31, 2012).

140. See Press Release, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *Church Supports Principles of Utah Compact on Immigration* (Nov. 11, 2010), <http://newsroom.lds.org/article/church-supports-principles-of-utah-compact-on-immigration> (the statement issued by the Church of Jesus Christ of Latter-Day Saints in support of the Utah Compact states:

The Church regards the declaration of the *Utah Compact* as a responsible approach to the urgent challenge of immigration reform. It is consistent with the important principles for which we stand: we follow Jesus Christ by loving our neighbors . . .

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of Utah residents are members¹⁴¹—and states that the five principles that should guide the discussion surrounding immigration reform are: federal solutions, law enforcement, families, economy, and a free society.¹⁴² In articulating these principles, the Compact affirms that immigration is a federal matter, urges state and local law enforcement to focus on violations of criminal rather than civil law, emphasizes the importance of family unity and the dignity of workers, and the “spirit of inclusion.”¹⁴³ Since it was drafted in November 2010 the Compact has received nearly 5,000 online signatures of endorsement and has inspired the states of Maine and Indiana to draft similar compacts.¹⁴⁴

While not officially a document inspired by principles of faith, it is apparent that the strong influence of the LDS Church on the culture of Utah played a role in the principles articulated in the Compact.¹⁴⁵ However, the Compact also drew criticism from groups such as the American Legion for endorsing an “amnesty” that would harm veterans

we recognize an ever-present need to strengthen families. Families are meant to be together . . . we acknowledge that every nation has the right to enforce its laws and secure its borders Public officials should create and administer laws that reflect the best of our aspirations as a just and caring society. Such laws will properly balance love for neighbors, family cohesion, and the observance of just and enforceable laws.)

141. See CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS ONLINE ALMANAC, <http://www.ldschurchnews.com/articles/58730/United-States-information-Utah.html#> (last visited Aug. 31, 2012).

142. UTAH COMPACT, *supra* note 139.

143. *Id.* (stating the fifth principle of The Utah Compact emphasizes the need to treat immigrants as members of the community at large, rather than as strangers or others:

Immigrants are integrated into communities across Utah. We must adopt a humane approach to this reality, reflecting our unique culture, history and spirit of inclusion. *The way we treat immigrants will say more about us as a free society and less about our immigrant neighbors. Utah should always be a place that welcomes people of goodwill.*

(emphasis added)).

144. See, e.g., David Montero, *Utah Compact Hailed for Shaping, Changing Immigration Debate*, SALT LAKE TRIB., Nov. 11, 2011, <http://www.sltrib.com/sltrib/politics/52897845-90/immigration-utah-compact-reform.html.csp>.

145. *Id.*

(On a chilly Friday afternoon in the place marking Brigham Young’s decision to settle Salt Lake Valley, state lawmakers and the Mormon church marked the one-year anniversary of The Utah Compact—a document supporters credit for sweeping immigration reform within the Utah and across the nation. The symbolism wasn’t accidental, according to Attorney General Mark Shurtleff. ‘I think it’s fully fitting we do this here where Brigham Young [and Mormon settlers] came into the valley as immigrants—some would say unauthorized immigrants—to this valley in 1847,’ Shurtleff said. Mexico owned the territory when pioneers arrived.)

and other citizens,¹⁴⁶ and others were vocal that the principles in the Compact were not integrated into Utah's immigration legislation in a truly meaningful way.¹⁴⁷ The principles articulated in the Utah Compact were also credited by some with the successful recall of Arizona State Senator Russell Pearce in November 2011,¹⁴⁸ the architect of Arizona's S.B. 1070 whose district in Mesa, Arizona contains a majority of LDS Church members.¹⁴⁹

The Utah Compact is an example of how people of faith and conscience can mobilize to influence immigration reform and policy by focusing on both the rule of law and humanitarian principles. While the debate continues about how much effect the Compact has actually had on immigration law and policy in Utah and the greater Southwest,¹⁵⁰ there can be no doubt that its existence and alleged influence on constituents adds an extra dimension to the recent efforts by state governments to regulate immigration at the sub-federal level.

146. See Ronald Mortensen, *Utah Compact Supporters Turn Veterans Day into Amnesty Day*, SALT LAKE CITY IMMIGR. EXAMINER, Nov. 12, 2011, <http://www.examiner.com/immigration-in-salt-lake-city/utah-compact-supporters-turn-veterans-day-into-amnesty-day>.

147. See, e.g., Esperanza Granados, *HB116 Does Not Fall Within the Principles of the Utah Compact*, SALT LAKE TRIB., Nov. 12, 2011, <http://www.sltrib.com/sltrib/opinion/52880098-82/utah-compact-immigration-federal.html.csp> (expressing the opinion that Utah's state guest-worker legislation for undocumented individuals "provides an illusory benefit . . . has caused great confusion and a false sense of hope . . . [which] has led to their exploitation by people who realize the shortcomings of the law").

148. See, e.g., Marjorie Cortez, *Utah Compact Helped Turn Anti-immigration Tide in Arizona*, DESERET NEWS, Nov. 10, 2011, <http://www.deseretnews.com/article/705394066/Utah-Compact-helped-turn-anti-immigration-tide-in-Arizona.html>; Rachel Weiner, *Arizona Recall: Why Russell Pearce Lost*, WASH. POST, Nov. 9, 2011, http://www.washingtonpost.com/blogs/the-fix/post/arizona-recall-why-russell-pearce-lost/2011/11/09/gIQALj6a5M_blog.html ("Immigration was a factor in his defeat—in large part because the Mormon Church decided that it should be. . . . This recall was part of an internal Republican—and in particular—Mormon debate over how to approach immigration.").

149. See Weiner, *supra* note 148 ("Pearce . . . [is a] member[] of the Church of Jesus Christ of Latter Day Saints. . . . Mesa, founded by the church, is one of the most Mormon cities in the country.").

150. See e.g. David Montero, *Utah Compact Had Big Impact on Immigration Debate*, SALT LAKE TRIB., Nov. 9, 2011, <http://www.sltrib.com/sltrib/politics/52880133-90/compact-immigration-utah-lake.html.csp>.

*B. Alabama H.B. 56: A “Humanitarian Crisis”*¹⁵¹

Standing opposite the efforts in Utah to create reasonable state immigration regulations is the state of Alabama, which seized from Arizona the mantle of possessing the harshest state-level immigration law in the country with the passage of H.B. 56 in June 2011.¹⁵² Undeterred by concerns about the constitutionality of such regulations, many of the states following Arizona’s lead went even further than S.B. 1070. In addition to criminalizing unlawful presence,¹⁵³ some states attempted to subject United States citizens and lawful residents who interact with their undocumented friends, neighbors, and community members to potential prosecution for “harboring” aliens.¹⁵⁴ No state went further than Alabama whose state immigration law, H.B. 56, earned the dubious distinction of being the most stringent—and, critics contend, the most inhumane¹⁵⁵—of all of the state efforts to regulate immigration law.

Is it ironic indeed that Alabama has become the latest hotbed of the immigrants’ rights movement, given that prior to the enactment of H.B. 56, Arizona had been dubbed “the New Selma” by some activists following the passage of S.B. 1070 in 2010.¹⁵⁶ However, while Arizona’s law came under fire for sanctioning—and, some would argue,

151. See Isabel Rubio *Harsh Immigration Laws Threaten “Humanitarian Crisis” in Alabama, Prompting Latinos to Fight Back*, DEMOCRACY NOW (Oct. 20, 2011), http://www.democracynow.org/2011/10/20/harsh_immigration_laws_threaten_humanitarian_crisis

(We are in a state of humanitarian crisis here I can’t even begin to explain to you the level of fear and chaos that HB 56 has created in the community. . . . We really think at the core this is aimed at the Latino community, not the entire immigrant community.).

