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The Oklahoma Taxpayer and Citizen Protection Act: Blowing Off Steam or Setting Wildfires?

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THE OKLAHOMA TAXPAYER AND CITIZEN PROTECTION ACT: BLOWING OFF STEAM OR SETTING WILDFIRES?

ELIZABETH MCCORMICK*

ABSTRACT

This article considers Oklahoma’s recent experiment in immigration regulation and examines how it is that Oklahoma has found itself on the front lines of the illegal immigration debate. The article begins with a discussion of the rich history of immigration to and immigrants in Oklahoma. It then attempts to unpack the evolution of Oklahoma’s illegal immigration crisis and understand the genesis and the impacts of the state’s comprehensive but perhaps exaggerated response to the perceived crisis. Finally, using Oklahoma’s experience as an example, the article argues that a “steam valve” model of immigration federalism is no longer an apt description of sub-federal immigration lawmaking. Rather than allowing states to blow off their anti-immigrant steam, this article argues that allowing individual states to enact immigration control measures locally provides a dangerous mechanism for national anti-immigrant groups to accomplish through a state-by-state lobbying effort what they have been unable to achieve at the national level. Instead of acting as a steam valve, H.B. 1804 provides the match to ignite a growing wildfire of restrictive state legislation that puts pressure on the immigrant community and the federal legislature at the same time.

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*Lots of folks back East, they say, is leavin' home every day,
 Beatin' the hot old dusty way to the California line.
 'Cross the desert sands they roll, gettin' out of that old dust bowl,
 They think they're goin' to a sugar bowl, but here's what they find—
 Now, the police at the port of entry say,
 "You're number fourteen thousand for today."
 Oh, if you ain't got the do re mi, folks, you ain't got the do re mi,
 Why, you better go back to beautiful Texas, Oklahoma, Kansas,
 Georgia, Tennessee.
 California is a garden of Eden, a paradise to live in or see;
 But believe it or not, you won't find it so hot
 If you ain't got the do re mi.*

—*Do Re Mi, Woody Guthrie (1937)*

PART I. INTRODUCTION

In 1937, Oklahoma native Woody Guthrie wrote this ballad recounting the experience of hundreds of thousands of migrants fleeing the Dust Bowl and economic depression of Oklahoma and other states to seek work and a better life in California.¹ Beginning in the early 1930s and over the course of the

1. WOODY GUTHRIE, *Do Re Mi, on DUST BOWL BALLADS* (Victor Records 1940).

next decade, millions of families fled poverty and destitution in Oklahoma, Kansas, Colorado, Texas, Arkansas, Missouri, and New Mexico, in search of better employment opportunities, many of them ending up in southern California.² These indigent newcomers to California were blamed for overwhelming the state's existing welfare system and increasing competition for low-paying jobs in a state with an already high jobless rate.³ "Lumped together as 'Okies,' they were the butt of derogatory jokes and the focus of political campaigns in which candidates made them the scapegoats for a shattered economy. They were accused of 'shiftlessness,' 'lack of ambition,' 'school overcrowding' and 'stealing jobs' from native Californians."⁴

As part of an effort to discourage migration from Oklahoma and other Dust Bowl states, "many states maintained tough vagrancy laws and required many years of residence of those applying for public assistance," but California was especially hostile to these poor newcomers.⁵ In 1936, Los Angeles Police Chief James Edgar Davis set up a border patrol consisting of more than one hundred police officers stationed at the state line in order to stem the flow of poor migrant families.⁶ Dubbed the "Bum Blockade," this unauthorized vigilante force established check points at major road and rail crossings for the purpose of turning back newly arriving migrants who lacked obvious means of support.⁷ Davis promised that the blockade would save the state millions of dollars in welfare payments and criminal prosecutions.⁸ The anti-migrant trend continued in 1937 when the California legislature passed the "anti-Okie" amendment to the California welfare law and made it a crime to bring indigent persons into the state.⁹ In his defense of a legal challenge to

2. Carol Bidwell, *Fleeing the Dust Bowl for a Golden Opportunity: Millions Escaping 1930s Hard Times in Midwest Found the Fabled California Unwelcoming*, DAILY NEWS OF L.A., Mar. 12, 2008, at B1, available at 2008 WLNR 5083686.

3. PETER LACHAPPELLE, PROUD TO BE AN OKIE: CULTURAL POLITICS, COUNTRY MUSIC AND MIGRATION TO SOUTHERN CALIFORNIA 22-23 (2007); see also FRANCISCO E. BALDERRAMA & RAYMOND RODRIGUEZ, DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930s, at 76 (1995) (pointing out that among those hardest hit by the arrival of poor migrants from Oklahoma were Mexican migrant farm workers). While employers were urged not to replace local workers with Dust Bowl refugees, "knowing the language and customs, plus their willingness to work for starvation wages, gave the 'Okies' a decided advantage over Mexican workers. Mexican workers resented the intruders, and outbreaks of violence between the two competing groups were not uncommon." *Id.*

4. Cecilia Rasmussen, *LA Then and Now: LAPD Blocked Dust Bowl Migrants at State Borders*, L.A. TIMES, Mar. 9, 2003.

5. James N. Gregory, *The Dust Bowl Migration*, in POVERTY IN THE UNITED STATES: AN ENCYCLOPEDIA OF HISTORY, POLITICS, AND POLICY 242 (Gwendolyn Mink & Alice O'Connor eds., 2004).

6. *Id.* at 244-45.

7. Rasmussen, *supra* note 4, at 4.

8. See *id.* (reporting that, although the program ended after two months in the face of threatened lawsuits, Davis claimed that the blockade had succeeded in keeping out 11,000 unwanted migrants and stopped a seasonal crime wave in Los Angeles).

9. Welfare and Institutions Code of California of 1937, Pub. L. No. 2615 ("Every person, firm or corporation, or officer or agent thereof that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor."), *invalidated by* *Edwards v. California*, 314 U.S. 160 (1941). In 1939 the district attorneys of several of the counties most affected by the Dust Bowl influx began using the law in

the law, the California Attorney General argued that migrants brought moral, health, and criminal problems to the state and called upon the federal government to do its part by addressing the national economic crisis contributing to California's "refugee" problem.¹⁰

Fast-forward seventy years, and Oklahoma is once again at the center of another migrant crisis. This time the migrants are non-citizens, many unlawfully present in the United States, and this time they are flocking to rather than escaping from the Sooner State. Like the Dust Bowl migrants, most have come to Oklahoma in search of work and a better life and, as was true in California, those who arrived first and found work were soon followed by family members, friends, and others hoping to share the opportunities.¹¹ Over time more and more non-citizens, particularly unlawfully present non-citizens, have arrived and made their homes in Oklahoma. With this has come increasing resentment and hostility toward these newcomers, who are criticized for taking jobs from native-born workers, exhausting social services, flouting immigration laws, and bringing crime to the state. As was the case in California before passage of the "anti-Okie" law, Oklahoma lawmakers repeatedly decried the failure of the federal government to take control of a national illegal immigration crisis, before ultimately taking it upon themselves to pass legislation to protect the state from this "illegal alien invasion."¹² In May 2007, the Oklahoma Taxpayer and Citizen Protection Act (H.B. 1804) passed the Oklahoma Legislature with an overwhelming bipartisan majority and was signed into law by Governor Brad Henry.¹³

H.B. 1804 has received national attention as a model omnibus state approach to targeting illegal immigration¹⁴ and has been widely hailed by

order to send a message that poor migrants should stay away. More than two dozen people were indicted, tried, and convicted for helping relatives move to California from Oklahoma and nearby states. The prosecutions were challenged by the ACLU, leading to a ruling by the Supreme Court in *Edwards*, that states could not restrict interstate migration by poor people or any other Americans. See Gregory, *supra* note 5, at 246.

10. Brief of the Att'y Gen. of the State of California on Behalf of Appellee, *Edwards v. California*, 314 U.S. 160 (Oct. 15, 1941) ("California has been faced and is faced with a problem of great importance to its citizens, not only because of the expense involved, but because of those health, moral and crime problems inevitably attendant upon an abnormal influx of persons unable to maintain themselves We have set forth in the Supplement to this brief a series of Resolutions adopted by the California legislature referring to the seriousness of the migrant problem in California and calling upon the Federal Government to recognize its existence by aid to the State and by means of federal legislation.") (emphasis added).

11. Alexis Charbonnier, *Law Cited in Reverse Migration*, TULSA WORLD, Oct. 28, 2007, at A1.

12. Jim Myers, *Sullivan Again Pushes a Tulsa Immigration Office*, TULSA WORLD, Mar. 16, 2005, at A9.

13. Angel Riggs & Leigh Bell, *Immigration Reform Signed*, TULSA WORLD, May 9, 2007; Oklahoma Taxpayer and Citizen Protection Act, 2007 O.S.L. 112 [hereinafter H.B. 1804].

14. See Devona Walker, *Others May Copy State's Bill*, THE OKLAHOMAN, Nov. 12, 2007 available at 2007 WLNR 22341416 (reporting that immigration reform activists in Kansas were following Oklahoma's groundbreaking immigration effort); *Immigration Law Could Spread to Other States*, TULSA WORLD, Nov. 12, 2007 (reporting that, in the aftermath of H.B. 1804, Carol Helm, founder of local anti-immigration group Immigration Reform for Oklahoma Now (IRON), had been asked to advise citizen groups in half a dozen states about immigration enforcement campaigns).

supporters and touted in the media as the toughest, most punitive illegal immigration bill in the nation.¹⁵ The law bars unauthorized immigrants from receiving public assistance,¹⁶ penalizes employers who hire unauthorized immigrants,¹⁷ restricts unauthorized immigrants' access to all forms of official identification,¹⁸ and encourages local law enforcement agencies to train with federal authorities so they can assist in the apprehension of unauthorized immigrants.¹⁹

Even before it went into effect on November 1, 2007, H.B. 1804 had strong and immediate psychological effects, creating fear and apprehension within Oklahoma's immigrant communities and uncertainty and concern among those who serve and minister to immigrants about what H.B. 1804 does and how it would be enforced.²⁰ A substantial exodus of immigrant families from Oklahoma has caused ripple effects both in states to which these families migrated and in states seeking to prophylactically prevent a major influx of unauthorized non-citizens from Oklahoma.²¹ Three legal challenges to H.B. 1804 have been filed so far, two alleging that the statute violates the United States Constitution and is preempted by federal law and one raising claims under the Oklahoma Constitution. Although two of those lawsuits are pending,²² one pre-implementation challenge was dismissed by a federal judge in December 2007 for lack of standing,²³ and this dismissal has inspired a number of other states to move forward with similar legislation.²⁴ At the same time, those committed to "resisting the alien invasion"

15. Justin Juozapavicius, *Oklahoma Immigration Law Blamed for Death*, BOSTON GLOBE, Jan. 25, 2008 (reporting death of two-year-old United States citizen son of unauthorized immigrant parents who delayed seeking medical attention for him because they were afraid that they would be turned over to immigration officials if they went to the hospital).

16. H.B. 1804, *supra* note 13, at § 8.

17. *Id.* at § 7.

18. *Id.* at § 4.

19. *Id.* at § 10.

20. Leigh Bell, *Immigration Reform: The Fallout: Change Has Volunteers Edgy*, TULSA WORLD, May 14, 2007, at A1; Angel Riggs, *Groups Told to Continue Serving Immigrants*, TULSA WORLD, Oct. 10, 2007, at A9.

21. *See Tough Immigration Law Prompts Mass Exodus from Oklahoma*, NEW AMERICAN, Sept. 17, 2007, available at 2007 WLNR 18835480 (questioning fate of unauthorized immigrants who fled to Arkansas and Missouri to escape H.B. 1804 in light of illegal immigration laws subsequently introduced in those states); *Proposed Law May Force Schools to Check Citizenship*, WPLN NEWS TRANSCRIPT, NASHVILLE PUBLIC RADIO, Mar. 24, 2008, available at <http://wpln.org/newstranscripts/?p=2126> (quoting sponsor of Tennessee bill, Henry Fincher, saying "[t]his bill has worked in Oklahoma to drive illegal immigrants away from that state, I'm sure some those have migrated here because of our soft, uh, laws."); Howard Witt, *Where have the illegal immigrants gone? Oklahoma law targeting illegal workers had some unforeseen results*, CHI. TRIBUNE, Feb. 10, 2008, available at http://www.chicagotribune.com/news/chi-immigrant_bdfeb10,0,6296102.story.

