



Photo by Melanie Veletz.

Entering Arizona.

U.S.–MEXICO FUTURES FORUM

We're All Arizonans Now — The Fallout of SB 1070

by Tamar Jacoby

What a difference a few months make. As recently as March 2010, Arizona was still just a state — not yet shorthand for America's ever-widening divide over illegal immigration.

The passage of Arizona SB 1070 has transformed the national immigration debate, fueling passion and intensity and hardening arguments to the point that there's almost no point in talking any more — people on both sides are that entrenched.

In a radical departure from settled law, SB 1070 makes illegal immigration a state crime in Arizona — until now, it has been entirely a federal matter. Even more controversially, the measure authorizes and in some cases requires local police to detain people they think may be

unauthorized. A devilishly ingenious, and disingenuous, piece of lawyering, the legislation is designed to appear reasonable and pass the test of constitutionality, but it gives police far-reaching power to harass unlawful immigrants with the goal of driving them out of the U.S. — a strategy the law's framers call “attrition through enforcement.”

Everyone in America has an opinion about the measure and — due in part to this sly crafting — it has become a political Rorschach test.

President Barack Obama, President Felipe Calderón of Mexico, The New York Times, the Catholic Church, the AFL-CIO and a Who's Who of Latino pop stars, among others, have denounced the legislation. More than 15 American cities have passed boycott measures

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Protestors urge a boycott of Arizona at an immigration rally in Ann Arbor, Michigan.

forbidding their employees to travel to Arizona. Dozens of conferences and conventions scheduled to take place there have been cancelled. The national immigrants-rights movement — one of the fastest growing and most influential political forces to emerge in the U.S. in recent years — is now focused all but exclusively on combating the new law. And tens of thousands of people across the country have participated in demonstrations pillorying it as a racially motivated assault on immigrants and an invitation to

ethnic profiling. In some circles, the very word Arizona has become synonymous with racism — on a par with and compared to outrages committed in Nazi Germany.

Meanwhile, on the other side of the divide, poll after poll shows that some 60 percent of Americans support SB 1070. What exactly do they understand about the measure, and why do they endorse it? It's hard to say — none of the polling has probed very deeply. Some supporters talk about stemming border violence and controlling crime —

particularly the brazen, mob-style crime committed by international smuggling cartels. Others seem more bothered by the simple illegality of illegal immigration. Few surveys, now or in the past, show voters to be particularly angry at unlawful immigrants or eager to punish them. But many are very angry at the dysfunctional immigration system — and at a political class that doesn't seem bothered by millions of people making a mockery of the law.

What percentage of those who tell pollsters they support SB 1070 grasp that it will encourage profiling or the harassment of otherwise law-abiding illegal immigrants? Is that what they are endorsing? Or is their support merely an inchoate cry for government — any level of government — to get control of who is entering the country? According to the Rasmussen Report, a polling operation, roughly half of those who endorse the Arizona law are at least “somewhat concerned” about potential “civil rights violations.” But nuanced or not, the measure's backers too have attracted some strident spokespeople. Just listen to Sarah Palin, who defends SB 1070 as “noble and just” and urges followers to defy the “boycott crowd.”

Beneath the bitter politics, there's a serious debate — actually several of them. How threatening is the crime in Arizona? (According to a recent FBI report, Phoenix is one of the four safest cities in America — and in Arizona, as across the U.S., the immigrant influx has corresponded with a decline in crime.) Is drug violence from Mexico spilling north across the border? (Not yet, or not significantly, but that could happen at any moment, and drug cartels increasingly dominate the smuggling of illegal immigrants.) Is SB 1070 unconstitutional? (The five legal challenges heading for federal

court will eventually decide that.) Just how serious an offense is illegal immigration, and how should America respond to people who, though guilty of entering the country unlawfully, have done nothing else wrong? These are all important questions.

But quite apart from any substantive issues and whatever its consequences in Arizona, arguably the most devastating effect of SB 1070 is political — the way it's poisoning the American immigration debate.

Not just immigrants-rights advocates but well-meaning liberals across the country stand increasingly at odds on this issue with 60 percent of the American public. Where one side sees law enforcement and personal security, the other sees racism. The very term enforcement has become a dirty word to many immigrants-rights activists. And to the 60 percent who back the measure, reform advocates look increasingly suspect — unwilling to admit an obvious truth (that illegal immigrants have broken the law) and far too ready to play the race card against those with legitimate concerns. Increasingly, for both sides, immigration is becoming an issue of good versus evil. And in that kind of moralistic standoff, there is no middle ground — no room for politics or compromise.

It's a disastrous course — and one all too familiar in American politics. Consider the stalemate of all stalemates: abortion. On immigration as on abortion, increasingly the two sides speak different languages. Pro-life vs. pro-choice. Pro-enforcement vs. pro-reform. Each camp reads what it wants into its signature term, but the other camp reads something entirely different. Each side sees the other as morally reprehensible. Each is sure it's right. We as a nation can't resolve the problem, but we can't let go of it either — and it soon poisons



Photo by John Moore/Getty Images.