152. The condemnations of H.B. 56—which has been accused of causing “one of Alabama’s worst times since Jim Crow” —are too voluminous to recount here. See, e.g., Victor Palafox, *H.B. 56: How the People of Alabama Fought Back Against the Worst Anti-Immigrant Law in the Country*, HUFFINGTON POST, May 10, 2012, http://www.huffingtonpost.com/victor-palafox/hb-56-how-the-people-of-a_b_1505081.html (Summarizing the grassroots response in Alabama).

153. Arizona S.B. 1070 makes unlawful presence in the state of Arizona a crime of trespass. S.B. 1070, 49th Leg., 2d Reg. Sess. (Ariz. 2010), available at www.azleg.gov/legtext/49leg/2r/bills/sb1070a.pdf.

154. See H.B. 56, 2011 Leg., Reg. Sess. (Ala. 2011), available at <http://latindispatch.com/2011/06/09/text-of-alabama-immigration-law-hb-56/>.

155. See Press Release, AMERICA’S VOICE, *National Evangelical Leaders Speak Out Against AL’s Anti-Immigration Law, Call it a Moral Crisis* (Nov. 10, 2011), http://americasvoiceonline.org/press_releases/entry/national_evangelical_leaders_speak_out_against_als_anti-immigration_law_cal/.

156. See Fr. Paul Mayer, *MLK Day and Arizona Evoke Memories of Selma*, HUFFINGTON POST, Jan. 16, 2011, http://www.huffingtonpost.com/father-paul-mayer/memories-of-selma-dr-king_b_808568.html.

requiring—racial profiling of individuals in order to determine their immigration status,¹⁵⁷ the outcry against the Alabama Taxpayer and Citizenship Protection Act reached a different level. This was due to two extremely controversial provisions unique to H.B. 56: the requirement that Alabama public schools compile information about the legal status of children and their parents, and the criminalization of humanitarian aid to undocumented immigrants in the state of Alabama.¹⁵⁸

Of all of the pending state restrictions on immigration law, Alabama's H.B. 56 has been the most contentious, and has also generated the greatest grassroots pushback from public interest groups and citizens.¹⁵⁹ Although much of law has been enjoined pending a constitutional challenge, some of the most controversial provisions were not¹⁶⁰ - and the future of H.B. 56 remains uncertain given the United States Supreme Court's recent ruling on the constitutionality of Arizona's S.B. 1070 in June 2012.¹⁶¹

III. "AN ACT OF RADICAL HOSPITALITY:" THE LEGAL CONSEQUENCES OF PROVIDING SANCTUARY TO UNDOCUMENTED IMMIGRANTS¹⁶²

The increased enforcement of immigration law at the state and federal level has renewed the call for people of faith and conscience to provide sanctuary to undocumented immigrants.¹⁶³ In many faith traditions, the obligation to care for the poor, the sick, and the elderly is

157. See Julianne Hing, *Arizona Legalizes Racial Profiling with S.B. 1070, Says Advocates*, COLORLINES (Apr. 23, 2010 4:12 PM), http://colorlines.com/archives/2010/04/brewer_signs_sb1070_legalizes_racial_profiling_of_arizonas_immigrants.html.

158. See *supra* notes 146-51.

159. *Id.*

160. See Mike Esterl and Miriam Jordan, *Key Win for Alabama Immigrant Law*, WALL ST. J., Sept. 29, 2011, <http://online.wsj.com/article/SB10001424052970204226204576599012968434494.html>.

Some of the provisions that the District Court did not enjoin were later enjoined by the United States Court of Appeals for the Eleventh Circuit on appeal. See *United States v. Alabama*, 443 F. App'x. 411 (11th Cir. 2011).

161. See Hispanic Interest Coal. of Ala. v. Bentley, No. 5:11-cv-2484, 2011 WL 5516953 (N.D. Ala., Sept. 28, 2011); see also *Alabama*, 443 F. App'x. 411.

162. See Rabbi Michael Feinberg, GREATER N.Y. LAB.-RELIGION COAL., *Churches Providing Sanctuary to Immigrants*, CBS NEWS (Feb. 11, 2009, 4:53 PM), <http://www.cbsnews.com/stories/2007/05/10/national/main2786988.shtml> ("For us, sanctuary is an act of radical hospitality, the welcoming of the stranger who is like ourselves, the stranger in our midst, our neighbors, our friends.")

163. See Rev. Hank Peirce, *UUA President and Boston Clergy Protest Arizona Law*, UNITARIAN UNIVERSALIST (Oct. 11, 2011), <http://www.uua.org/immigration/stories/162985.shtm>.

a central commandment. For Christians, the duty to minister to immigrants and refugees is bound up in the biblical call to serve the poor as they would serve Jesus Christ himself.¹⁶⁴ In the Catholic Worker movement,¹⁶⁵ this duty extends to providing hospitality to all who seek it – hospitality in the form of food, clothing, and shelter to those who seek it, regardless of their legal or undocumented immigration status.¹⁶⁶ Embracing the belief that “no human being is ‘illegal,’”¹⁶⁷ those affiliated with the Catholic Worker Movement believe that Catholic social teaching directs Roman Catholics to show “mercy without borders,”¹⁶⁸ and that there are inherent human rights that transcend the laws of man.¹⁶⁹

Recognizing that the call to provide hospitality extends to the entire human race—not merely to legal citizens of our respective nations – persons of faith have opened their homes and their places of worship to immigrants seeking refuge, regardless of their lawful or unlawful immigration status. At times, the duty to follow the personal religious command to minister to undocumented individuals has subjected persons of faith and conscience to criminal prosecution for harboring, aiding, and abetting immigrants seeking to evade immigration authorities.¹⁷⁰ Many people, including members of the clergy, have served time in prison for these acts of faith and conscience.¹⁷¹ This section will discuss the sections of the Immigration and Nationality Act (“INA”) prohibiting the transportation and harboring of undocumented immigrants, the legal consequences

164. *Matthew* 25:31 (Revised Standard Version)

(Then the righteous will answer him, saying, ‘Lord, when did we see thee hungry and feed thee, or thirsty and give thee drink? And when did we see thee a stranger and welcome thee, or naked and clothe thee? And when did we see thee sick or in prison and visit thee?’ And the King will answer them, ‘Truly, I say to you, as you did it to one of the least of these my brethren, you did it to me.’).

165. The Catholic Worker Movement, founded in 1933 by Dorothy Day, runs houses of hospitality where volunteers perform “the works of mercy” by providing needy individuals with “food, clothing, shelter, and welcome.” See Jim Forest, *The Catholic Worker Movement*, CATH. WORKER MOVEMENT <http://www.catholicworker.org/historytext.cfm?Number=78> (last visited Oct. 25, 2012).

166. *Id.*

167. This expression is originally attributed to Elie Wiesel, Holocaust survivor, Nobel Peace Prize recipient, and author. See Colette Bancroft, *Notable: No Human Being is Illegal*, ST. PETERSBURG TIMES, July 25, 2010, at 7L, available at <http://www.tampabay.com/features/books/notable-no-human-being-is-illegal/1109998>.

168. See MARK AND LOUISE ZWICK, *MERCY WITHOUT BORDERS: CATH. WORKER AND IMMIGRATION* (2010).

169. *Id.*

170. See generally *United States v. Aguilar*, 883 F.2d 662 (9th Cir. 1989).

171. *Id.*

endured by some participants in the Sanctuary Movement of the 1980s for violating those provisions of federal law, as well as the acts of sanctuary provided by those involved in the so-called “New Sanctuary Movement” of the last decade, including the rise of “sanctuary cities.”¹⁷²

A. Federal Prohibitions Against Transporting and Harboring Undocumented Immigrants: INA § 274(a)

The INA contains several criminal prohibitions against the harboring and transport of undocumented immigrants. The most commonly prosecuted sections are found in INA section 274. INA section 274(a)(1)(A)(i) criminalizes “bring[ing] or attempt[ing] to bring [an alien] to the United States,”¹⁷³ and INA section 274(a)(1)(A)(ii) criminalizes the transportation of unlawfully present aliens.¹⁷⁴ The federal harboring provision is found in INA section 274(a)(1)(A)(iii), and prohibits anyone from “conceal[ing], harbor[ing], or shield[ing] an alien] from detection.”¹⁷⁵

An individual may only be prosecuted under the federal anti-smuggling statute, INA section 274(a)(1)(A)(i), if she has “knowingly” brought, or attempted to bring, an alien into the United States “at a place other than a designated port of entry.”¹⁷⁶ This has resulted in most prosecutions under INA section 274(a)(1)(A)(i) being brought against large-scale human traffickers rather than individuals or groups who

172. See *infra* Part III.

173. 8 U.S.C. § 1324(a)(1)(A)(i) provides criminal penalties for anyone who knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien.