22. *See Chamber of Commerce of the U.S v. Henry*, No. 08-CV-00109, slip op., 2008 WL 2329164 (W.D. Okla. Feb. 1, 2008); *Pet. for Decl. Judg., Michael C. Thomas v. Brad Henry*, Governor, No. CJ-2008-00046 (Tulsa Cty. Dist. Ct., filed Jan. 8, 2008).

23. Nat'l Coal. of Latino Clergy, Inc. v. Henry, No. 07-CV-613-JHP, slip op., 2007 WL 4390650 (N.D. Okla. Dec. 12, 2007) (def. motion to dismiss granted).

24. *See Christina M. Woods, Oklahoma Sees No Signs of Mass Exodus*, WICHITA EAGLE, Mar. 30, 2008, at A1, available at 2008 WLNR 6003217 (reporting that Oklahoma's "crackdown" on illegal immigration and "fear that illegal immigrants would flee to Kansas" prompted the Kansas legislature

have been encouraged and emboldened to send even stronger messages that illegal immigrants are unwelcome in Oklahoma,²⁵ and the immigrant exodus from Oklahoma has convinced the authors of the bill and their supporters in national anti-immigration organizations such as the Federation for American Immigration Reform (FAIR) and the Immigration Reform Law Institute (IRLI) of the apparent success of their strategy of state-by-state immigration reform.²⁶

Oklahoma is one of more than a dozen states that IRLI has assisted in drafting immigration legislation since 2006.²⁷ Both FAIR and IRLI promote the concept of “attrition through enforcement” through which unauthorized immigrants are encouraged to leave the United States as a result of laws that make it difficult to find work or a place to live or to access public services. The success of this concept in Oklahoma post-H.B. 1804 has been applauded by IRLI and used to entice other states to follow Oklahoma’s lead.²⁸ In September 2008, State Representative Randy Terrill, the primary author and sponsor of H.B. 1804, was one of three recipients of FAIR’s “We the People” Award, for his “exceptional service to the immigration reform movement.”²⁹

While the outcome of the current legal challenges may ultimately determine the constitutionality and future viability of all or parts of H.B. 1804, as

to introduce immigration reform bills in early 2008); Robert T. Garrett, *Oklahoma A Glimpse of the Future? Crackdown on Illegal Immigration Draws Criticism, Texas Interest*, DALLAS MORNING NEWS, Feb. 14, 2008, at 1A (reporting on effort by Texas legislators to propose bills mirroring H.B. 1804 in light of the perceived successes in driving unauthorized immigrants from the state and the failed legal challenges to the bill); Press Release, Masselli Palumbo, Rhode Island General Assembly, *RI Taxpayer and Citizen Protection Act* (Dec. 17, 2007), available at <http://www.rilin.state.ri.us/news/pr1.asp?prid=4535> (reporting the introduction of law modeled after H.B. 1804 in order to respond to growing state budget and economic challenges).

25. Mick Hinton, *Immigration Suit Again Dismissed*, TULSA WORLD, Dec. 14, 2007, at A21 (quoting Randy Terrill saying, “It has been my position all along that House Bill 1804 would withstand any legal challenge brought against it. The Judge’s decision to dismiss the case vindicates that view.”); John Greiner, *Legislators Prepare for Start of Session*, THE OKLAHOMAN, Feb. 3, 2008, at 10A (reporting on Terrill’s plan in the 2008 legislative session to introduce “Son of 1804,” which would make English the official language of Oklahoma and require school districts to report on unauthorized immigrant children enrollment information).

26. See FAIR: Federation for American Immigration Reform, Our Purpose and Our Principles, http://www.fairus.org/site/PageServer?pagename=about_aboutmain (last visited Aug. 25, 2008) (according to the FAIR website, FAIR is a national organization that opposes current levels of immigration to the United States and has called for a moratorium on all immigration until appropriate legislative reforms are in place); see Immigration Reform Law Institute (IRLI), <http://www.irli.org> (last visited Aug. 25, 2008) (the IRLI is the “public interest law affiliate” of FAIR and provides state and local lawmakers with technical support “to ensure that proposed state or local legislation is constitutional and does not conflict with controlling federal law.”).

27. See Immigration Reform Law Institute (IRLI), State and Local Laws, <http://www.irli.org/laws.html> (last visited Aug. 25, 2008).

28. See IRLI, Tip of the Month: Attrition Through Enforcement, STATE AND LOCAL LEGISLATION BULLETIN (June 2008), <http://www.irli.org/bulletin0608.html> (“The media outlets have been flooded with reports that states taking tough stances on illegal immigration (e.g. Arizona and Oklahoma) have reported a mass exodus of illegal immigrants. States will encounter similar results if they enact legislation with carefully crafted language.”).

29. Press Release, Terrill to Receive National Award for Real Immigration Reform, Oklahoma House of Representatives, Sept. 10, 2008, available at <http://www.lsb.state.ok.us/>. The other two recipients of the award in 2008 were CNN Anchor Lou Dobbs and Dr. Rodney Hunt, founder of the Mississippi Federation for Immigration Reform and Enforcement. *Id.*

we approach the one-year anniversary of the law's implementation, it is worthwhile to undertake an examination of the law's impacts and determine whether, even if it withstands legal challenge, H.B. 1804 is nonetheless wrong for Oklahoma. Particularly in light of the relatively small number of unauthorized immigrants residing in the state—slightly more than one half of one percent of the total unauthorized population of the United States³⁰—this article examines Oklahoma's unexpected positioning on the frontlines of the illegal immigration debate and questions whether any harms caused by illegal immigration in Oklahoma outweigh the costs and consequences to the state of implementing H.B. 1804. In addition, even if restrictive measures like H.B. 1804 do provide a mechanism for states to respond to the burdens of illegal immigration borne locally,³¹ the article concludes that allowing individual states to enact immigration control measures locally provides a dangerous mechanism for national anti-immigrant groups to accomplish through a state-by-state lobbying effort what they have been unable to achieve at the national level.

Part II of this article provides some historical context to Oklahoma's current illegal immigration crisis by reviewing the history of immigration to Oklahoma and the role that immigrants have played in the formation of the state and throughout the first century of statehood. This history reveals that Oklahoma was in fact initially settled through successive episodes of mass migration into the state's vast and largely unpopulated territory. The promise of land ownership and economic opportunity were powerful incentives for destitute but hopeful migrants of diverse origins. Indeed, the state nickname, "Sooner," is a tribute to newcomers to Oklahoma who entered the state illegally in search of prosperity and opportunity. Particular attention is paid to Mexican immigration to Oklahoma because immigrants from Mexico, both legal and unauthorized, currently comprise the majority of Oklahoma's foreign-born population. Though the size of the Mexican born population has grown significantly in recent years, the discussion shows that the Mexican presence in Oklahoma is not new, nor is the prejudice and hostility directed toward Mexican residents of Oklahoma.

30. See Emily Bazar, *Strict Immigration Law Rattles Oklahoma Businesses*, USA TODAY, Jan. 10, 2008, available at http://www.usatoday.com/news/nation/2008-01-09-immigcover_N.htm. This statistic is based on an estimated 75,000 unauthorized immigrants residing in Oklahoma and a conservative estimate of 12 million total in the United States. The total population of Oklahoma in 2006 was estimated at 3,579,211.

31. See Peter H. Schuck, *Taking Immigration Federalism Seriously*, 2007 U. CHI. LEGAL F. 57, 70 (2007) ("[T]he burdens imposed by immigrants—such as increased demand for public benefits and services, and downward pressure on wage rates—are disproportionately felt at the state and local level, which suggests that states are in the best position to assess and manage the tradeoffs among conflicting public goals peculiar to their policies."); Cristina Rodriguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 590-591 (2008) (arguing that an exclusively national immigration policy "cannot capture the preferences of a large and diffuse population," and the solution to the current immigration crisis lies in a system that enables states and localities "to express their diverse positions on unauthorized migration.").

Part III focuses on the genesis of H.B. 1804 and the events and circumstances leading up to the Oklahoma legislature's passage of the first state law in the nation to comprehensively address illegal immigration. The discussion tracks developments, events, and attitudes throughout the decade preceding the introduction of H.B. 1804 that contributed to the legislature's decision to take on illegal immigration. Importantly, the discussion illustrates that the motivation for the bill came from fronts both within and outside of Oklahoma, and that the bills' proponents, while loudly decrying the evils of illegal immigration, offered little real evidence in support of their claims of the economic hardship and lawlessness brought to Oklahoma by unauthorized immigrants. More particularly, Part III of this article makes clear that the bill's authors gave no consideration to the benefits a community might derive from the presence of unauthorized immigrants or to the potential costs to that community if their unauthorized immigrant residents were driven away as a result of measures like H.B. 1804.

Part IV examines the impact of H.B. 1804 both within and outside of Oklahoma and considers the effectiveness of the law in achieving any of its stated policy goals. The discussion demonstrates that empowering Oklahoma and other states to act on anti-immigrant animus can have implications far beyond the state boundaries and that to a certain degree these implications are intentional. The article then suggests that, to the extent that state immigration measures have actually become a mechanism for implementing policy goals driven substantially from outside of the state, one of the primary policy arguments for immigration federalism loses some appeal and sway. Under these circumstances, allowing individual states to enact anti-immigrant measures will not necessarily reduce the likelihood of a push for similar restrictions at the federal level. To the contrary, rather than providing a steam valve for individual states to release their pent-up frustration with growing immigration related costs and burdens, H.B. 1804 and similar measures instead have an incendiary effect setting off a wildfire of anti-immigrant laws throughout the states and ultimately implicating national immigration policy. Indeed, an examination reveals that this is precisely the goal of the anti-immigration cohort as they move from state to state convincing small but vocal constituencies in communities with historically small immigrant populations that unauthorized immigration is their most pressing problem. As Oklahoma's experience with H.B. 1804 will show, at the end of the day, state immigration measures such as these are more likely to serve the agendas of national anti-immigrant forces than to respond to the actual needs and concerns of the majority of voters in the state.

PART II. THE PATH TO H.B. 1804: THE HISTORY OF IMMIGRATION TO OKLAHOMA

A. *The New Immigration Frontier*

A decade ago, Oklahoma might have seemed like an unlikely place to find

state lawmakers engaged in a debate about illegal immigration. Up until the early 1990s, the challenges of providing services to diverse immigrant communities and responding to a rapidly increasing number of unauthorized immigrants were confronted almost exclusively by large cities in border and coastal states and a few other major cities which were the traditional destinations of most newly arriving immigrants to the United States.³² But since the early 1990s, these traditional migration patterns have changed dramatically, and immigrants in search of better job opportunities, lower crime rates, and a lower cost of living have moved east from California, south from New York, or north from Texas to settle in places like South Carolina, Alabama, Georgia, Tennessee, Arkansas, and Nebraska that have not historically been the destinations of large numbers of newcomers to the United States. Since 1990, these states have seen their immigrant communities grow at extraordinary rates.³³ In fact, between 1990 and 2000, thirty states, including Oklahoma, experienced a growth in their immigrant populations that exceeded the already extraordinary national growth rate of 57.4 percent.³⁴ Immigrants to these non-traditional gateways are also more and more likely to end up in smaller cities, suburbs and rural areas than has been the case in the past.³⁵ Not only have these new gateway states attracted an increasing number of immigrants relocating from within the United States, they have become the destination of a growing number of newly arriving immigrants.³⁶ Moreover, once the pioneers into new immigrant territory settle and establish themselves in their new communities, they generally help to pave the way for the arrival of family members, friends, and compatriots who follow in search of economic opportunities and the comfort of a familiar support network.³⁷

According to estimates of the U.S. Census Bureau, the foreign born

32. See AUDREY SINGER, THE BROOKINGS INST., *THE RISE OF NEW IMMIGRANT GATEWAYS* 2-3 (2004); Peter Laufer, *My New Kentucky Home: The cutting edge of illegal immigration used to be L.A. Now it's Owensboro*, WASH. MONTHLY, Jan.-Feb. 2005, at 22; see also MIGRATION POLICY INSTITUTE, U.S. IN FOCUS, <http://www.migrationinformation.org/USfocus/> (last visited Aug. 15, 2008) [hereinafter MPI: U.S. IN FOCUS]. From this page, various census data on the distribution of immigrants can be viewed on a state-by-state basis or as an entire nation.