A supporter of SB 1070 outside the Arizona state capitol building, July 2010.

other issues, making it hard to do even basic things, like confirm judges.

Can we come back from this brink? It's far from clear. Other recent public opinion research on immigration, confirming dozens of polls conducted over the past five years, suggests that the overwhelming majority of Americans views the issue through a pragmatic lens. Voters are troubled by endemic illegal immigration and the way it is eroding the rule of law. They support much tougher enforcement, both on the border and in the workplace. But large

majorities also grasp that millions of workers and their families cannot realistically be deported, and voters are impatient for the government to find a solution to the problem. This common-sense pragmatism is the polar opposite of the holier-than-thou moralism of the Arizona debate — and it could, potentially, serve as a counterweight. But as history shows, pragmatism and moderation rarely trump emotion in politics. Once a wedge issue, in most cases, always a wedge issue — it's hard to put that toothpaste back in the tube.

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The best thing that could happen now: the battle could subside, as other, more pressing issues — jobs, the economy, the size and reach of government — come to the fore during the autumn campaign season. And after a lull — who knows how long — a more reasoned policy debate might resume. The problem: even then, the lines of the debate may be redrawn — radically redrawn — as a result of Arizona. In fact, those lines are already shifting, and not for the good.

Elected officials from Florida to California have raced to adopt a new mantra: border security. Just weeks after SB 1070 became law, former immigration reform champion Sen. John McCain, now fending off a primary challenge from the right, aired a campaign ad that showed him walking the border with a tough-talking sheriff and promising to “complete the danged fence” — the same border fence he had mocked bitterly just three years before. President Obama quickly saw the way the tide was turning and ran to get ahead of it, requesting 1,200 National Guard troops for the border. Then in May, instead of starting work on comprehensive reform, the Senate debated three amendments to a must-pass spending bill that would have quintupled resources and manpower on the border. None of the three drew the

necessary 60 votes, but all came close, with support from moderate Democrats as well as Republicans.

At the same time, even as lawmakers embrace enforcement, reform advocates are increasingly denouncing it. Their arguments: it’s expensive, it’s unnecessary, it’s futile, it hasn’t worked in the past, it won’t solve the problem — to increase enforcement spending now, this mantra goes, is “throwing good money after bad.” These aren’t new claims: the reform movement has never been enthusiastic about tough immigration enforcement. But now, for many, it seems as if every effort to make the law stick is on a par with Arizona’s overwrought policing. And right or wrong, the reformers’ qualms make them a perfect foil for enforcement hawks in Congress and the media.

This isn’t a new turn of events — the immigration debate has gone through phases like this in the past, often just before national elections. But the rhetoric is more strident this time around — and the likely consequences for immigration reform are more alarming.

Because the truth is that better, more effective enforcement will be a critical piece of any immigration overhaul. And there can be no hope politically of passing a reform package without a national consensus on enforcement, both on the border and in the workplace.

Richard Trumka, president of the AFL-CIO, speaks at an anti-SB 1070 rally.



Photo by Natalia Jaramillo



Photo by Mark Wilson/Getty Images.

Senator John McCain and Arizona sheriffs Paul Babeu and Larry Dever hold a news conference on the border situation in Arizona.

The immigrants-rights advocates aren't wrong: enforcement alone is not the answer on immigration. The system is broken — thoroughly and fundamentally broken. The enforcement mechanisms on the books are weak and outmoded. The country's annual admissions quotas are dangerously out of sync with its economic interests. There aren't enough visas for highly skilled workers — the talent we need to remain globally competitive. And there is virtually no way for the foreign labor force that sustains the bottom of the economy — at farms, seasonal resorts, restaurant kitchens and construction sites — to enter the country legally. Decades of unrealistically low legal quotas combined with lax enforcement have produced a vast illegal population living on the margins of society. And there's enough snarled red tape gumming up the system to confound Kafka himself — four- to five- to 22-year waits (depending on which line you're waiting in), a green card backlog of 4.5 million (those are people authorized to enter the U.S. but not yet admitted) and unwieldy, unnecessary bureaucracy of every imaginable kind at every point.

Just cracking down harder on a system like this will not solve the problem. And yes, just talking tough is all too often — particularly for Republicans — a way of avoiding the harder conversation about what change is needed. Still, we cannot hope to fix immigration without better,

more competent, more convincing enforcement. And in the context of a system that works, enforcement will be a boon to everyone, newcomers and native-born alike, with an interest in a fair and workable, nondiscriminatory immigration process.

Perhaps the best analogy is highway patrol — imagine a 25 mile per hour speed limit on an interstate highway. With a limit this unrealistically low, almost everyone on the road will find themselves breaking the law. The limit will be all but unenforceable, and any effort to make it stick will fall somewhere between annoying and draconian. The public would soon be up in arms — or more likely at each others throats — with at least some people defending the limit, unreasonable as it was, simply because it was law. And soon enough, for many, enforcement would become a dirty word. But ultimately the problem is not enforcement — the problem is the bad law.