8 U.S.C. § 1324(a)(1)(A)(i) (2006).

174. Section 1324(a)(1)(A)(ii) makes it criminal for anyone to knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law.

Id. § 1324(a)(1)(A)(ii).

175. Section 1324(a)(1)(A)(iii) criminalizes those who knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.

Id. § 1324(a)(1)(A)(iii).

176. *Id.* § 1324(a)(1)(A)(i).

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provide sanctuary or humanitarian aid to undocumented immigrants.¹⁷⁷ However, a person may be prosecuted for violating the federal alien transportation and anti-harboring statutes if he is found to have harbored an alien “knowing[ly] or in reckless disregard” of the alien’s status as an undocumented immigrant.¹⁷⁸ This, along with the federal courts’ broad interpretations of the anti-transportation and anti-harboring provisions of INA section 274(a), has led to the prosecution of individuals who provide humanitarian aid to undocumented immigrants—most notably, the prosecution of persons of faith and conscience affiliated with the Sanctuary Movement in the 1980s.¹⁷⁹

B. The 1980s Sanctuary Movement

In the 1980s, several countries in Central America—including El Salvador and Guatemala—were engaged in civil wars that cost thousands of people their lives, and displaced countless others.¹⁸⁰ Many survivors of the wars fled to the United States seeking political asylum in the United States were eventually able to adjust their status due to a legal settlement in which the government admitted that asylum applicants from Central America never had their claims adjudicated on an individual basis.¹⁸¹ This is because at the time the United States government was denying Central American asylum applications as a matter of policy—categorizing refugees from El Salvador, Guatemala, and Nicaragua as “economic” refugees, ineligible as a matter of law to receive political asylum.¹⁸² In response to this policy, a movement developed among people of faith and conscience that came to be known as the Sanctuary Movement, which was organized to shelter and protect unauthorized migrants in the United States from being returned to war zones and, arguably, almost certain death.¹⁸³

The prosecution of persons of faith who provided humanitarian aid

177. There are, however, instances of members of faith communities and persons of conscience—particularly those affiliated with the 1980s Sanctuary Movement—of being prosecuted for aiding and abetting the illegal entry of aliens into the United States. *See, e.g.*, *United States v. Aguilar*, 883 F.2d 662 (9th Cir. 1989) (among the defendants were Philip Willis-Conger and Father Quinones).

178. 8 U.S.C. §1324(a)(1)(A)(i).

179. *See Aguilar*, 883 F.2d at 666-67.

180. A great deal has been written about the civil wars in Central America in the 1980s and the migration of refugees from these war-torn countries to North America. *See, e.g.*, SAUL LANDAU, *THE GUERRILLA WARS OF CENTRAL AMERICA: NICARAGUA, EL SALVADOR, AND GUATEMALA* (1994).

181. *See Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991).

182. *Id.*

183. *See generally* MIRIAM DAVIDSON, *CONVICTIONS OF THE HEART: JIM CORBETT AND THE SANCTUARY MOVEMENT* (1988).

to asylum seekers as part of the Sanctuary Movement of the 1980s is well-documented.¹⁸⁴ In addition to prosecutions brought under INA section 274(a), some individuals affiliated with the Sanctuary Movement—including Roman Catholic priests—were convicted of aiding and abetting the entry of undocumented immigrants into the United States.¹⁸⁵ No doubt contributing to the frequency of prosecution by the government of individuals affiliated with the 1980s Sanctuary Movement was the fact that the movement did not operate in secret. Unlike other large-scale sanctuary movements such as the anti-slavery Underground Railroad and the resistance to the Holocaust in Europe during World War II, the 1980s Sanctuary Movement relied on the public nature of their actions to accomplish their goals, daring the authorities to hold them accountable for their open defiance of federal anti-harboring laws.¹⁸⁶

Like Daniel Millis in his prosecution for “littering” by leaving water for migrants in the Buenos Aires National Wildlife Refuge, the individuals prosecuted by the federal government for providing physical sanctuary to Central American refugees argued that they did not violate INA section 274(a) because their actions were motivated by humanitarian concerns.¹⁸⁷ However, this argument was not successful, and to date it remains a crime to provide humanitarian aid to undocumented immigrants if such actions can be construed as providing transportation or harboring within the meaning of INA section 274(a).¹⁸⁸

184. See Gregory A. Loken & Lisa R. Babino, *Harboring, Sanctuary, and the Crime of Charity Under Federal Immigration Law*, 28 HARV. C.R.-C.L. L. REV. 119 (1993).

185. See *United States v. Aguilar*, 883 F.2d 662, 695-96 (9th Cir. 1989).

186. See Lois Armstrong, *Busted by Federal Agents, a Tucson Pastor Keeps the Sanctuary Light Aflame for Fleeing Salvadorans*, PEOPLE MAG. (Mar. 25, 1985), <http://www.people.com/people/archive/article/0,,20090253,00.html>.

187. Among other defenses to their conduct, the defendants in *Aguilar* argued that the actions of those affiliated with the Sanctuary Movement were protected by the Free Exercise Clause of the First Amendment, as well as a humanitarian exception to 13 U.S.C. § 1324(a) itself. *Aguilar*, 833 F.2d at 687.

188. Recently, there has been a renewed concern that individuals not affiliated with any formal movement—such as private landlords who rent property to undocumented immigrants—may be prosecuted for “harboring” aliens pursuant to INA § 274(a) if they have knowledge or constructive knowledge of their tenants’ immigration status. See, e.g., Sophie Marie Alcorn, *Landlords Beware, You May Be Renting Your Own Room . . . In Jail: Landlords Should Not Be Persecuted for Harboring Aliens*, 7 WASH. U. GLOBAL STUD. L. REV. 289 (2008). On a related note, in response to concerns about liability for property owners and discrimination against tenants, California passed a law prohibiting inquiries into tenants’ immigration status in 2008. See, e.g., Juliana Barbassa, *Landlords Can’t Ask About Immigration*, USA TODAY, Oct. 12, 2007, http://www.usatoday.com/news/nation/2007-10-12-2950439304_x.htm.

C. *The New Sanctuary Movement*

The increased enforcement of immigration law in the United States following the terrorist attacks of September 11, 2001—in both the G.W. Bush and Obama Administrations¹⁸⁹—has led to a renewed call among faith-based groups to provide sanctuary to undocumented immigrants in the United States.¹⁹⁰ The New Sanctuary Movement is a nationwide movement that was sparked in part by the passage of House Bill H.R. 4437 in December 2005 by U.S. Representative James Sensenbrenner (R-WI), which would have strengthened interior enforcement of immigration law and affirmed that states have “inherent authority” to enforce immigration law.¹⁹¹ In response to H.R. 4437, religious leaders across the country—led by Cardinal Roger Mahoney of the Archdiocese of Los Angeles—called for a response from people of faith and conscience to oppose the law and refuse to comply with it on moral and religious grounds.¹⁹² This ultimately led to the mobilization of thousands of persons, in dozens of cities across the country, who took to the streets in protest of H.R. 4437 and in support of comprehensive immigration reform.¹⁹³

Although H.R. 4437 ultimately did not become law,¹⁹⁴ in November 2006, the religious leaders who mobilized in opposition to the inhumane provisions of the law decided to create a formal initiative known as the New Sanctuary Movement.¹⁹⁵ This national initiative was structured in order to respond to “the crisis of ongoing raids and deportations,” as well as to work toward comprehensive immigration reform.¹⁹⁶ However, as in the 1980’s Sanctuary Movement, the

189. The Obama Administration has deported more individuals than any other presidential administration in United States history. See Brian Bennett, *Obama Administration Reports Record Number of Deportations*, L.A. TIMES, Oct. 18, 2011, <http://articles.latimes.com/2011/oct/18/news/la-pn-deportation-ice-20111018>.