33. See SINGER, *supra* note 32, at 5-6.

34. See SINGER, *supra* note 32, at 5.

35. AUDREY SINGER, ET. AL., MIGRATION POLICY INSTITUTE, *TWENTY-FIRST CENTURY GATEWAYS: IMMIGRANTS IN SUBURBAN AMERICA* (2008), <http://www.migrationinformation.org/feature/print.cfm?ID=680> (summarizing information found in *TWENTY-FIRST CENTURY GATEWAYS: IMMIGRANT INCORPORATION IN SUBURBAN AMERICA*, AUDREY SINGER, SUSAN W. HARDWICK, CAROLINE B. BRETTELL, BROOKINGS INSTITUTION PRESS, (2008)) (“[A] growing number of immigrants are settling in suburbia as soon as they arrive, adding diversity to once largely homogenous areas—and sometimes triggering tension among residents who are jarred by the impact of immigrants on their neighborhoods.”); Haya El Nasser, *For More Immigrants, Suburbia's a Nice Fit*, USA TODAY, Mar. 4, 2008, at 1A.

36. See SINGER, *supra* note 32, at 12.

37. William H. Frey, *The United States Population: Where the Immigrants Are*, U.S. SOC'Y & VALUES, 25, June 1999, at 26, available at <http://202.41.85.234:8000/InfoUSA/facts/ijse0699/frey.htm>. (“Family reunification immigration tends to occur in ‘chains’ that link family members and friends to common destinations. This is especially the case for lower-skilled immigrants since they

population of Oklahoma grew almost three-fold between 1990 and 2006, from 65,489 to 175,987.³⁸ Those numbers represent an increase in the percentage of foreign born Oklahoma residents from 2.1 percent to 4.9 percent of the total population.³⁹ Oklahoma ranked nineteenth in the nation in the rate of growth of its foreign born population between 1990 and 2000, and thirteenth in percentage change from 2000 to 2006.⁴⁰ While these increases are certainly striking and no doubt significant for many Oklahoma communities and residents, it is worth noting that, because the overall foreign born population of the United States grew at an unprecedented rate between 1990 and 2006,⁴¹ Oklahoma's overall ranking in terms of its percentage of foreign born residents and total number of foreign born residents did not experience dramatic shifts during that period.⁴² In 2006, Oklahoma was home to approximately one-half of one percent of the total foreign born population of the United States.⁴³

Oklahoma's immigrant community consists of a diversity of nationalities and ethnic groups, but the vast majority of the foreign born residents are Hispanic.⁴⁴ Hispanics are also the fastest growing minority group in Oklahoma.⁴⁵ Between 2000 and 2007, Oklahoma's Hispanic population—

are more dependent on kinship ties for assistance in gaining entry to informal job networks that exist in the 'classic' immigrant magnet metro areas.”)

38. MIGRATION POLICY INST., STATES RANKED BY PERCENT FOREIGN BORN: 1990, 2000, AND 2006 (2006) (on file with author), available at <http://www.migrationinformation.org/DataHub/acscensus.cfm> [hereinafter MPI: Data Hub]. This number represents all foreign born residents including naturalized citizens.

39. *Id.* During this same period, the percent of foreign born residents of the United States increased from 7.9% to 12.5%. *Id.*

40. MIGRATION POLICY INST., STATES RANKED BY PERCENTAGE CHANGE, 1990, 2000, AND 2006 (2006) (on file with author).

41. MIGRATION POLICY INST., MIGRATION FACTS, STATS, AND MAPS, STATES RANKED BY NUMERIC DIFFERENCE IN THE FOREIGN BORN POPULATION: 1990, 2000, AND 2006 (2006) (on file with author). The number of foreign-born residents of the United States grew from 19,767,316 in 1990, to 31,107,889 in 2000, and to 37,547,789 in 2006. *Id.*

42. MIGRATION POLICY INST., STATES RANKED BY PERCENTAGE CHANGE, 1990, 2000, AND 2006 (2006) (2006) (on file with author). Oklahoma ranked thirty-fourth in percentage of foreign born in 1990, as compared with a rank of thirty-second in both 2000 and 2006. *Id.* In 1990, Oklahoma ranked twenty-ninth in the nation in the number of foreign born residents, as compared with a rank of thirtieth in 2000 and 2006. MIGRATION POLICY INST., STATES RANKED BY NUMBER OF FOREIGN BORN: 1990, 2000, AND 2006. (on file with author).

43. PEW HISPANIC CTR., STATISTICAL PORTRAIT OF THE FOREIGN BORN POPULATION IN THE UNITED STATES 2006, tbl.12a (2008), available at <http://pewhispanic.org/files/factsheets/foreignborn2006/Table-12a.pdf>. In 2006, Oklahoma was the twenty-eighth most populous state. See MIGRATION POLICY INST., IMMIGRANTS AND VOTING: 2008 ELECTION PROFILE OKLAHOMA (2008), <http://www.migrationpolicy.org/pubs/MPI-ImmigrantsandVoting-OKLAHOMA.pdf>.

44. See U.S. Census Bureau, *2006 American Community Survey, Selected Characteristics of the Native and Foreign-Born Populations*, <http://tinyurl.com/5vn9dh>. In a 2006 survey, 56 percent of the foreign born residents of Oklahoma identified themselves as Hispanic. *Id.* See MIGRATION POLICY INST., IMMIGRANTS AND VOTING: 2008 ELECTION PROFILE OKLAHOMA (2008), <http://www.migrationpolicy.org/pubs/MPI-ImmigrantsandVoting-OKLAHOMA.pdf>. By contrast, 4.6 percent of native born Oklahomans report being of Hispanic or Latino heritage. *Id.*

45. Ginnie Graham, *Hispanics on Rise*, TULSA WORLD, May 1, 2008, at A1 (According to the U.S. Census Bureau, “Hispanics’ numbers trail those of blacks and American Indians, but they have been closing the gap with increases each year of at least 4 percent.”). Hispanics comprise 7 percent of the total population and are the third largest minority group in Oklahoma. *Id.*

including both citizens and non-citizens—increased by nearly 46 percent, far exceeding the overall national increase of 29 percent.⁴⁶ This increase is due both to increased Hispanic immigration flows into the state and to a higher than average birth rate among immigrant and non-immigrant Hispanic residents.⁴⁷

The extent to which unauthorized immigration contributed to the recent growth in Oklahoma's immigrant population is not certain. Nevertheless, of the approximately 176,000 foreign born residents⁴⁸ of Oklahoma, it is estimated that between 50,000 and 75,000—as many as 43 percent—are unlawfully present in the United States,⁴⁹ a rate that exceeds the national average of approximately 30 percent of the total foreign born population.⁵⁰ Moreover, as is the case throughout the country, it is estimated that most of the unauthorized immigrants living in Oklahoma are Mexicans who have arrived in the United States since 1990.⁵¹ The greatest concentrations of unauthorized immigrants are in and around the Oklahoma City and Tulsa metropolitan areas, which are each estimated to have grown by more than 50 percent between 2000 and 2005.⁵² However, other far less populated areas also saw significant growth in their unauthorized immigrant populations during this period.⁵³ As will be discussed more fully in Part III, the recent sharp increase in the immigrant—particularly the unauthorized immigrant—population of Oklahoma, has had profound impacts in communities throughout the state that are facing increased demands on school districts, health care systems, law enforcement agencies, and other service providers. Many of these communities, like others across the country, are unaccustomed to having large numbers of immigrant residents and were often, at least initially, poorly equipped to meet the needs of a growing and diverse immigrant population. Thus, in a very short time, a state with a historically small foreign-born population has found itself with a significantly expanded

46. *Id.*

47. According to Jan Figart of the Tulsa Community Service Council, “the Hispanic population of Oklahoma will continue to grow exponentially for the next 29 years regardless of any new migration to our state because of the increased birth rate of the Hispanic population.” *Id.*

48. See U.S. CENSUS BUREAU, *supra* note 44 at 1. As of 2006, roughly 58,000 of the foreign born residents were naturalized citizens. *Id.*

49. Bazar, *supra* note 30. According to a 2006 Pew Hispanic Center study, nearly half of the estimated 12 million non-citizens living in America without legal authorization arrived legally with temporary, non-immigrant visas. See PEW HISPANIC CTR., *MODES OF ENTRY FOR THE UNAUTHORIZED MIGRANT POPULATION* (2006), <http://pewhispanic.org/files/factsheets/19.pdf>.

50. *Id.*

51. See JEFFREY PASSEL, PEW HISPANIC CTR., *THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S.* (2006), <http://pewhispanic.org/files/reports/61.pdf>.

52. ROB PARAL, IMMIGRATION POLICY CENTER, *UNDOCUMENTED IMMIGRATION BY CONGRESSIONAL DISTRICT* (2006), <http://immigration.server263.com/index.php?content=b061001> (reporting an increase from 13,000 to 22,000 in Congressional District 1 and an increase from 18,000 to 28,000 in Congressional District 5).

53. For example, the Fourth Congressional District in south central Oklahoma, which includes the state's third largest city, Norman, had an estimated increase of 100 percent, from 4,000 to 8,000 unauthorized immigrant residents. *Id.*

unauthorized and Spanish-speaking immigrant population that has been accused of causing economic hardship and lawlessness in the state.⁵⁴ Under these circumstances, H.B. 1804 was born and Oklahoma found itself at ground zero in the debate over illegal immigration.

As we consider Oklahoma's responses to this most recent immigration wave, it is worth remembering that immigration to Oklahoma is not a new phenomenon. In fact, the early settlement of Oklahoma reflects a rich and varied story of migrants coming to Oklahoma from all over the United States and around the world, and Oklahoma's response to these newcomers has vacillated from warm hospitality and welcome to hostile discrimination and rejection.

B. *Migration to Oklahoma: Indians, Boomers, Sooners and Other Pioneers*

The first large scale migration⁵⁵ of non-citizens to what is now Oklahoma⁵⁶ involved the forced relocation beginning in 1830 of thousands of American Indians by the United States Government from their lands in the eastern United States to Indian Territory.⁵⁷ This involuntary migration was orchestrated by the United States government in large part in response to increasing pressure from non-Indians in Georgia, Alabama and Mississippi who desperately wanted and had begun to encroach upon Indian lands for farming and gold mining.⁵⁸ Unlike the European settlers who would eagerly arrive in Oklahoma in later parts of the century in search of land and a better life, these migrants were stripped of their land and possessions, forced to make a perilous and, in many cases, deadly thousand mile journey, and resettled in Indian Territory against their will.⁵⁹ By 1840, more than sixty

54. Section 2 of H.B. 1804 contains preambular language that declares: "The State of Oklahoma finds that illegal immigration is causing economic hardship and lawlessness in this state and that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status." H.B. 1804, *supra* note 13, at §2.

55. Prior to the acquisition of Oklahoma through the Louisiana Purchase in 1803, explorers and traders from France and Spain were present in the territory but neither France nor Spain established settlements in the region. Still the enduring influence of these early French and Spanish explorers can be found in the many place names derived from French and Spanish in Oklahoma today: Cimarron River, Aqua Frio Creek, Palo Duro, Choteau, Verdegis, and Poteau. See GASTON LITTON, HISTORY OF OKLAHOMA 42-45 (1957).

56. Because the borders of Indian Territory and present day Oklahoma are not coterminous, my references to pre-1907 migration to Oklahoma refer to migration to areas of Indian Territory that would eventually be within the boundaries of the State of Oklahoma.

57. The Indian Removal Act of 1830 mandated the removal of American Indians east of the Mississippi River to territory west of the Mississippi in an area that includes what are now Oklahoma, Kansas and parts of Nebraska, Colorado, and Wyoming. Indian Territory was created for Indians who were removed from their ancestral lands in the eastern United States which, in turn, were turned over to non-Indians. See Stacy Leeds, *By Eminent Domain or Some Other Name: A Tribal Perspective On Taking Land*, 41 Tulsa L. R. 51, 64 (2005); FRANCIS PAUL PRUCHA, THE GREAT FATHER: THE UNITED STATES GOVERNMENT & THE AMERICAN INDIANS 78-88 (Univ. of Neb. 1984).