The argument for enhanced enforcement starts with politics — both the politics of tackling the issue and the politics of passing an overhaul. The Obama administration, like the Bush administration before it, maintains — and I believe rightly so — that restoring the government's credibility on enforcement is necessary to pave the way for public acceptance of reform. As is, after years of inept and half-hearted enforcement, voters don't trust the government

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Photo by Lenny Ignelzi/Associated Press.

Immigration agents detain employees of San Diego's French Gourmet Restaurant in a raid that led to felony indictments against the restaurant's owner and manager.

to handle immigration — and, the thinking goes, Washington needs to restore that trust before Americans will support an overhaul. Immigrants'-rights advocates increasingly question this logic. Even those who swallowed hard and accepted it two or three years ago are beginning to ask when the investment will pay off — after all, they argue, the crackdown drags on, and grows harsher, with scant change of heart among the public. The advocates have a fair question. But in truth, although illegal border crossings are down, that's due in part to the slow economy — we don't need as many immigrant workers in a downturn. And it's hard to say with a straight face that U.S. immigration law is being effectively enforced — particularly in the workplace.

Enhanced enforcement will be even more of a political necessity once a bill is introduced, whenever that happens. Tough, effective enforcement provisions are the only way to attract Republican support. They are also essential to provide cover for skittish centrist Democrats. They're the key to the grand bargain it's going to take to pass any bill: without meaningful enforcement on the border and in the workplace, there is simply no chance that enough lawmakers in either party will vote for legalizing 11 million unlawful immigrants. The math

is inescapable and beyond any doubt — this is the only path to a majority in either the House or the Senate.

But beyond politics, effective workplace enforcement is also good immigration policy — an indispensable piece of any serious overhaul.

What, after all, is the goal of comprehensive immigration reform? Yes, it's about providing a realistic, humane answer for the unlawful immigrants already living and working in the United States. That's the provision that gets the most attention and will once again, when the debate resumes, generate the most controversy. But a second, arguably even more important, goal is creating a system that works for the future: that allows the immigrants we decide we need and want in America to enter in a safe, controlled, legal fashion. This means streamlining procedures, eliminating bureaucracy and reducing waits and backlogs. It also means devising a better, more flexible system for deciding how many immigrants we want and need — for economic and other reasons. And once we have more flexible, realistic limits in place — the immigration equivalent of a 65 to 75 mile per hour interstate speed limit — enforcing those rules effectively will benefit everyone involved.

However the immigration system affects you, your calculus will look different in a post-reform world. Immigrant workers who choose to come the legal way — assuming the overhaul creates a workable, legal pipeline — won't want to be undermined by other people coming illegally. Employers who follow the rules and hire authorized workers won't want to be undercut by competitors hiring unlawful ones. Border agents' focus will shift from chasing busboys and farmhands to stopping drug smugglers and potential terrorists. And there will be no debate: the public will want Customs and Border Patrol to have the resources they need. Enforcement hawks and doves alike will endorse a system that eliminates fraud and fights identity theft, that steers immigrants toward safe, legal ways to enter the U.S. and, by giving legal immigrants the means to prove they are who they say they are, combats discrimination.

Under the existing, unrealistic system, enforcement can feel like an imposition and worse — separating children from parents, putting productive American employers out of business, uprooting the lives of otherwise law-abiding people who have the bad luck to be stopped for traffic violations. But once we fix what's broken — if and when Congress rises to the challenge of fixing it — effective enforcement will be essential to maintaining the integrity of the system.

Another way of putting this: ultimately, the purpose of reform is to restore public confidence — confidence in the nuts and bolts of the law but also in the historic ideal of America as a nation of immigrants. Without that confidence, there's nothing but trouble ahead — and the only way to restore confidence

is with effective enforcement. No, enforcement alone won't solve the problem. But without enforcement, we are nowhere. And a partisan, moralistic debate demonizing enforcement can only set us back, making it much harder to take the steps we as a nation need to take.

In the end, the lesson of Arizona is simple — and circular.

That the system is broken is well understood and has been for a long time now by people across the political spectrum. The federal government should have stepped in years ago. The outlines of the solution are clear enough, and Congress has had ample opportunities to enact something. If it had — in 2006 or 2007 — Arizona never would have

happened. The passage of SB 1070 is a direct consequence of Washington's failure to act. But — and here's where things get circular — the Arizona legislation and the all-or-nothing, good-vs.-evil debate it has spawned are going to make it much harder for Congress to do what it needs to do. Arizona demonstrates the costs of inaction. It proves beyond a doubt that the status quo is unsustainable. But it is almost surely going to prolong that status quo — perhaps for a long time to come.

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Tamar Jacoby speaks at the U.S.–Mexico Futures Forum.



Photo by Dionicia Ramos.