190. See THE NEW SANCTUARY MOVEMENT, <http://www.newsanctuarymovement.org> (last visited Aug. 28, 2012).

191. See *Summary of the Sensenbrenner Immigration Bill*, NAT’L CONF. ST. LEGIS., <http://www.ncsl.org/default.aspx?tabid=13091> (last visited Sept. 7, 2012).

192. See *Hospitality*, NEW SANCTUARY MOVEMENT, <http://www.newsanctuarymovement.org/hospitality.html>. (last visited Sept. 7, 2012).

193. See Rachel L. Swarns, *Immigrants Rally in Scores of Cities for Legal Status*, N.Y. TIMES, Apr. 11, 2006, at 1A.

194. See The Leadership Conference, *The Immigration Debate: H.R. 4437, S. 2454, and S. 2611*, C.R. MONITOR (2006), available at www.civilrights.org/monitor/fall2006/art2p1.html.

195. See Alcorn, *supra* note 188, at 289, 294-95.

196. See Mike Hungerford, *Building on a Powerful Tradition: The New Sanctuary Movement*, PEACE COUNCIL, <http://www.peacecouncil.net/pnl/08/771/771sanctuary.html> (last visited Oct. 25, 2012).

churches affiliated with the New Sanctuary Movement must agree to do more than simply work for policy changes in our immigration laws in the abstract—they must also agree to provide physical shelter—sanctuary—to at least one family facing deportation in their congregations.¹⁹⁷ This has once again led undocumented immigrants to seek refuge within the walls of churches across the country that feel compelled, as a matter of faith and conscience, to protect them from expulsion from the United States due to their lack of legal immigration status.¹⁹⁸

1. Providing Physical Sanctuary to Immigrants in the Interior

Providing physical shelter to immigrants ordered removed from the United States is seen by the persons of faith and conscience who do so to be an act of civil disobedience.¹⁹⁹ However, the provision of physical sanctuary to individuals who the United States government is attempting to deport is not merely a refusal to comply with an unjust law but it is an affirmative act that, critics contend, constitutes “harboring” of aliens in violation of federal law.²⁰⁰

A. Casa Juan Diego—The Houston Catholic Worker

Inspired by the Catholic Worker Movement founded by Peter Maurin and Dorothy Day,²⁰¹ Casa Juan Diego is a Catholic Worker House of Hospitality in Houston, Texas, dedicated to providing sanctuary to immigrants and refugees on the U.S.-Mexico border.²⁰² Founded in 1980 by a married couple, Mark and Louise Zwick, Casa Juan Diego was originally one house of hospitality that provided sanctuary to immigrants fleeing civil war and unrest in Latin America.²⁰³ Since that time, Casa Juan Diego has grown into a large ministry that currently has ten houses of hospitality, including specialty houses for pregnant and battered women and paralyzed, sick, and

197. Swarns, *supra* note 193.

198. See, e.g., *infra* Section III.B.

199. Cf. EVANGELICAL PRESBYTERIAN CHURCH, *supra* note 17.

200. See *supra* Part III.A.

201. See generally Tom Cornell, *A Brief Introduction to the Catholic Worker Movement*, CATH. WORKER MOVEMENT, <http://www.catholicworker.org/historytext.cfm?Number=4> (last visited Aug. 28, 2012).

202. See *What is Casa Juan Diego?*, HOUS. CATH. WORKER, <http://www.cjd.org/about/what-is-casa-juan-diego> (last visited Sept. 7, 2012) [hereinafter “*Juan Diego*”].

203. *Id.*; Michael Serazio, *The Zwicks: “Faith People”*, HOUSTONPRESS, May 5, 2005, <http://www.houstonpress.com/2005-05-05/news/the-zwicks-faith-people>.

wounded immigrants.²⁰⁴ They also have a medical ministry, food and clothing centers, and a project that assists immigrant-workers who have been denied wages with recovery of the money due them for work performed.²⁰⁵ Since its founding, Casa Juan Diego has subsisted solely on voluntary contributions.²⁰⁶

For more than thirty years, Casa Juan Diego has openly assisted immigrants and refugees as part of its founders' belief in their obligation to perform the Works of Mercy.²⁰⁷ However, this has led to accusations that Casa Juan Diego is breaking the law, and that their provision of sanctuary to undocumented immigrants is immigrant "smuggling" or "harboring."²⁰⁸ Despite such accusations, Casa Juan Diego continues to minister to immigrants and refugees in Houston, and their mission has become a model for other faith-based organizations seeking to provide sanctuary to migrants in the interior.

B. *The Case of Elvira Arellano*

Perhaps the most notorious recent example of an undocumented immigrant seeking physical sanctuary from deportation is that of Elvira Arellano, a Mexican national who took refuge in the Adalberto United Methodist Church in Humboldt Park, Illinois for one year from August

204. *Juan Diego*, *supra* note 202.

205. *Id.*; see also Mark Zwick & Louise Zwick, *Celebrating 25 Years: Casa Juan Diego Opens to Help Poor Immigrants and Refugees in Houston*, HOUS. CATHOLIC WORKER, May 5, 1981, <http://cjd.org/2005/02/01/celebrating-25-years-casa-juan-diego-opens-to-help-poor-immigrants-and-refugees-in-houston>.

206. See Zwick & Zwick, *supra* note 205

(In the middle of January, we became serious about a location for the Houston Catholic Worker. There was only one place available, 4309 Washington Avenue, which was immediately christened Casa Juan Diego. This name, Juan Diego, was chosen because of the importance of his role in the story of Our Lady of Guadalupe. We did not have a penny. The financial response was forthcoming. A Westside pastor, Msgr. Crosthwait (Fr. Joe) gave us our first check. A young mechanic named Stephen who lived in our neighborhood asked if he could do something. He went into his house and returned with five one hundred dollar bills. We were on our way.).

207. Mark Zwick & Louise Zwick, *Is Casa Juan Diego a Smuggling Operation? No, Just the Works of Mercy for Immigrants and Refugees*, HOUS. CATH. WORKER, July-Aug. 2003 (reprinted from 1989), <http://cjd.org/2003/08/01/is-casa-juan-diego-a-smuggling-operation-no-just-the-works-of-mercy-for-immigrants-and-refugees>.

208. See *id.*

(With the discovery of the deceased who had suffocated in a trailer truck jammed with living and the dead, local reporters besieged Casa Juan Diego with questions. . . . The first question came on the phone from a reporter from one of Houston's major stations. 'We want to know about your smuggling operation.');

Mark Zwick & Louise Zwick, *Church and State and the New "Serfs"*, HOUS. CATH. WORKER, Apr. 1, 2008, <http://cjd.org/2008/04/01/church-and-state-and-the-new-serfs>.