58. PRUCHA, *supra* note 57, at 70.

59. *Id.*

thousand Indians had been resettled in what would be Oklahoma.⁶⁰

Following the end of the Civil War, with the discovery and exploitation of the abundant coal resources in southeast Oklahoma, a growing wave of non-native immigrants arrived to work in the coalfields and mines.⁶¹ Initially, most of these laborers were English, Irish, Scottish, and Welsh and came to Oklahoma from mines in Pennsylvania.⁶² As the industry expanded and the demand for labor increased, immigrants from southern and eastern Europe also began to arrive, first from other mine operations in the eastern United States and eventually directly from their native lands.⁶³ By 1890, thousands of Italian, Polish, Lithuanian, French, and Russian immigrants were living and working in this once sparsely populated area and more were coming every year.⁶⁴ Mexican immigrants also came to work in the mines beginning in 1890, many having left their jobs on railroad work crews or in Mexican coal and silver mines for better wages in Oklahoma.⁶⁵ From the beginning, the vast majority of coal mine workers in Oklahoma were either foreign born or second generation immigrants,⁶⁶ and this trend continued through the opening of Indian Territory to non-Indian settlement in 1889 and Oklahoma statehood in 1907, when 55 percent of Oklahoma coal miners were foreign born.⁶⁷ In addition, as more and more of the immigrant miners sent for their families to join them and make a permanent home in Oklahoma, the overall immigrant population in towns and cities throughout the coal mining region of southeastern Oklahoma grew substantially.⁶⁸

In the last quarter of the nineteenth century, even as more and more American Indian tribes were being forcibly removed to Indian Territory,⁶⁹ a place the Indians had been promised they would have to themselves forever,⁷⁰ non-Indians in surrounding states began to press for access to the vast

60. *Id.* at 79.

61. U.S. IMMIGRATION COMM'N, IMMIGRANTS IN INDUSTRIES, S. DOC. NO. 61-633 pt. 1 vol. 2, at 14-15 (1910).

62. *Id.* at 15.

63. *Id.*; see also Stanley Clark, *Immigrants in the Choctaw Coal Industry*, 33 CHRON. OF OKLA. 440 (1955). Between 1864 and 1890, many Oklahoma mining companies took advantage of a federal law allowing contract labor and "furnished steamship ticket and expenses to European emigrants recruited for their mines, with the costs taken from earnings." *Id.* at 440; JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM 1860-1925 14 (Rutgers Univ. Press 2002) (1955) ("Many business men, unwilling to leave matters in the hands of beneficent fate, actively expedited the immigrant traffic. Here the railroads played a key role as they did throughout the economy . . . They needed immigrants, not just for construction, but to buy the great railroad land grants and to insure future revenue . . . [and] sent agents to blanket northern Europe with alluring propaganda.").

64. HIGHAM, *supra* note 63, at 14.

65. U.S. IMMIGRATION COMM'N, *supra* note 61, at 16.

66. *Id.* at 9.

67. *Id.* at 23.

68. In Oklahoma in 1907, more than one in four residents of McAlester, one in three residents of Lehigh and Coalgate, and one half of residents of Krebs, Alderson, and Hartshorne were foreign born. See Clark, *supra* note 63, at 443.

69. PRUCHA, *supra* note 57, at 142-43. Treaties signed in 1866 required the tribes to give up sections of their land for settlement by Indians removed from Kansas and elsewhere. *Id.*

70. Leeds, *supra* note 57, at 63.

mineral resources and rich farmlands of Indian Territory and demanded that the territory be opened to non-Indian settlement.⁷¹ Although many non-Indian farmers and laborers at that time worked on Indian lands with the permission of the tribes, illegal occupation of Indian lands became more and more common. “Boomers” claiming a right to homestead in the territory organized themselves and illegally entered Indian Territory in an attempt to stake a claim and set up colonies on land they claimed was part of the public domain.⁷² Convinced of the righteousness of their cause and the unfairness of the laws denying them access, the boomers were undeterred by military posted all around the border, troopers constantly on patrol, and Presidential proclamations declaring their actions unlawful.⁷³ Even after multiple arrests and removals from the territory, they kept coming back.⁷⁴ Ultimately, the tribes’ objections to this illegal invasion of their lands were unavailing and pressure from the Boomers, railroad companies and others to open a significant portion of Indian Territory⁷⁵ to non-Indian settlement led to the land run of 1889⁷⁶ and the next significant migration of newcomers to Oklahoma.⁷⁷

71. PRUCHA, *supra* note 57, at 252.

72. PRUCHA, *supra* note 57, at 255. The Boomers, “by direct action and propaganda determined to open the lands in the territory . . . [and] claimed that fourteen million acres of land in the Indian Territory were in fact already in the public domain and subject to homestead entry. Such activities, together with a tremendous flood of Boomer literature, led to organized Oklahoma colonies on the borders of the Indian Territory in Kansas and Texas that claimed the right to homestead in the territory and made forays into the territory and established incipient communities before they were driven out by federal troops.” *Id.*

73. LITTON, *supra* note 55, at 364-65.

74. *Id.* at 366-71. Between 1879 and 1884, no fewer than ten illegal entries onto Indian Territory were made by various groups of Boomers intent on setting up homesteads in Indian Territory, each of which ended with the arrest and removal from the territory of the illegal squatters. *Id.* at 374.

75. The Boomers sought the opening of the “unassigned lands” in Indian Territory to non-Indian Settlement. These lands, which came to be known as Oklahoma, were located at the center of Indian Territory and had been ceded to the United States by the Seminole and Muskogee Creek tribes following the Civil War. It is because these lands had not been settled by any other tribes that the Boomers claimed that they were public lands and part of the public domain subject to homesteading. See Bob Blackburn, *Unassigned Lands*, in ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE (Dianna Everett ed. Okla. Historical Soc’y), <http://digital.library.okstate.edu/encyclopedia/entries/U/UN001.html> (last visited Mar. 24, 2009).

76. The land run of April 1889 was the first of five that would be organized over the next six years, with a total of more than 7 million acres distributed to non-Indian settlers. “Between 1889 and 1901, what we refer to as the western half of the Indian Territory, organized as the Territory of Oklahoma in 1890, was opened to settlement. Beginning with the Oklahoma district on April 22, 1889, reservations in this area, one after another, were opened for settlement . . . By the end of 1901 practically all the land in that part of Indian Territory known as the Territory of Oklahoma had been occupied.” John Rogers, *A History of the Constitution of Oklahoma*, Okla. Stat. Ann. (West 1952).

77. DONALD C. & ELIZABETH M. DICKINSON RESEARCH CTR., RUSHES TO STATEHOOD: THE OKLAHOMA LAND RUNS, http://www.nationalcowboymuseum.org/research/r_virt_landrun1.html (last visited Mar. 24, 2009). “In about 1879, Elias C. Boudinot helped to build a strong demand for the opening of these lands. President Rutherford B. Hayes issued a proclamation on April 26, 1879 forbidding trespass into these lands. However, almost immediately, speculators and landless citizens began organizing and agitating for opening the land to settlement. Newspapers referred to these pro-settlement groups as “Boomers.” Boomers were encouraged to plan and participate in excursions or raids into the lands with the objectives of colonization and gaining a legal opinion as to the status of these lands.” *Id.*

In March 1889, the Oklahoma District was officially opened to non-Indian settlement by Proclamation of President Benjamin Harrison.⁷⁸ One month later, on April 22, more than fifty thousand prospective settlers were stationed along the borders of the district waiting for the official opening of the territory for homesteading and a chance to claim one of approximately 12,000 available tracts. At the end of the day, the resident population of the town of Guthrie, “where the night before, the coyote, the gray wolf, and the deer roamed undisturbed,”⁷⁹ was 15,000.⁸⁰ At Oklahoma Station—present day Oklahoma City—ten thousand residents were in place by day’s end.⁸¹ While there were many contented new residents of Oklahoma, many settlers hoping to find a home in Oklahoma territory were disappointed at the end of their long journey to find that no good land remained, due in substantial part to the early and unlawful entry by hundreds of settlers desperate to reach their preferred plots of land before anyone else.⁸² Because of the long history of unlawful Boomer invasions and occupation of Indian Territory, Congress and the President had specifically prohibited anyone who entered in violation of the law from ever staking a claim.⁸³ In the weeks before the run, troopers had patrolled the border and searched the interior for squatters and expelled anyone found on the land.⁸⁴ Despite these efforts, hundreds of land claims were made by people who were not lawfully present in Oklahoma or had otherwise violated the legal entry requirements, including: U.S. Marshalls and other government employees already present in the territory at the time the lands officially opened for settlement;⁸⁵ Boomers trying to reclaim land they had illegally occupied and been removed from before the unassigned lands were opened to settlement;⁸⁶ and “Sooners” who snuck across the border before the official opening time in order to stake out the most desirable tracts of land.⁸⁷ Many disputes arose over land claimed by settlers who had allegedly entered the territory unlawfully, and these disputes led to lawsuits⁸⁸ and, occasionally, bloodshed.⁸⁹ While in many cases the Sooners’

78. 25 Stat. 757, 759 (Act of March 22 that confirmed and ratified an agreement with the Muscogee (or Creek) Nation of Indians in Indian Territory).

79. William Willard Howard, *The Rush to Oklahoma*, 33 HARPERS WEEKLY 391, 391-4 (1889).

80. LITTON, *supra* note 55, at 387.

81. *Id.*

82. *Id.* at 388-89; “Some gave up their claims only to try again at later land openings in the Indian Territory, including four more by runs, others by lottery, allotment and sealed bids.” *Land Rush Reenacted with Yells*, N.Y. TIMES, Apr. 23, 1889, A1, at 18, available at <http://query.nytimes.com/gst/fullpage.html?res=950DE7DF143DF930A15757C0A96F948260>.

83. Indian Appropriations Act, ch. 412, 25 Stat. 980, 1005 (1989); see also *Smith v. Townsend* 148 U.S. 490 (1893).

84. See Howard, *supra* note 79.

85. *Id.*

86. *The Rush to Oklahoma: A Plan to Enter the Promised Land Disguised as Indians*, N.Y. TIMES, Apr. 15, 1889, available at http://query.nytimes.com/mem/archive-free/pdf?_r=1&res=9907E1D8163BE033A25756C1A9629C94689FD7CF&oref=slogin.

87. Howard, *supra* note 79. LITTON, *supra* note 55, at 395-96.

88. STAN HOIG, *THE OKLAHOMA LAND RUSH OF 1889* 187 (1984). There were thousands of cases, most of which were decided by the Registrar of Deeds in the local land office, but many were

claims were rejected and they were punished for their crimes, that was not universally the case.⁹⁰ Many observers saw the Boomers and Sooners as victims of an unfair system of land distribution⁹¹ and looked on their crimes with empathy.⁹² Indeed, over time the legend of the pioneering Sooner, today a symbol of Oklahoma's entrepreneurial spirit and confidence, has overshadowed the term's outlaw origins.⁹³

But for the prohibition on Sooners, the Oklahoma land run⁹⁴ was open to any qualified male citizen, or non-citizen male who declared his intention of becoming a United States citizen.⁹⁵ In fact, many of the settlers participating

appealed or were heard by U.S. District Courts, the Oklahoma Supreme Court, and the U.S. Supreme Court. *Id.*; see also *Kingfisher v. Wood and Fossett*, 11 Dec. Dep. Int. 330, 336 (Secretary of the Interior invalidates claim of U.S. Army employee already living in territory on day of run who did not leave the territory and reenter at the designated time); *Smith v. Townsend*, 148 U.S. 490 (1893) (holding that "one who was within the territorial limits at the hour of noon of April 22 was, within both the letter and the spirit of the statute, disqualified to take a homestead therein").

89. HOIG, *supra* note 88, at 195 (discussing land dispute involving W. L. Couch, first mayor of Oklahoma City, which led to his death and ultimately to a finding by the land office that neither Couch nor his opponent and murderer were the lawful claimants to the property).

90. *Id.* (discussing a successful but questionable claim by Frank Gault, who would later become mayor of Oklahoma City and a representative to the Territorial Legislature). "There still remain those decisions which appear to defy the ends of justice, as well as many acts of soonerism which were never properly revealed and adjudicated." *Id.* at 222.

91. See *id.* at 222 ("The sooner cases would eventually reveal that this was an unfair and inadequate way of distributing lands of the public domain.").

92. "Many of the Boomers who had already entered the territory knew their entry was technically illegal; that the district had not been opened to settlement at the time they entered. However, the 'Boomers' were neither ordinary law breakers nor idlers. Most of them were farmers who wanted free land. On the whole they were well meaning people. Many of them held religious services in their camps." Rogers, *supra* note 76, at XVI.

93. See HOIG, *supra* note 88, at 245 ("There are many fallacious notions which still abound in regards to the run of 1889. But as time heals many wounds, it also dissolves many of life's conflicts. Virtually forgotten today is the bitter rancor against the sooners. The term 'sooner' has lost its negative identification and has instead become a term of recognition and pride for Oklahoma, emphasizing determination and achievement rather than the negative aspect of breaking the rules."); see also *id.* at 246 (quoting editorial from ST. LOUIS POST DISPATCH, Apr. 21, 1889) ("The spirit which animates these people, evil and good, is the spirit which has made this continent a garden. Within an incredible time what was a barren waste and wilderness will be turned into thriving cities, farms and homes . . . The inspiration of human progress in the spectacle.") The University of Oklahoma chose the nickname Sooner for its athletic teams in 1908. "As time went on, 'Sooner' came to be a synonym of Progressivism. The Sooner was an 'energetic individual who travels ahead of the human procession.' He was prosperous, ambitious, competent, a 'can-do' individual. And Oklahoma was the Sooner State, the land of opportunity, enterprise and economic expansion, very much in the Progressive spirit that engulfed the old South in the 1920s." *What is a Sooner?*, University of Oklahoma, <http://www.soonersports.com/trads/what-is-a-sooner.html> (last visited Mar. 22, 2009).

94. LITTON, *supra* note 55, at 388. Homestead Act of 1862, ch. 75, 12 Stat. 392 (1862), amended by Act of Mar. 3, 1891, ch. 561, 26 Stat. 1095 (current version in scattered sections of 16 U.S.C., 25 U.S.C., and 43 U.S.C.).

95. From 1795 until 1952, in order to be eligible to naturalize, a non-citizen had to file a declaration of intent to become a citizen several years in advance of applying for naturalization. See HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES 115-16 (2006). "The declaration served an administrative function by allowing an early review of eligibility in the form of an examination under oath before a court clerk. The declaration entailed no obligation to naturalize, though many immigrants did take that next step and become citizens." *Id.*; see also Naturalization Act of 1795, ch. 20, §1, 1 Stat. 414, 414 (1795) (repealed 1802).

in the land run of 1889 were immigrants,⁹⁶ and they reflected the great quantity and diversity of immigrants—German, Italian, French, English, Belgian, Canadian, Bohemian, Scottish, Irish, and Danish⁹⁷—coming to the United States at that time.⁹⁸ According to the census one year later, 14.8 percent of the population of the United States and 4.4 percent of the residents of Oklahoma were foreign born.⁹⁹ Never again since 1890 has the proportion of foreign born residents in the U.S. population been that high.¹⁰⁰ Similarly in Oklahoma, although the number of immigrants would grow substantially in the years ahead, 1890 was the high water mark for proportion of foreign born residents until 2006, when it reached 4.9 percent.¹⁰¹ Throughout the early years of Oklahoma statehood, the immigrant population was quite diverse but primarily European, with the greatest number coming from Germany to the farmlands in the northern part of the state.¹⁰² There were also substantial numbers of Russian, Irish, Austrian, English and Italian immigrants, some of whom were drawn by opportunities in farming and ranching, and others who came to find work in the coal mines and oil fields, on the railroad, and in the growing manufacturing sector.¹⁰³

In addition to the immigrants drawn primarily by economic opportunities, were a great many who came to Oklahoma to escape persecution and oppression elsewhere. Between 1900 and 1914, almost 150,000 German refugees emigrated to the United States from colonies in Russia in search of religious and political freedom.¹⁰⁴ Most settled in the Great Plains of the Midwest, of which thousands came to Oklahoma where they established

96. *Land Rush Reenacted with Yells*, *supra* note 82.

97. See LITTON, *supra* note 55, at 44-45, 49-50, 192, 230, 233-34; see also Charles Hillinger, *Oklahoma Land Runs Live on in Art & Stories*, L.A. TIMES, Sept. 13, 1985, at 10, available at 1985 WLNR 962664 (describing immigrant participation in land run).

98. In 1890, there were 9.2 million foreign born residents of the United States, of which the greatest numbers came from Germany, Great Britain, Ireland, Canada, and Sweden. All of these nationalities were present in relatively significant numbers in Oklahoma at the time of the census in 1890. See U.S. CENSUS BUREAU, REPORT OF POPULATION OF THE UNITED STATES AT THE 11TH CENSUS: 1890 table 32.

99. See U.S. CENSUS BUREAU, NATIVITY OF THE POPULATION, FOR REGIONS, DIVISIONS, AND STATES: 1850-1990, table 13, available at <http://www.census.gov/population/www/documentation/twps0029/tab13.html>; see also MPI: Data Hub, *supra* note 38.

100. According to the U.S. Census Bureau, there were 37.5 million foreign born in the United States in 2006, or 12.5 percent of the total population. See U.S. CENSUS BUREAU, 2006 AMERICAN COMMUNITY SURVEY S0501: SELECTED CHARACTERISTICS OF THE NATIVE AND FOREIGN-BORN POPULATIONS, available at http://factfinder.census.gov/servlet/STTable?_bm=y&-geo_id=01000US&-qr_name=ACS_2006_EST_G00_S0501&-ds_name=ACS_2006_EST_G00_&-_lang=en&-_caller=geoselect&-state=st&-format=

101. *Id.*

102. LITTON, *supra* note 55, at 28.

103. In 1909, the leading industries in Oklahoma were agriculture-related: flour milling, cottonseed milling, and meatpacking. See Diana Everett, *Manufacturing*, ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE, <http://digital.library.okstate.edu/encyclopedia> (last visited July 9, 2008).

104. See Donald N. Brown, *Immigration*, ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE, <http://digital.library.okstate.edu/encyclopedia> (last visited July 9, 2008).

Lutheran and Mennonite communities in the western part of the state.¹⁰⁵ Oklahoma was also the eventual destination of Jewish immigrants from Eastern Europe who came to the United States between 1907 and 1914 as part of the “Galveston Plan.”¹⁰⁶ Under the Galveston Plan, Jewish immigrants escaping persecution and economic deprivation in Eastern Europe were diverted from the congestion, poverty and crime of the cities of the East Coast, especially New York, and brought directly to the Port of Galveston, Texas.¹⁰⁷ Under the auspices of the Jewish Immigration Information Bureau, prospective Jewish émigrés were recruited directly from throughout the Pale of Settlement and encouraged to bypass the “great ghettos” of the Northeast in favor of the wide open space of the West where “opportunity still knocks on everyman’s door.”¹⁰⁸ However, because of the untamed and undeveloped nature of the western frontier, there was a strong preference for able-bodied, adaptable, single men with transferable skills, “with a background in cobbling, tailoring, metalwork and carpentry.”¹⁰⁹ When they arrived in Texas, the Galveston immigrants were dispersed throughout the West, many settling eventually in towns and cities in Oklahoma where some worked as farmers and meatpackers,¹¹⁰ others as tailors and shopkeepers.¹¹¹ Though relatively very small in number in comparison to the Jews who immigrated during

105. *Id.* “It is especially interesting to note that in 1910 only 143 residents of Oklahoma listed Russian as their mother tongue, while over 5,800 were listed as born in Russia.” *Id.* The exodus from Russia began following the implementation of a policy of forced assimilation in 1871 which the German settlers fiercely resisted. See *German Emigration from Russia*, N.Y. TIMES, July 20, 1873, available at <http://query.nytimes.com/gst/abstract.html?res=9B00E0D61539EF34BC4851DFB1668388669FDE> (“The great motto of Nicholas, ‘one god, one czar, one language,’ has been used with irritating effect against the religion and freedom of speech of both the Teutonic people on the Baltic and the German colonists throughout Russia.”).

106. See BERNARD MARENBACH, GALVESTON: ELLIS ISLAND OF THE WEST 18, 24, 81 and 100 (1983).

107. See Gur Alroey, *Galveston & Palestine: Immigration & Ideology in the Early 20th Century*, AM. JEWISH ARCHIVES J. 2004, available at http://www.americanjewisharchives.org/aja/journal/PDF/LVI/AJA_LVI_06.pdf.

108. Jenna Wiseman Joselit, *Giving Galveston Its Day in the Sun*, THE JEWISH DAILY FORWARD, May 8, 2008, available at <http://www.forward.com/article/13321/>. The recruitment literature set out strict requirements for participation: “The emigrant must not be over 40 years of age. If married the emigrant, his wife and children must be strong and healthy The intending immigrant should clearly understand that economic conditions everywhere in the United States are such that strict Sabbath observance is exceedingly difficult, if not impossible.” Alroey, *supra* note 107, at 134.

109. *Id.*

110. MARENBACH, *supra* note 106, at 81.

111. See Jonathan Kirsch, *How Different Became America*, L.A. TIMES, Jan. 19, 2003, available at 2003 WLNR 15143171 (highlighting the story of Adolph and Sam Frankel who were born in Hungary, immigrated through Galveston, and eventually opened clothing businesses in Cushing, Oklahoma and Borger, Texas.); Brad Phelps, *Tulsa Woman, 95, lived story of ‘The Immigrant’*, TULSA WORLD, May 10, 1990, at 8B, available at 1990 WLNR 4315213 (interview with Tulsa resident who immigrated through Galveston from her village near Kiev in 1909 and eventually settled in Tulsa in 1917 where she had a successful clothing and real estate business); John Farrell, *Exodus to the American West: New Exhibit at the Autry Museum Shows How Jews First Were Pulled to the Frontier by Opportunity and Later Pushed There by European Anti-Semitism*, LONG BEACH PRESS-TELEGRAM, July 12, 2002 at U32, available at 2002 WLNR 1606084 (“Though they had trouble farming because they had never been allowed to own land in Europe, Jews were still welcomed in Western communities where ‘Jews had great opportunities simply because there were so few people that anyone with talent was welcome.’”).

these years through Ellis Island,¹¹² those who came to Oklahoma through the Galveston Plan integrated quickly into their new surroundings and prospered economically, helping to build strong social and cultural networks¹¹³ that endured even after the National Origins Quota Act of 1924¹¹⁴ interrupted further Jewish migration from Europe for many years.

In the late 1970s Oklahoma also became a resettlement location for thousands of Indochinese refugees, primarily from Vietnam. Up until that point, the total foreign-born Asian population of Oklahoma had never exceeded one thousand.¹¹⁵ By 1980, there were more than six thousand Indochinese¹¹⁶ living in Oklahoma, and by 1990 that number had grown to more than ten thousand.¹¹⁷ In the next decade, more than twenty thousand immigrants from across Asia, including substantial numbers from China, Korea, India, the Philippines, and Japan, moved to Oklahoma.¹¹⁸ Today, there are more than 44,000 Oklahoma residents who were born in Asia, almost sixty percent of whom have become naturalized citizens.¹¹⁹

C. Mexican Immigration to Oklahoma

The earliest visitors to Oklahoma from Mexico arrived in 1541, and though no permanent settlements were established, these expeditions by Spanish conquistadores laid the groundwork for the future Mexican presence in Oklahoma.¹²⁰ Throughout the eighteenth and nineteenth centuries, Oklahoma was part of an important route for the movement of people, cattle and goods between Mexico and the United States,¹²¹ and from 1821 to 1848 the

112. See Alroey, *supra* note 107, at 139.

113. *Id.* at 146.

114. Immigration Act of 1924, ch. 190, 43 Stat. 153 (1924).

115. According to the 1960 census, the largest number of foreign born Asian residents came from Japan (151), the Philippines (45), Lebanon (103), and China (40). U.S. CENSUS BUREAU, 1960 CENSUS OF POPULATION: OKLAHOMA VOL. I, PART 38, CHARACTERISTICS OF THE POPULATION table 99, available at <http://www2.census.gov/prod2/decennial/documents/37749254v1p38ch5.pdf>.

116. U.S. CENSUS BUREAU, 1980 CENSUS OF POPULATION: OKLAHOMA table 195, available at http://www2.census.gov/prod2/decennial/documents/1980a_okD-01.pdf; see also DONALD N. BROWN, ETHNIC ADAPTATIONS TO OKLAHOMA: THE GERMANS, MEXICANS, AND VIETNAMESE, IN THE CULTURE OF OKLAHOMA 79 (Howard Stein & Robert Hill eds., 1993).