2006 to August 2007.²⁰⁹ Ms. Arellano argued that, although she had been ordered deported to Mexico, she had a right to stay in the United States with her son, a United States citizen.²¹⁰

Although Ms. Arellano's decision to seek sanctuary in a Christian church was not unprecedented, her visibility and vocal defiance of immigration authorities—as well as her public denouncement of United States immigration law and policy—made Ms. Arellano a symbol of the devastating effects of deportation on families and children in the public imagination.²¹¹ However, despite her courage, Ms. Arellano was eventually apprehended by federal immigration authorities in Los Angeles, California and removed to Mexico in August 2007.²¹²

2. *Water, Food, and Medical Care As Sanctuary: Faith-Based Border Activist Groups*

Increased enforcement of immigration law on the border in the last decade—particularly the construction of additional fences in populated areas designed to deter migrants from attempting to cross into the United States—has driven those seeking to enter the country without authorization into the desert, where *coyotes*²¹³ and others familiar with the harsh terrain will guide them to civilization for a hefty fee.²¹⁴ In addition to the inherent risks of transacting business with human smugglers,²¹⁵ the heat and desolation of the desert makes the trek incredibly dangerous and many migrants succumb to the effects of the environment before they ever reach their destination.²¹⁶

In an attempt to mitigate the danger of migrants' journeys across the desert, several faith-based groups organized on the U.S.-Mexico border and began working to provide humanitarian aid—mostly water,

209. See generally Julianne Hing, *Elvira Arellano Keeps Her Promises, Won't Stop Fighting*, COLORLINES (May 11, 2009, 2:32 PM), http://colorlines.com/archives/2009/05/elvira_arellano_keeps_her_promises.html.

210. *Id.*

211. See, e.g., N.C. Aizenman & Spencer S. Hsu, *Activist's Arrest Highlights Key Immigrant Issue; She is Deported; Son is Left Behind*, WASH. POST, Aug. 21, 2007, at A5, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/08/20/AR2007082001675.html>.

212. See Ed Pilkington, *U.S Departs Mother Who Took Sanctuary*, GUARDIAN, Aug. 20, 2007, at 20, available at <http://www.guardian.co.uk/world/2007/aug/21/usa.edpilkington>.

213. Human smugglers are commonly referred to in Spanish as "coyotes." See, e.g., Tim Padgett, *People Smugglers Inc.*, TIME MAG., Aug. 18, 2003, at 42, available at <http://www.time.com/time/magazine/article/0,9171,474582,00.html>.

214. *Id.* at 43-44.

215. *Id.* at 44.

216. *Id.* at 43, 44.

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but occasionally medical care and other sustenance—to individuals attempting to cross into the country without authorization. Motivated by a desire to protect and sustain human life,²¹⁷ the faith-based border groups contend that their actions are not political and are done solely to respond to the reality of the life-and-death situation on the border.²¹⁸

A. Humane Borders

One of the first faith-based groups dedicated to providing humanitarian aid to individuals attempting to cross the U.S.-Mexico border is Humane Borders, which was formed in Southern Arizona in June 2000.²¹⁹ The mission of Humane Borders, which is “motivated by faith,”²²⁰ is to “create a safe and death free border environment.”²²¹ To that end, Humane Borders recruits more than 1,500 volunteers to place water stations at strategic places on the U.S.-Mexico border where migrants are known to travel on their journey to the United States.²²² Unlike some other humanitarian aid groups, Humane Borders only places water for migrants in places where they have either received permits in the case of public lands or written permission from landowners on private lands.²²³ They also have an official policy of not breaking the law by littering or by transporting undocumented migrants.²²⁴

Humane Borders estimates that since 2001, it has placed more than 100,000 gallons of life-saving water in the desert on the U.S.-Mexico border.²²⁵ In order to ensure that the water stations are located in areas where migrants in danger of perishing will be able to access them,

217. See *Mission*, HUMANE BORDERS, <http://www.humaneborders.net/mission/> (“Our sole mission is to take death out of the immigration equation.”) (last visited Sept. 7, 2012) [hereinafter “*Mission*”].

218. See *Water Stations*, HUMANE BORDERS, <http://www.humaneborders.net/water-stations/> (last visited Sept. 7, 2012) [hereinafter “*Water Stations*”].

(It is not our business to pretend we can control the flow of migrants that come north through our deserts where daytime summer temperatures can exceed 110 degrees. The facts are that due to circumstances way beyond our control they do come. Despite whatever opposing political views people may have on this issue we hope that the one thing we can all agree on is that this northward migration should not cost people their lives.)

219. *Mission*, *supra* note 217.

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. See *Sign Up*, HUMANE BORDERS, <http://www.humaneborders.net/sign-up/> (last visited Sept. 7, 2012).

225. *Water Stations*, *supra* note 218.

Humane Borders has worked with the Pima County (Arizona) Medical Examiner to identify where bodies have been found.²²⁶ This also assists those working with Humane Borders and other groups leaving water in the desert to map the routes that migrants traverse on their journeys.²²⁷

B. Tucson Samaritans/Los Samaritanos

Founded in July 2002, the Tucson Samaritans/Los Samaritanos (“the Tucson Samaritans”) is a mission of the Southside Presbyterian Church in Tucson, Arizona.²²⁸ The mission of the Tucson Samaritans is simple: “To Save Lives in the Southern Arizona Desert.”²²⁹ To that end, the Tucson Samaritans provide medical assistance, food, and water to border crossers, stating that they are “united in our desire to relieve suffering among our brothers and sisters and to honor human dignity.”²³⁰ Holding themselves out as providing hospitality to strangers,²³¹ the Tucson Samaritans travel the Southern Arizona desert in four-wheel-drive vehicles equipped with provisions designed to help people survive.²³² In addition to providing people in distress with immediate aid, volunteers with the Tucson Samaritans also advocate for change in our current federal immigration law and policy.²³³

Like other border activist groups, the Tucson Samaritans subscribe to the principles articulated in the Civil Initiative²³⁴ and believe that

226. *Id.*

227. *Id.*

228. *See Home*, TUCSON SAMARITANS, <http://www.tucsonsamaritans.org/> (last visited Sept. 7, 2012).

229. *Id.*

230. *See FAQ About Samaritans*, TUCSON SAMARITANS, <http://www.tucsonsamaritans.org/about-samaritans.html> (last visited Sept. 7, 2012).

231. *Id.*

232. *Id.*

233. *Id.*

(We are actively seeking to change border policy by serving as witness to its failures, by drawing media attention to the suffering in the desert and by advocating a more realistic and humane border policy. We support the finalization of international accords that would help prevent traveler’s deaths. We are committed to bringing all parties to the table to define sustainable immigration policy.).

234. Jim Corbett, *Civil Initiative—Our Responsibility for Protecting the Persecuted Must Be Balanced by Our Accountability to the Legal Order*, TUCSON SAMARITANS, <http://www.tucsonsamaritans.org/civil-initiative.html> (last visited Sept. 7, 2012). The principles of the Civil Initiative are as follows:

- Civil initiative is nonviolent, truthful, wide-ranging, cooperative, pertinent, volunteer-based, and community centered.
- Nonviolence checks vigilantism. Civil initiative neither evades nor seizes police powers.
- Truthfulness. Civil initiative must be open and subject to public examination.

“our responsibility for protecting the persecuted must be balanced by our accountability to the legal order.”²³⁵

C. No More Deaths/No Mas Muertes

No More Deaths/No Mas Muertes (“No More Deaths”) was founded in March 2004 at the Multi-Faith Border Conference.²³⁶ No More Deaths/No Mas Muertes states that its mission is “to end death and suffering on the U.S./Mexico border through civil initiative: the conviction that people must work openly and in community to uphold fundamental human rights.”²³⁷ No More Deaths embraces the “Faith-Based Principles for Immigration Reform”²³⁸ and in addition to providing humanitarian assistance, the group focuses on “[w]itnessing and responding,” “[c]onsciousness raising,” “[g]lobal movement building,” and “[e]ncouraging humane immigration policy.”²³⁹ In 2008, No More Deaths was adopted by the Unitarian Universalist Church of

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- Civil initiative is wide-ranging and not factional. It protects those whose rights are being violated, regardless of the victim’s ideological position or political usefulness.
 - Civil initiative is cooperative. Dialogue with authorities must exist in an atmosphere of respect for government officials as persons and with an attitude of willingness to compromise.
 - It is pertinent to protect victim’s needs and not succumb to reactions that are primarily symbolic or merely expressive. Media coverage and public opinion are of secondary importance; [our] central concern is to do justice rather than to petition others to do it.
 - The community must never forfeit its duty to protect the victims of human rights violations. But it must be a volunteer-based effort; no new bureaucracy should be formed that would conflict with governmental functions of those constitutionally designated to assume responsibility.
 - Civil initiative is community-centered. Our exercise of civil initiative must be integrated within the community and must outlast and outreach individuals acts of conscience.