117. BROWN, *supra* note 116, at 79.

118. U.S. CENSUS BUREAU, CENSUS 2000 SUMMARY FILE 3, matrices P21, P23, and PCT20, available at http://factfinder.census.gov/servlet/QTTable?-geo_id=04000US40&-qr_name=DEC_2000_SF3_U_QTP14&-ds_name=DEC_2000_SF3_U; see also Donald N. Brown, *Immigration*, ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE, <http://digital.library.okstate.edu/encyclopedia/entries/I/IM001.html> (last visited July 15, 2008).

119. U.S. Census Bureau, Selected Characteristics of Oklahoma's Foreign Born Population by Region of Birth: Asia, 2006 American Community Survey, http://factfinder.census.gov/servlet/STTable?-geo_id=04000US40&-qr_name=ACS_2006_EST_G00_S0505&-ds_name=ACS_2006_EST_G00_.

120. MICHAEL SMITH, THE MEXICANS IN OKLAHOMA 2-4 (Univ. of Okla. Press 1980) (describing the expeditions of Spanish conquistadores across the great plains in search of a mythical city of gold, Gran Quivira).

121. *Id.*

Oklahoma panhandle was actually part of Mexican territory.¹²² Although there were no Mexican settlements in Oklahoma through the end of the nineteenth century, a significant number of Mexicans were brought to Indian Territory as captives of Kiowa, Apache and Comanche tribes who regularly raided settlements in northern Mexico.¹²³ These captives, who were then ransomed, sold or integrated into the tribes, were among the first permanent Mexican immigrants to Oklahoma.¹²⁴

Mexican immigrants began arriving in Oklahoma in significant numbers in the early part of the last century.¹²⁵ Driven by poor economic conditions and in the aftermath of the 1910 revolution, thousands of Mexicans migrated to Oklahoma where they found work in the coal mines,¹²⁶ cotton fields, meat packing plants, oil fields, and quarries, as well as a variety of other unskilled jobs in the state.¹²⁷ A great many worked on the railroads, where Mexicans constituted a majority of the maintenance crews from 1900 until the late 1920s.¹²⁸ At first, most Mexican immigrants in Oklahoma were single men who lived a migratory lifestyle dictated by the availability of largely seasonal work, and they traveled frequently back and forth across the border to see families at home.¹²⁹ The mobility and transient lifestyle of the Mexican laborer was viewed as a positive by many, who considered Mexicans less desirable as citizens and less likely to integrate into American society.¹³⁰ Over time, though, employers came to recognize the benefits of a more stable

122. The panhandle was part of Spanish territory until Mexico gained independence in 1821, and Mexico continued to claim the panhandle as part of its territory until the Treaty of Guadalupe Hidalgo in 1848. *Id.* at 4.

123. *Id.* at 5-6. The United States entered into a treaty with the three tribes in 1853 that specifically provided that the tribes would refrain from any future raids into Mexico and restore any captives taken. Treaty With the Comanches, 10 Stat. 1013 (July 27, 1853, ratified Apr. 12, 1854, proclaimed Feb. 12, 1855).

124. SMITH, *supra* note 120. See also DAVID WISHART, ENCYCLOPEDIA OF THE GREAT PLAINS 580 (Univ. of Neb. Press 2004) (discussing how at mid-century the Kiowas captured Mexican children to replace their own children who were succumbing to infectious diseases and noting how many Kiowas remark that the large percentage of captive blood in the tribe renders them all Mexican).

125. Between 1900 and 1910, the number of Mexicans living in Oklahoma grew from 134 to 2,744. U.S. CENSUS BUREAU, THIRTEENTH CENSUS OF THE UNITED STATES 804 (1910), available at <http://www2.census.gov/prod2/decennial/documents/36894832v1ch10.pdf>. Ten years later, that number had more than doubled to 6,884. U.S. CENSUS BUREAU, FOURTEENTH CENSUS OF THE UNITED STATES, VOL. II, at 699 (1920), available at <http://www2.census.gov/prod2/decennial/documents/41084484v2ch08.pdf>. Actual numbers are likely much higher, as census figures did not include a substantial number of migrant Mexicans working in Oklahoma at the time. WISHART, *supra* note 124, at 348.

126. Mexicans comprised the fourth largest ethnic group in the coal mining region of southeast Oklahoma, exceeded only by Lithuanians, Italians, and Poles. SMITH, *supra* note 120, at 42.

127. WISHART, *supra* note 124, at 348-349; see also Michael M. Smith, *Hispanics*, ENCYCLOPEDIA OF OKLAHOMA HISTORY AND CULTURE, <http://digital.library.okstate.edu/encyclopedia/entries/H/HI014.html>.

128. Smith, *Hispanics*, *supra* note 127.

129. WISHART, *supra* note 124, at 348.

130. According to a report of the Dillingham Commission, "While the Mexicans are not easily assimilated this is not of very great importance, as long as most of them return to their native land in a very short time." DANIEL J. TICHENOR, DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA 168 (2002) construing U.S. IMMIGRATION COMMISSION, IMMIGRATION REPORT, S. Doc. No. 61-747, at 690 (3d Sess. 1911).

and permanent workforce and began to assist workers in bringing their families from Mexico to settle in Oklahoma nearer to the jobsites.¹³¹ By 1930, the number of Mexican residents had climbed to around 7,500, and small communities of Mexican immigrants could be found in Oklahoma City, Tulsa, Sapulpa and many other towns along the railroad.¹³²

The influx of Mexican workers across the border and into the railroad yards, mines, farms and meat packing plants of Oklahoma was largely unchecked by immigration officials until 1929.¹³³ “Cheap Mexican labor was in great demand by a host of America’s burgeoning industries. The railroads, mining companies and agribusinesses sent agents to greet immigrants at the border, where they extolled the rewards of their respective enterprises. Border officials felt no duty to impede the labor flow into the southwest.”¹³⁴ In addition, the restrictive immigration laws of 1917 and 1924 had little impact on the flow of Mexican nationals into the United States.¹³⁵ However, with the onset of the Depression and widespread unemployment, hostility toward Mexican workers grew and, in response to mounting complaints that Mexicans were stealing jobs and social services from Americans in need, the government implemented a plan to remove as many Mexicans as possible from the United States.¹³⁶ The plan was implemented by officials of federal, state and local governments through a widespread campaign of intimidation, harassment, deportation, and “voluntary repatriation.”¹³⁷ Targeting areas where the largest concentrations of Mexicans could be found, immigration agents, often assisted by local law enforcement, rounded up Mexicans and Mexican Americans and returned them to Mexico.¹³⁸ No precise figures exist

131. *Id.* The railroad companies initially offered Mexican laborers in Oklahoma a higher daily wage, but that did little to stop the high turnover of workers leaving to take more stable jobs in farming where they could more easily bring their families. SMITH, *supra* note 120, at 37-9.

132. SMITH, *supra* note 120, at 40; *see also* U.S. CENSUS BUREAU, FOURTEENTH CENSUS OF THE UNITED STATES, VOL. III, PART II, at 573 (1930), available at <http://www2.census.gov/prod2/decennial/documents/10612982v3p2ch05.pdf>.

133. Steven Boisson, *Immigrants the Last Time America Sent Her Own Packing*, HISTORYNET (July 27, 2006), <http://www.historynet.com/immigrants-the-last-time-america-sent-her-own-packing.htm>.

134. *Id.*

135. BALDERRAMA & RODRIGUEZ, *supra* note 3, at 8. “There were seldom more than sixty Bureau of Immigration agents stationed along the entire length of the U.S. Mexican border at any one time. This was ludicrous, to say the least, for the International Boundary between the two countries stretches from the Pacific Ocean to the Gulf of Mexico.” *Id.* at 8-9. Between 1910 and 1930, the total population of immigrants born in Mexico increased from approximately 220,000 to just over 630,000. U.S. CENSUS BUREAU, SIXTEENTH CENSUS OF THE UNITED STATES, VOL. III, CHARACTERISTICS OF THE POPULATION PART II, at 43 (1940), <http://www2.census.gov/prod2/decennial/documents/10612982v3p2ch05.pdf>.

136. *See* Abraham Hoffman, *Mexican Repatriation During the Great Depression: A Reappraisal*, in IMMIGRANTS—AND IMMIGRANTS: PERSPECTIVES ON MEXICAN LABOR MIGRATION TO THE UNITED STATES 225, 225-26 (Arthur F. Corwin, ed., 1978) (describing a change in sentiment toward Mexican laborers with rising unemployment and falling wages that left many native workers and Mexicans in need of private and public relief services).

137. *See generally* Kevin R. Johnson, *The Forgotten “Repatriation” of Persons of Mexican Ancestry and Lessons for the “War on Terror,”* 26 PACE L. REV. 1 (Fall 2005).

138. *Id.* at 55.

on how many of those deported were unlawfully present in the United States, but it is believed that a vast majority were legal residents.¹³⁹ Because many departed without official deportation proceedings, or under the auspices of state run campaigns of “voluntary” repatriation,¹⁴⁰ there are also no exact figures on the total number who departed. Nevertheless, of the estimated one million people of Mexican ancestry who were removed, repatriated or driven from the United States between 1929 and 1937, approximately sixty percent are believed to have been United States citizens.¹⁴¹

While the full extent of the Mexican Repatriation campaign in Oklahoma is not clear, there is no doubt that deliberate efforts to drive Mexicans from the state were made. Between 1933 and 1934, Oklahoma City was the target of immigration raids that led to the deportation of an unknown number of Mexicans.¹⁴² There are also records of trainloads of “voluntary repatriates” sent from Oklahoma City, many of whom were encouraged to leave by an offer from the city to pay their fares.¹⁴³ Others were undoubtedly driven from Oklahoma by a combination of the dire economic situation,¹⁴⁴ the unavailability of work,¹⁴⁵ and the ubiquitous anti-Mexican sentiment.¹⁴⁶ At the end of the decade, three-quarters of the Mexican immigrants living in Oklahoma were gone.¹⁴⁷

139. Wendy Koch, *U.S. Urged to Apologize for 1930s Deportations*, USA TODAY, Apr. 5, 2006, available at http://www.usatoday.com/news/nation/2006-04-04-1930s-deportees-cover_x.htm (quoting Professor Kevin Johnson of the University of California at Davis Law School).

140. In Los Angeles, the Welfare Department organized repatriation trains and, in the span of five months in early 1931, an estimated 50,000 Mexican and their children—one third of the Mexican population of Los Angeles—were removed to Mexico. BALDERRAMA & RODRIGUEZ, *supra* note 3, at 104. “The intent of repatriation was three-fold: to return indigent nationals to their own country, in this case Mexico; to save welfare agencies money; and to create jobs for real Americans. Having their hard-earned tax dollars used to support indolent aliens did not sit well with property owners and business interests.” *Id.* at 99.

141. Johnson, *supra* note 137, at 4.

142. BALDERRAMA & RODRIGUEZ, *supra* note 3, at 55.

143. *Id.* at 101-102. According to the Mexican Consulate in Nuevo Laredo, three percent of more than 8,000 Mexicans who arrived there from the United States during two months in 1932 were from Oklahoma. *Id.* at 121.

144. Mexican residents of Oklahoma who were out of work had few options for survival since welfare payments for a family were \$4.86 per month. *Id.* at 80.

145. Pressure from labor unions and unemployed citizens led many private employers to stop hiring Mexicans and eliminate those workers already on the rolls. SMITH, *supra* note 120, at 40. Unemployment rates for Mexicans ranged from 15 to 85 percent and, in 1937, an estimated two million Mexicans in the United States were out of work. *Id.* at 75.

146. “Regardless of the actual facts, allegations kept the anti-Mexican sentiment inflamed throughout the nation during the decade. Local, state, and national officials were incessantly bombarded with letters and petitions. Individuals and organizations demanded that immediate action be taken to curtail the employment of Mexicans. Americans also wanted Mexicans removed from the relief rolls and shipped back to Mexico, where they believed all Mexicans belonged.” *Id.* at 82; see also Gilbert Paul Carrasco, *Latinos in the United States: Invitation and Exile*, in IMMIGRANTS OUT!: THE NEW NATIVISM AND THE ANTI-IMMIGRANT IMPULSE IN AMERICA 190, 193 (Juan Perea ed., NYU Press 1997) (reporting threats to burn down the homes of Mexicans who did not leave Oklahoma).

147. U.S. CENSUS BUREAU, SIXTEENTH CENSUS OF THE UNITED STATES, VOL. II, PART V, at 813 (1940), <http://www2.census.gov/prod2/decennial/documents/33973538v2p5sch8.pdf>.

During the labor shortages of World War II,¹⁴⁸ Mexicans were brought back to Oklahoma to work on the railroad¹⁴⁹ or in cotton fields and meat packing plants as part of the Bracero program.¹⁵⁰ Many more undoubtedly came during the two decades of the Bracero program as part of a new wave of unauthorized Mexican migration spurred on by a continuing demand for agricultural and other unskilled labor that far outstripped the number of available legal Braceros.¹⁵¹ In the 1960s, significant numbers of Mexican nationals and Mexican Americans moved north from agricultural jobs in the Rio Grande Valley of Texas to escape mistreatment and discrimination by their employers and in search of more stable, year-round employment.¹⁵² Still, the number of Mexican-born residents of Oklahoma did not again reach 1930s levels until 1980, following a decade in which the total population of Mexicans living in the United States more than doubled.¹⁵³ Mexicans continued to come to work in Oklahoma even during a period of economic crisis in the 1980s that saw large numbers of native born Oklahomans leaving the state.¹⁵⁴

Thousands of Mexicans living in Oklahoma took advantage of the opportunity to legalize their status following the passage of the Immigration Reform and Control Act of 1986 (IRCA), and Oklahoma was one of ten states with the greatest number of immigrants applying for legal status under

148. The shortage of farm labor was due to the loss of workers to military duty, as well as to more lucrative jobs in the defense industry, and employers were eager to find cheap and plentiful replacements from Mexico. See Bob Sector & Ronald B. Taylor, *New Wave of Cheap Labor Seen: Alien Farm Workers Fear Immigration Law Change*, L.A. TIMES, Oct. 22, 1985, at A1; see also Enid Trucios-Gaynes, *The Legacy of Racially Restrictive Immigration Laws and Policies and the Construction of the American National Identity*, 76 OR. L. REV. 369, 397 (1997) (“White farmers from Oklahoma, Arkansas, and Texas, who had filled the demand for agricultural laborers, rapidly made the transition to better paying industrial jobs as the economy improved. This movement of white farmers to industrial jobs resulted in an increased need for farm labor.”) (internal citations omitted).

149. BARBARA A. DRISCOLL, *THE TRACKS NORTH: THE RAILROAD BRACERO PROGRAM OF WORLD WAR II* 143 (Univ. of Tex. 1999) (discussing the widespread use of Braceros by the Santa Fe Railway and other railroad companies throughout the Midwest and southwest, including Oklahoma).

150. WISHART, *supra* note 124, at 359.

151. Charles Rappleye, *Mexico, America & the Continental Divide*, VA. Q. REV. 61 (Apr. 1, 2007), available at 2007 WLNR 7496318. “The end of the fighting brought an end to the ‘emergency,’ but the growers of the American Southwest and the wage-starved peasants of Mexico had by then formed a symbiotic bond. The program was left in place, and soon accompanied by a much larger, clandestine flow of migrants. In 1946 there were 32,000 braceros; that year, apprehensions by the INS, always just a fractional measure of illegal migration, reached 100,000. In 1953, there were 200,000 braceros, and 850,000 apprehensions.” *Id.*

152. SMITH, *supra* note 120, at 64.

153. JEANNE BATALOVA, MIGRATION POLICY INSTITUTE, *MEXICAN IMMIGRANTS IN THE UNITED STATES* (Apr. 23, 2008), <http://migrationinformation.org/feature/print.cfm?ID=679>. In 1980, there were approximately 5,500 Mexican born residents of Oklahoma, of whom approximately 3,500 had entered after 1970. U.S. CENSUS BUREAU, 1980 CENSUS OF POPULATION, VOL. I, CH. D, PART 38 OKLAHOMA 8 (1980), http://www2.census.gov/prod2/decennial/documents/1980a_okD-01.pdf.

154. Rob Martindale, *State’s Population Rises for Third Straight Year*, TULSA WORLD, Jan. 18, 1994, at N1, available at 1994 WLNR 5100901 (During the 1980s “low energy prices soured the state’s economy and triggered a large emigration.”).

IRCA's amnesty provisions.¹⁵⁵ By 1990, Mexicans had become the largest immigrant group in Oklahoma, and that remains true today.¹⁵⁶ As they had in the past, the Mexican residents who arrived in Oklahoma in the 1980s and 1990s settled primarily in Oklahoma City and Tulsa, but smaller concentrations could be found in small towns and rural areas near the farms, ranches, and processing plants where they found work.¹⁵⁷

By 2006, 48.6 percent of the immigrants living in Oklahoma were of Mexican origin,¹⁵⁸ placing Oklahoma eighth in the nation in the percentage of its foreign born population born in Mexico,¹⁵⁹ and well above the representation of Mexicans in the total foreign born population of the United States.¹⁶⁰ Roughly three-quarters of the approximately 85,000 Mexican immigrants residing in Oklahoma in 2006 had entered the United States since 1990,¹⁶¹ and as many as 54,000 of these were estimated to be unauthorized.¹⁶² Taken together, the unprecedented and rapid rate of growth of the Mexican community in Oklahoma, along with the upsurge in the rate of unauthorized immigration to Oklahoma, created the perfect testing ground for Oklahoma's experiment in immigrant regulation, H.B. 1804.

155. Rhoda Baker, *Our Lives are Here: Why People from Around the World Come to Live in Tulsa*, TULSA WORLD, Nov. 8, 1991, available at 1991 WLNR 4587975.

156. Pew Hispanic Center, *Statistical Portrait of the Foreign Born in the United States 2006* (Jan. 2008), <http://pewhispanic.org/files/factsheets/foreignborn2006/Table-12.pdf>.

157. In 2000, 8.1 percent of the residents of Oklahoma City were of Mexican descent, as were 5.4 percent of Tulsans, 12.6 percent of the residents of Altus, home to a major meat processing facility, and 28.1 percent of the residents of Guymon, the location of an enormous corporate hog farm and slaughterhouse facility. U.S. CENSUS BUREAU, *CENSUS 2000*, Table DP-1: Oklahoma Profile of General Demographic Characteristics (2000), http://factfinder.census.gov/servlet/QTTable?_bm=y&-context=qt&-qr_name=DEC_2000_SF1_U_DP1&-ds_name=DEC_2000_SF1_U&-tree_id=4001&-redoLog=true&-all_geo_types=N&-caller=geoselect&-geo_id=04000US40&-geo_id=16000US4001700&-geo_id=16000US4031750&-geo_id=16000US4055000&-geo_id=16000US4075000&-search_results=16000US4031750&-format=&-_lang=en; see also Lee Bell, *The Changing Face of Guymon*, TULSA WORLD, Apr. 29, 2007, at 1, available at http://www.tulsaworld.com/news/article.aspx?articleID=070429_1_A1_hHisp84735 (discussing the transformation beginning in 1990 of the farming and ranching area surrounding the panhandle town of Guymon, which at that time already had a Hispanic population six times the state average, as the result of the opening of a hog processing plant employing primarily Mexican immigrants who now comprise between forty and fifty percent of the town's population).

158. U.S. CENSUS BUREAU, *2006 AMERICAN COMMUNITY SURVEY, PERCENT OF PEOPLE BORN IN MEXICO* (2006), http://factfinder.census.gov/servlet/GRTTable?_bm=y&-geo_id=01000US&-_box_head_nbr=R0505&-ds_name=ACS_2006_EST_G00_&-redoLog=false&-format=US-30&-mt_name=ACS_2006_EST_G00_R0503_US30.

159. *Id.*

160. In 2006, 30.7 percent of the foreign born population of the United States was of Mexican origin. *Id.*

161. U.S. CENSUS BUREAU, *2006 AMERICAN COMMUNITY SURVEY: OKLAHOMA, SELECTED CHARACTERISTICS OF THE FOREIGN-BORN POPULATION BY REGION OF BIRTH: LATIN AMERICA* (2006), http://factfinder.census.gov/servlet/STTable?_bm=y&-state=st&-context=st&-qr_name=ACS_2006_EST_G00_S0506&-ds_name=ACS_2006_EST_G00_&-tree_id=306&-redoLog=false&-_caller=geoselect&-geo_id=04000US40&-format=&-_lang=en.

162. These estimates are based on a 2005 survey of the Pew Hispanic Center finding that 56 percent of the unauthorized migrants in the United States were Mexican, and 80 to 85 percent of Mexican immigrants who had been in the United States less than ten years were unauthorized. See Passel, *supra* note 51, at 4.

PART III. UNPACKING H.B. 1804: THE EVOLUTION OF OKLAHOMA'S ILLEGAL IMMIGRATION CRISIS

A. *Oklahoma Post-IRCA*

The circumstances giving rise to H.B. 1804 did not materialize overnight. Rather, important demographic changes in Oklahoma happened over a period of two decades beginning with the passage of IRCA. Under IRCA's amnesty provisions, thousands of unauthorized Oklahoma residents—most of them Mexican—were able to obtain legal status and ultimately able to sponsor family members to legally immigrate to the United States.¹⁶³ These immigrants in turn were able to and did sponsor the legal immigration of thousands of family members after they became citizens.¹⁶⁴ At the same time, while IRCA regularized the immigration status of more than twenty thousand unauthorized residents of Oklahoma,¹⁶⁵ many other unauthorized residents who were not eligible to legalize under IRCA remained in the state after 1986, and many more came without authorization to find work and to join newly legalized family members over the next decade.¹⁶⁶ Thus, in Oklahoma as elsewhere, IRCA led to an increase in the state's legal foreign-born population, but ultimately to an even larger increase in the state's unauthorized immigrant population.¹⁶⁷

From the beginning, modest efforts to implement the enforcement provisions of IRCA were visible in Oklahoma, as federal immigration officers investigated and sanctioned employers for violations of IRCA's employment authorization provisions¹⁶⁸ and instituted deportation proceedings under IRCA's criminal alien provisions.¹⁶⁹ In addition, efforts were made to crack

163. Omer Gillham, *Latino Population Sees a Growth Spurt*, TULSA WORLD, Apr. 25, 1999, available at http://www.tulsaworld.com/news/article.aspx?articleID=19990425_Ne_a1latin (reporting that 19,000 unauthorized residents of Oklahoma applied for status under IRCA).

164. *Id.*

165. *Id.*

166. *Id.* (explaining that many of the unauthorized today legally immigrated under the sponsorship of an IRCA-legalized family member and subsequently lost status). The increased unauthorized migration of family members was a trend seen around the country, where "most of the post-IRCA movement for family reunification was illegal, averaging perhaps 300,000 persons per year. One study found that having a newly legalized migrant in the family increased the probability of unauthorized migration by a factor of seven." Jorge Durand, Douglas S. Massey, & Emilio A. Parrado, *The New Era of Mexican Migration to the United States*, THE JOURNAL OF AMERICAN HISTORY (Sept. 1999), available at <http://www.journalofamericanhistory.org/projects/mexico/jdurand.html>.

167. According to a U.S. Immigration and Naturalization Service study, the unauthorized immigrant population of Oklahoma grew from 16,000 in 1990, to 21,000 in 1996, and to 46,000 in 2000. Nick Trougakos, *Illegal Immigrants Increase in State, Federal Study Finds New Agency Absorbing Immigration Service*, THE OKLAHOMAN, Mar. 1, 2003, at 6, available at 2003 WLNR 16556370.

168. *Oklahoma Immigration Agency Considers Fining Firms*, DALLAS MORNING NEWS, Dec. 31, 1988, at 35A, available at 1988 WLNR 2270543. (discussing INS plans to fine Oklahoma City businesses for failure to comply with IRCA employment verification requirements).