Id.

235. *Id.*

236. See *History and Mission of No More Deaths*, NO MORE DEATHS/NO MAS MUERTES, <http://nomoredeaths.org/information/history-and-mission-of-no-more-deaths.html> (last visited Sept. 7, 2012) [hereinafter “*History and Mission*”].

237. *Id.*

238. See *Faith-Based Principles for Immigration Reform*, NO MORE DEATHS/NO MAS MUERTES, <http://nomoredeaths.org/information/faithbased.html> (last visited Sept. 7, 2012) (In sum, the Faith-Based Principles of Immigration Reform are to: “1) Recognize that the current Militarized Border Enforcement Strategy is an ill-conceived policy;” “2) Address the status of undocumented persons currently living in the U.S.,” “3) Make family unity and reunification the cornerstone of the U.S. immigration system;” “4) Allow workers and their families to enter the U.S. to live and work in a safe, legal, orderly, and humane manner through an Employment-Focused immigration program;” and “5) Recognize that root causes of migration lie in environmental, economic, and trade inequities.”).

239. *History and Mission*, *supra* note 236.

Tucson as an official ministry.²⁴⁰

The main ministry provided by No More Deaths is the provision of humanitarian aid to migrants five to twenty miles from the Mexico border in the Arizona desert.²⁴¹ No More Deaths has a “base camp” near the town of Arivaca, Arizona, where migrants can stop on their journey to receive food, water, shelter, and medical care.²⁴² Although the majority of the volunteers who work with No More Deaths are local; since 2008, additional volunteers have worked with the organization year-round to provide assistance, including college students participating in alternative spring break experiences.²⁴³

In addition to providing humanitarian aid in the desert, No More Deaths has several additional projects designed to assist migrants on the U.S.-Mexico Border. The organization has partnered with migrant aid stations in Sonora, Mexico to provide assistance to the approximately 1,500 migrants that are removed to border towns in Mexico by the Department of Homeland Security (“DHS”) on a daily basis.²⁴⁴ No More Deaths also participates in a project addressing the abuse of migrants by the U.S. Customs and Border Patrol (“CBP”), and has produced a report detailing some of the more egregious instances of Border Patrol abuse.²⁴⁵

Like other groups providing food, water, and other sustenance to migrants on the U.S.-Mexico border, the organization maintains that the provision of humanitarian aid to human beings is never a crime and that, as such, their actions are well within the bounds of the law.²⁴⁶

240. *Id.*

241. *See Desert Aid*, NO MORE DEATHS/NO MAS MUERTES, <http://www.nomoredeaths.org/Desert-Aid/> (last visited Sept. 7, 2012).

242. *Id.*

243. *See Volunteer*, NO MORE DEATHS/NO MAS MUERTES, <http://www.nomoredeaths.org/Information/volunteer.html> (last visited Sept. 7, 2012).

244. *See Aid Stations, Resource Centers, Shelters*, NO MORE DEATHS/NO MAS MUERTES, <http://www.nomoredeaths.org/Mexico-Aid-Centers/aidstations.html> (last visited Oct. 15, 2012).

245. *See October 2011 Newsletter*, NO MORE DEATHS/NO MAS MUERTES, Oct. 2011, <http://www.nomoredeaths.org/Updates-and-Announcements/newsletter-december-2010.html>. The newsletter summarizes the full report, which is based on interviews with 12,895 individuals deported to Sonora, Mexico, between Fall 2008 and Spring 2011. *Id.* The report states that the interviews revealed that during that time, Border Patrol agents denied food to 2,981 people, gave insufficient food to 11,384 people, denied water to 863 people, and gave insufficient access to water to 1,402 additional people. *Id.* They also found that 10% of interviewees reported physical abuse, and 86% were deported without medical treatment. *Id.*

246. *See Volunteer Opportunities: Summer 2011*, NO MORE DEATHS/NO MAS MUERTES, <http://www.nomoredeaths.org/Information/summer2011.html> (last visited Sept.

However, this certainty about the legality of the actions of No More Deaths volunteers has not insulated them from accusations of breaking federal law by harboring undocumented immigrants in violation of federal law.²⁴⁷

D. Sanctuary As Policy: “Sanctuary Cities,” Non-Cooperation with Federal Immigration Law, and Municipal Identification

In addition to the provision of sanctuary as an affirmative act by individuals, churches, and other groups, there has also been an increase of formal non-cooperation policies with federal immigration officials enacted by local governments across the country.²⁴⁸ Although some cities and large metropolitan police departments have long held policies that prohibit local law enforcement from engaging in the enforcement of immigration law as a matter of public safety,²⁴⁹ in recent years some local governments have taken it upon themselves to pass resolutions declaring their cities and towns “Sanctuary Cities”²⁵⁰—places where undocumented immigrants can live, work, and be part of the community

7, 2012) (“We are very clear about the legal parameters of our work in the desert, and cover them extensively in training. We do not do anything illegal.”).

247. *Id.* (“Unfortunately, this does not mean we are immune from legal threats and challenges. You should carefully consider your willingness to accept the legal risk.”).

248. Several localities have refused to participate in the information sharing program with the Department of Homeland Security known as Secure Communities, in which requests to hold suspected undocumented immigrants pursuant to a detainer issued by Immigration and Customs Enforcement (“ICE”). The most recent jurisdiction to decline to participate in Secure Communities is Washington, D.C. *See* Christina Costantini & Elise Foley, *D.C. Passes Bill to Restrict Secure Communities Immigration Enforcement Program*, HUFFINGTON POST, July 10, 2012, 7:17 PM, http://www.huffingtonpost.com/2012/07/10/dc-immigration-law-secure-communities-ice_n_1663214.html.

249. *See* L.A. Police Dep’t, Special Ord. No. 40 (Nov. 27, 1979). Although such policies simply reiterate that the proper role of local law enforcement is to enforce state and local law—not federal immigration law—such policies are often mistaken for sanctuary policies, and as such, the cities within the jurisdiction of law enforcement agencies with these policies are improperly labeled Sanctuary Cities. *See, e.g., Sanctuary City? Not L.A.*, L.A. TIMES, Aug. 27, 2011, at A17

(In a sanctuary city, the city government either actively protects undocumented immigrants from arrest or declines to cooperate with those who oversee deportations, sometimes by limiting the use of city funds. Los Angeles does none of that Special Order 40 concludes that ‘officers shall not initiate police action with the objective of discovering the alien status of a person.’ It does not, however, prevent officers from turning over those arrested for other offenses to immigration authorities; in fact, it specifically directs officers to contact federal authorities if an arrestee turns out to be in the country illegally.)

250. *See, e.g.,* Virginia A. Fisher, *Cambridge Offers Sanctuary*, HARV. CRIMSON, May 10, 2006, <http://www.thecrimson.com/article/2006/5/10/cambridge-offers-sanctuary-cambridge-reaffirmed-its/>.

without fear of apprehension by federal immigration authorities.²⁵¹ Although critics contend that such “non-cooperation” agreements are prohibited by federal law,²⁵² it remains unclear what obligation local governments have to assist the federal government with immigration enforcement, and what the repercussions are for refusing to do so if such a duty exists.²⁵³ This section will briefly discuss what a Sanctuary City is, as well as some of the policies, procedures, and benefits provided to undocumented immigrants in localities that identify as sanctuaries for those who have reason to fear apprehension by federal immigration authorities.

1. *What Is a Sanctuary City?*

“Sanctuary City” is a term that is often used by politicians on both the left and the right, but there remains quite a bit of confusion about what exactly makes a locality a sanctuary for undocumented immigrants.²⁵⁴ The Congressional Research Service (“CRS”) has defined Sanctuary Cities as localities “that have adopted ‘don’t ask, don’t tell’ policies in which city employees, including the police, are not required to report illegal immigrants to the federal authorities”²⁵⁵ and listed thirty-two cities in the United States as Sanctuary Cities, including the most populous city in the country, New York City.²⁵⁶

In truth, however, New York City is probably not actually a Sanctuary City, nor are most of the cities listed in the CRS report. Like many large metropolitan police departments, the New York City Police Department (“NYPD”) has policies in place that discourage local law enforcement from asking individuals about their immigration status in order to ensure that they report crimes when they are either victims or witnesses.²⁵⁷ However, such policies have little to do with providing

251. *Id.* (“Cambridge reaffirmed its status as a ‘sanctuary city’ for undocumented immigrants Monday, resolving to protect residents from deportation by the federal government or discrimination because of immigration status.”).

252. 8 U.S.C. § 1373(a) (2006)

(Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.)

253. 8 U.S.C. § 1373 contains no enforcement provisions, nor any penalties for failing to comply with its provisions. 8 U.S.C. § 1373.

254. *See, e.g.,* Michael Luo, *A Closer Look at the ‘Sanctuary City’ Argument*, N.Y. TIMES, Nov. 29, 2007, at A26.

255. *Id.*

256. *Id.*

257. *Id.*

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sanctuary to undocumented immigrants—the goal is to ensure public safety generally, as it makes it more difficult for law enforcement to do their jobs if law-abiding individuals are afraid to contact the police for fear of apprehension by federal immigration authorities.²⁵⁸ Additionally, the vast majority of cities with such policies in place—including the two largest, New York City and Los Angeles—do cooperate with federal immigration authorities to identify and apprehend “criminal aliens” through information-sharing programs such as 287(g)²⁵⁹ and Secure Communities.²⁶⁰

So this begs the question, what is a true “Sanctuary City?” Do localities that identify as Sanctuary Cities, in fact, have a “don’t ask, don’t tell” policy toward undocumented immigrants living in their community? Or, do these local governments do something more than assert their non-cooperation with federal immigration authorities and actually take action to affirmatively provide some sort of sanctuary to persons without lawful immigration status? While there is not one answer to these questions, the actions of one locality—New Haven, Connecticut—shed some light on what it means to be a Sanctuary City.

i. New Haven: The Provision of Government-Issued Identification As Sanctuary

Most local governments that have decided to affirmatively declare themselves Sanctuary Cities have generally also taken steps to integrate and welcome undocumented migrants into their community by providing them with some benefits, such as municipal identification

258. *Id.* (“If we didn’t allow illegals to report crimes,’ Mr. Giuliani said yesterday, ‘a lot of criminals would have gone free because they’re the ones who had the information.’”).

259. 8 U.S.C. § 1357(g) (2006).

260. *Secure Communities*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT, http://www.ice.gov/secure_communities/ (last visited Sept. 7, 2012)

(Secure Communities is a simple and common sense way to carry out ICE’s priorities. It uses an already-existing federal information-sharing partnership between ICE and the Federal Bureau of Investigation (“FBI”) that helps to identify criminal aliens without imposing new or additional requirements on state and local law enforcement. For decades, local jurisdictions have shared the fingerprints of individuals who are booked into jails with the FBI to see if they have a criminal record. Under Secure Communities, the FBI automatically sends the fingerprints to ICE to check against its immigration databases. If these checks reveal that an individual is unlawfully present in the United States or otherwise removable due to a criminal conviction, ICE takes enforcement action—prioritizing the removal of individuals who present the most significant threats to public safety as determined by the severity of their crime, their criminal history, and other factors—as well as those who have repeatedly violated immigration laws.).

cards.²⁶¹ That was the case with New Haven, Connecticut, which became the first locality in the United States to issue municipal identification cards to all city residents—regardless of immigration status—in 2007.²⁶² As a result, the provision of identification to undocumented immigrants has now become an act of sanctuary.

Following the terrorist attacks on the Twin Towers and the Pentagon on September 11, 2001, the availability of state-issued driver's licenses and identification cards has been restricted to individuals who are able to prove that they are either United States citizens or aliens currently in a lawful immigration status.²⁶³ Federal and state governments decided to restrict identification documents to persons who were lawfully present in the wake of 9/11 because five of the nineteen individuals who hijacked commercial airlines on that day had overstayed their non-immigrant visas and were thus “undocumented” at the time they carried out the terrorist attacks.²⁶⁴

Unfortunately, the lack of access to government-issued identification for undocumented immigrants has had a great deal of unintended consequences. For example, in California, the inability to obtain a driver's license has resulted in a large increase, statewide, in the impoundment of cars driven by unlicensed drivers discovered at “driver's license checkpoints.”²⁶⁵ Some local governments, such as Atlanta, have attempted to prohibit individuals from doing business with the city unless they can provide U.S. government-issued identification.²⁶⁶ Additionally, some banks will not permit individuals

261. See, e.g., Christina Costantini, *Municipal I.D. Cards Given to Undocumented Immigrants in Cities Across the U.S. With Varied Success*, HUFFINGTON POST, Oct. 24, 2011, 5:12 AM, http://www.huffingtonpost.com/2011/10/21/municipal-id-cards-undocumented-immigrants_n_1024412.html.

262. See Associated Press, *New Haven Becomes First City in U.S. to Offer ID Cards to Illegal Immigrants*, FOX NEWS (July 24, 2007), www.foxnews.com/story/0,2933,290522,00.html.

263. See Real ID Act of 2005, Pub. L. No. 109-13, § 201, 119 Stat. 302, 313 (2006).

264. See Chad Selweski, *Ten Years After 9/11, Miller Says U.S. Visa System too Lax*, MACOMB DAILY BLOGS (Sept. 14, 2011), www.macombpolitics.blogspot.com/2011/09/ten-years-after-911-miller-says-us-visa.html (“Five of the 9/11 hijackers had entered the country legally, but overstayed visas—if an effective program had been in place who knows if the attacks could have been prevented.”).

265. See, e.g., Kimberly Dvorak, *California Looks to Change Law Regarding Driver's License and Car Impoundments*, EXAMINER (Sept. 6, 2011), www.examiner.com/county-political-buzz-in-san-diego/california-looks-to-change-law-regarding-driver-s-license-and-car-impoundments.

266. See John Hill, *Atlanta Bans Mexican ID Card After Anti-Illegal Immigration Activist Complaint*, STAND WITH ARIZ. (May 1, 2012), <http://standwitharizona.com/blog/2012/05/01/atlanta-bans-mexican-id-card-for-services-after-anti-illegal-immigration-activist-complains/>.

to open accounts without state-issued identification. And in Arizona, parents cannot enroll their children in the local public elementary and secondary schools using a matricula consular as identification.²⁶⁷ As a result, undocumented immigrants have found it increasingly difficult—and sometimes impossible—to live, work, and send their children to school because they are unable to carry out many of the activities of daily life that require them to possess government-issued identification.²⁶⁸

The steps taken by New Haven to provide undocumented immigrants with identification so that they can participate more fully in civic life are a form of sanctuary, given the requirement by most states that proof of lawful presence is required to obtain a driver's license or official government identification card.²⁶⁹ While few localities have followed New Haven's example, the prospect of providing municipal identification to undocumented immigrants remains a form of sanctuary for undocumented immigrants that localities can undertake in order to create a more welcoming environment for all of their constituents, regardless of immigration status.²⁷⁰

IV. LOVE THY NEIGHBOR: SANCTUARY, AMNESTY, AND COMPREHENSIVE IMMIGRATION REFORM

This Article has discussed several different forms of action that can constitute sanctuary for undocumented immigrants: the provision of food and water, the rendering of medical aid, providing physical shelter or refuge, the refusal by local government to cooperate with federal immigration authorities, and the issuance of municipal identification cards to all persons without regard to immigration status.²⁷¹ However, it has been noted that the term “sanctuary”—especially when used in the context of providing aid to undocumented immigrants—has a negative connotation and is often conflated with another disfavored term often used when discussing immigrants, “amnesty.”²⁷² This Section will

267. See Daniel Gonzalez, *Change in ID-card Law Heightens Migrants' Fears*, ARIZ. REPUBLIC, Aug. 2, 2011, <http://www.azcentral.com/news/articles/2011/08/02/20110802consular-id-card-law-changes-heightens-migrants-fears.html>.

268. *Id.*

269. See, e.g., Melissa Bailey, *City ID Plan Approved*, NEW HAVEN INDEP. (June 5, 2007), newhavenindependent.org/archives/2007/06/city_id_plan_ap.php.

270. See, e.g., Emily Bazar, *Illegal Immigrants Are Issued ID Cards in Some Places*, USA TODAY, Oct. 4, 2007, www.usatoday.com/news/nation/2007-10-03-Immigrant_N.htm.

271. See *supra* Part II.

272. See Rose Cuison Villazor, *What is a “Sanctuary?”*, 61 SMU L. REV. 133, 135, 156 (2008) (noting that “[s]anctuary is arguably the new ‘amnesty’ of our time”).

discuss how the pejorative use of the term “amnesty” helped doom the passage of the DREAM Act, a reasonable proposal for immigration reform for undocumented immigrant children.

A. *The DREAM (Development, Relief and Education for Alien Minors) Act: “Amnesty” for Undocumented Immigrant Children*

One provision of immigration reform that has been considered by Congress numerous times in the last decade²⁷³ is the Development, Relief and Education for Alien Minors Act, better known as the DREAM Act. Most recently voted down by Congress in December 2010,²⁷⁴ the DREAM Act would provide relief for undocumented immigrants who were brought to the United States as minors, have graduated from a U.S. high school, and who have completed either two years of college or military service in the United States.²⁷⁵ The DREAM Act also contains provisions requiring applicants to demonstrate a lengthy period of continuous residence and good moral character during that time.²⁷⁶

The DREAM Act has received a great deal of support due to the fact that the potential beneficiaries of such legislation are innocent victims of their parents’ or guardians’ decision to bring them to the United States without proper authorization. However, there is also a great deal of criticism of the law because it is perceived by opponents to be an undeserved “amnesty” for undocumented immigrants that would result in fraud and abuse.²⁷⁷ The idea that anyone—even persons who were brought to the United States as infants—would receive an immigration benefit despite the fact that they “broke the law” is anathema to many of those who support the increased enforcement of U.S. immigration law. By couching the DREAM Act as an unearned form of “amnesty” for lawbreakers, the DREAM Act was defeated in Congress in 2010.²⁷⁸

273. The DREAM Act was first introduced by Congress in August 2001. See David Montero, *DREAM Act Supporters Try, Fail, to Get Hatch’s Ear*, SALT LAKE TRIB., Aug. 8, 2011, www.sltrib.com/sltrib/politics/52350097-90/act-campaign-chaffetz-dream.html.csp (“The bill was actually introduced on Aug. 1, 2001.”).

274. The legislation passed the House, but was filibustered in the Senate. See Brian Montopoli, *DREAM Act Dies in the Senate*, CBS NEWS (Dec. 18, 2010), www.cbsnews.com/2100-250_162-7162862.html.

275. *Id.*

276. See 8 U.S.C. § 1101(f) (2006) (defining “good moral character”).

277. See Rep. Steve King, *The DREAM Act is an Amnesty Bill that America Cannot Afford*, FOX NEWS (Dec. 6, 2010), www.foxnews.com/opinion/2010/12/06/dream-act-amnesty-america-afford/.

278. See Montopoli, *supra* note 274.

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On June 15, 2012, President Obama announced that certain undocumented immigrants who came to the United States prior to the age of sixteen would be eligible to apply for deferred action and work authorization, so long as they are currently age thirty or under and meet other eligibility requirements.²⁷⁹ However, as of this writing, there are currently no proposals for comprehensive immigration reforms pending in Congress, including a new version of the DREAM Act.²⁸⁰

CONCLUSION

The recent attempts by state and local governments to regulate immigration at the sub-federal level have not only stymied Congress' efforts to pass comprehensive immigration reform, but have caused a great deal of fear and apprehension among the many undocumented immigrants in the United States and their families. The fear that local law enforcement will report witnesses and victims of crime to immigration authorities has caused persons without lawful presence to withdraw from society, making all of us less safe in the process.²⁸¹ Additionally, the focus on an "enforcement-only" immigration policy—particularly on the border—has led to a humanitarian crisis over the last decade, with more and more people dying in the desert in their attempt to come to the United States, either to seek reunification with their families or to find a way to support them.

On June 25, 2012, the United States Supreme Court issued its decision in the landmark case of *Arizona v. United States*, which was the United States Department of Justice's challenge to the law that started it all—Arizona's S.B. 1070.²⁸² By striking down the majority of S.B. 1070 as preempted by federal law, the Supreme Court dealt a blow to the state governments that have been seeking to regulate immigration

279. See, e.g., Richard Wolf, *Obama Easing Deportation Rules for Young People*, USA TODAY, June 15, 2012, <http://content.usatoday.com/communities/theoval/post/2012/06/obama-to-speak-on-new-immigration-rules/1#.UAMNw5GQP6A>.

280. See, e.g., Shankar Vedantam, *Next Congress unlikely to pass DREAM Act, Republicans say*, WASH. POST, Dec. 24, 2010, at A2, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/12/23/AR2010122305377.html>.

281. See, e.g., Steven Beardsley, *Statewide Immigration Law Could Undermine Community Policing Efforts, One of State's Top Cops Says*, NAPLESNEWS (Feb. 4, 2011), www.naplesnews.com/news/2011/feb/04/statewide-immigration-law-could-undermine-community/?partner=RSS.

282. 132 S.Ct. 2492, 2492, 2497-98 (2012).

law at the state level.²⁸³ Because many of the state immigration laws discussed in this Article are ostensibly meant to complement federal enforcement of immigration law, the Supreme Court's explicit rejection of this legal theory makes it uncertain how state immigration laws will fare after the decision in *Arizona v. United States*.²⁸⁴ However, the Supreme Court's determination that the most controversial part of S.B. 1070 was not clearly preempted by federal immigration law—Section 2(B), the “show me your papers” provision that opponents of the law argue encourages racial profiling—may embolden other states to continue to experiment with the boundaries of what is permissible enforcement of immigration law within the limits of their historic police powers.²⁸⁵

Ultimately, the hard line taken by many of the state legislatures has gone beyond mere enforcement of immigration law and seeped into the regulation of the ability of persons to receive some of the most basic necessities of human life—food, shelter, and education. Regardless of the legality of immigration enforcement at the state level, in the words of those who provide humanitarian aid to immigrants, the provision of these basics—the provision of sanctuary—should never be a crime at either the state or federal level.

283. See, e.g., Andrew Cohen, *Razing Arizona: Supreme Court Sides With Feds on Immigration*, ATLANTIC, June 25, 2012, <http://www.theatlantic.com/national/archive/2012/06/razing-arizona-supreme-court-sides-with-feds-on-immigration/258932/>.

284. See, e.g., John Guzzon, *S.B. 1070 Ruling Doesn't End Immigration Debate*, MODERN TIMES MAG. (June 27, 2012), www.moderntimesmagazine.com/page16/Arizona_SB1070_120627/Arizona_SB1070_120627.php.

285. *Id.*