169. See Brian Ford, *Inmates Ordered Deported in Cost-Saving Step*, TULSA WORLD, Feb. 9, 1989, at A21, available at 1989 WLNR 3145735 (discussing institution of deportation proceedings

down on the fraudulent document industry that sprang up in response to IRCA's employment authorization requirements.¹⁷⁰ Nevertheless, while there were reports of occasional arrests of unauthorized immigrants traveling through the state,¹⁷¹ the presence of illegal immigrants in Oklahoma was not an issue for the news headlines for almost a decade after IRCA,¹⁷² and the influx of Hispanic immigrants into Oklahoma at a time when the state was experiencing low native population growth and economic hardship appeared to be generally welcomed.¹⁷³ It is worth noting, however, that even though IRCA succeeded in bringing thousands of previously unauthorized immigrants out of the shadows,¹⁷⁴ their presence in Oklahoma remained largely unnoticed since they were interspersed throughout neighborhoods and communities across the state and small enough in number in most places that conspicuous ethnic enclaves did not really exist.¹⁷⁵

Despite the lack of visibility to most Oklahomans, the immigrant population in Oklahoma, and especially the Mexican immigrant community, was

against immigrants serving criminal sentences); *160 Immigrants in 2 States Who are Felons to be Deported*, DALLAS MORNING NEWS, June 2, 1992, at 21A, available at 1992 WLNR 4753936 (reporting a series of arrests of immigrants with felony convictions in Texas and Oklahoma); Frank Trejo, *INS Arrests Over 90 Immigrants in 3-City Sweep*, DALLAS MORNING NEWS, Mar. 3, 1993, at 17A, available at 1992 WLNR 4784693. (reporting arrests of immigrants with felony convictions in Dallas, San Antonio and Oklahoma City).

170. *5 Accused in Plot to Get Work Permits*, TULSA WORLD, Jan. 23, 1992, at 5A, available at 1992 WLNR 4829910 (reporting arrests related to attempt to bribe INS official to obtain work authorization cards); Jerry Hereden, *Counterfeit: Money Isn't the Only Bogus Green*, TULSA WORLD, Aug. 1, 1994, at N1, available at 1994 WLNR 5119578 (reporting on law enforcement efforts to target the growing market in Oklahoma for green cards and other employment authorization documents).

171. *37 Aliens Arrested in Separate Incidents*, TULSA WORLD, May 5, 1989, at D16, available at 1989 WLNR 3228727 (reporting arrests by federal immigration officials in Oklahoma after stopping a van and a bus transporting unauthorized immigrants).

172. In fact, the part-time immigration court in Oklahoma City was shut down in early 1992 as a budget saving measure. Cece Todd, *Oklahoma Loses Court to Hear Immigration Cases*, TULSA WORLD, Jan. 17, 1992, at 3A, available at 1992 WLNR 4879413.

173. See Rob Martindale, *State Becomes Magnet for Hispanics*, TULSA WORLD, Sept. 13, 1991, at A13, available at 1991 WLNR 4594550 (discussing fifty percent growth rate in Hispanic immigrant population between 1980 and 1990, as compared with overall population increase of only four percent); *State Gains 204,000 People in 11-Year Period*, TULSA WORLD, Aug. 10, 1989, at A2, available at 1989 WLNR 3178839 (describing overall gains in state population despite a loss of almost a million residents over a decade); Rob Martindale, *State's Population Rises for Third Straight Year*, TULSA WORLD, Jan. 18, 1994, available at 1994 WLNR 5100901 (crediting international migration for more than ten percent of population growth); but see Rob Martindale, *State Eyes Growth From Immigration*, TULSA WORLD, Oct. 26, 1991, at A1, available at 1991 WLNR 4596506 (discussing Center for Immigration Studies report warning that increased immigration levels permitted under the Immigration Act of 1990 would lead to changes in the racial makeup of the United States and additional burdens for taxpayers forced to pay for support services for these new immigrants).

174. Rebecca Martin, *No Longer in a Strange Land*, TULSA WORLD, May 11, 1990, at 1B, available at 1990 WLNR 4318665 (describing how now-legal residents are more willing to cooperate with police and even to open apartment curtains because they are no longer afraid of discovery).

175. Baker, *supra* note 155 (discussing the lack of visible immigrant communities in Tulsa compared to larger immigrant centers like San Francisco or New York); Kelly Rucker, *Ethnic Families Put Down Roots*, TULSA WORLD, Sept. 18, 1991, at 1B, available at 1991 WLNR 4599374 (pointing out that despite the lack of a Chinatown or an Hispanic barrio, immigrant communities in Tulsa remained isolated from the native population by language barriers).

growing at an extraordinary rate, and the proportion of unauthorized immigrants was also growing. As was true elsewhere in the country, the flow of unauthorized immigrants to Oklahoma halted only briefly following IRCA, just long enough for migrants to realize that there were still a great many jobs available despite employer sanctions and that, in any event, bypassing IRCA's documentation requirements was not very difficult to do. In addition, the passage of even more restrictive immigration laws in 1996 did not stem the flow of unauthorized migration to Oklahoma. Indeed, it has been suggested that the unauthorized migrant population became even more of a fixture in Oklahoma and elsewhere following the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) because of provisions that made it more difficult for immigrants to move back and forth between jobs in Oklahoma and family south of the border.¹⁷⁶ Enhanced border controls and harsh penalties for unlawful entry to or presence in the United States created a disincentive for unauthorized immigrants to return home either because they wanted to avoid the perils and expense of another unauthorized entry¹⁷⁷ or because leaving could mean a lengthy separation from United Citizen or permanent resident family members in the United States.¹⁷⁸

Throughout the 1990s, social service agencies and community-based groups in Oklahoma responded to the growing immigrant community by offering English classes, job placement services and other immigration related services to help immigrants integrate into their new communities.¹⁷⁹ In many cases, appropriate programs and services did not exist so agencies

176. Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (bolstering number of border control personnel and increasing civil penalties for immigrants entering the United States illegally).

177. See Douglas S. Massey, *Backfire at the Border: Why Enforcement Without Legalization Cannot Stop Illegal Immigration*, 29 CATO INST. CTR. FOR TRADE POLICY STUDY 1, 1 (2005), available at <http://www.freetrade.org/pubs/pas/tpa-029.pdf> (discussing how increased enforcement at the border had amplified the costs and consequences of illegal border crossings and caused more migrants to remain for longer periods of time).

178. Under certain circumstances, unauthorized immigrants who leave may trigger a lengthy bar to lawful readmission to the United States. See 8 U.S.C. § 1182(a)(9)(B) (2008) (establishing three and ten year bars to re-entry for non-citizens who depart after certain periods of unlawful presence in the United States). The unlawful presence bars contained in section 212(a)(9)(B) are only triggered by a departure from the United States subsequent to the accrual of a period of unlawful presence, so an unauthorized immigrant with a citizen spouse who leaves the United States in order to apply for a legal entry, may find himself barred from reentry and separated from family in the United States for many years. See generally Fernando Colon-Navarro, *Familia E Inmigracion: What Happened To Family Unity?*, 19 FLA. J. INT'L L. 491, 507-08 (2007) (arguing that "in light of the long-standing goal of family unity, it is unacceptable that passage of [IIRIRA] should continue to separate families and force immediate relatives of U.S. citizens and LPRs to choose between risking inadmissibility, through a required departure from the United States, or remaining in the United States unlawfully with all the consequences that decision entails.").

179. See Baker, *supra* note 155, at 8 (discussing immigrant services provided by the YWCA Intercultural Services Center, the Hindu Society and the Greater Tulsa Hispanic Affairs Commission.); Rucker, *supra* note 175, at 1B (describing English language and job placement services provided by the Asian American Community Services Association and Hispanic Ministries).

worked to develop them in response to this new need.¹⁸⁰ In other communities, like Tulsa, with a long history of welcoming new immigrant communities, the influx of Spanish speaking immigrants meant the revival of English-immersion programs that had been in place since the first Vietnamese refugees settled in Oklahoma in the 1970s.¹⁸¹ Regardless of where they settled, hospitals, schools and other community-based service agencies were forced to adapt to keep up with the demand for services from newly arriving immigrants who did not speak English. However, at least initially, the challenge seemed less about handling the increased client numbers than about building capacities to serve Spanish speaking clients.¹⁸² In 1996, in order to respond to and raise awareness of some of the special needs of this community, Governor Frank Keating established the Governor's Advisory Council on Latin American and Hispanic Affairs.¹⁸³ Among other things, the Council was specifically charged with "coordinating, assisting and cooperating with the efforts of state agencies to serve the needs of Hispanics, especially in the areas of culture, education, employment, health, housing, and recreation."¹⁸⁴

Employers and business owners in the state were well aware of and welcomed the growing immigrant community because it provided much needed workers and a new supply of consumers of Oklahoma products and services.¹⁸⁵ In addition, a growing number of Hispanic-owned businesses that operated in low-income neighborhoods now heavily populated with new immigrants were prospering and were credited with stabilizing and revitalizing once declining areas.¹⁸⁶ Although it seemed clear by the late 1990s that

180. See Angie Brunkow, *Bridging the Cultural Gap With More Hispanics in Class, Schools Reaching Out to Help*, OMAHA WORLD HERALD, Aug. 30, 2001 (describing responses to demographic changes in Ringwood, Oklahoma, a town of 424 people, where sixty percent of the town's children are Hispanic and the number of Hispanic children in the local elementary school quintupled between 1990 and 2001); Kris Dudley, *New Parkview Multi-Ethnic Baptist Center Facility Dedicated*, TULSA WORLD, Mar. 19, 1997, at 3, available at 1997 WLNR 6711298 (describing creation of center to provide medical, food and housing assistance to post-IRCA immigrants, as well as English, U.S. government and driver's education classes).

181. Omer Gillham, *La Mayoria de los Oklahomeros No Pueden Leer Esto. Ellos Solamente ven Palabras que no Quieren Decir Nada*, TULSA WORLD, Apr. 26, 1999, at A13, available at 1999 WLNR 7774041 (reporting that Tulsa Public Schools paid \$453,000 to provide English instruction to 325 Spanish speaking students and 48 other non-English speaking students from Russia, Vietnam and elsewhere).

182. Omer Gillham, *They Come Looking for Work, Not Welfare*, TULSA WORLD, Apr. 26, 1999, at A1, available at 1999 WLNR 7774086 (quoting Oklahoma Department of Health official's observation that hiring Spanish speaking staff has encouraged more Spanish speaking clients to seek services but that this increased use of services is "still manageable under the department's budget").

183. Okla. Admin. Code § 1:1996-26 (1996) (creating Governor's Advisory Council on Latin American and Hispanic Affairs).

184. *Id.*

185. Omer Gillham, *Sinking Their Teeth Into the American Dream*, TULSA WORLD, Apr. 27, 1999, at A1, available at 1999 WLNR 7774613 (describing the growing contributions of the immigrant work force in both low-skilled and higher skilled jobs and, increasingly, as business owners and employers).

186. *Id.* (citing Oklahoma Chamber of Commerce estimates of approximately 3,000 Hispanic owned businesses in 1992); see also Rik Espinosa, *A Helping Hand*, TULSA WORLD, Apr. 27, 1999, at

federal immigration officials were aware that a substantial number of unauthorized immigrants were living and working in Oklahoma,¹⁸⁷ workplace enforcement did not appear to be a priority. In 1998, not a single Oklahoma employer was sanctioned for employing unauthorized workers, and employers who were found to be out of compliance were simply “urged to remedy their situation.”¹⁸⁸ Unauthorized immigrants were also generally viewed and treated by immigration officials much more sympathetically than is common today. According to one Oklahoma City immigration official, when unauthorized immigrants were arrested, they were given a choice between voluntarily leaving or being deported and “most receive[d] a one-way bus ticket from the INS” and left “voluntarily under escort.”¹⁸⁹ It is worth noting that many of the unauthorized immigrants who were arrested in Oklahoma five years post-IIRIRA were not actually residents, but rather were arrested as they traveled through Oklahoma en route to agricultural jobs in the southeast.¹⁹⁰ In the first half of 2000, a dramatic increase in the number of apprehensions in Oklahoma was attributed not to the rapid growth in the number of unauthorized residents of Oklahoma, but to increased traffic on Oklahoma’s northern highways of immigrants traveling to jobs in Georgia, Florida and the Carolinas.¹⁹¹

To be sure, not everyone in Oklahoma was equally welcoming or tolerant of Oklahoma’s new immigrants. By mid-2000, a backlash against the state’s growing Hispanic immigrant population was emerging and ultimately led to a ballot initiative to make English the official language of Oklahoma. The ballot measure would have prohibited state money from being spent on

A6, available at 1999 WLNR 7774478 (reporting on the incorporation of the Tulsa Hispanic Chamber of Commerce, the first in the state, to support 260 Hispanic-owned businesses in the county, with a combined revenue of more than \$171 million).

187. Omer Gillham, *Tulsa Has a New Member of La Familia*, TULSA WORLD, Apr. 25, 1999, at A1, available at 1999 WLNR 7773728 (reporting statement by immigration official that Oklahoma businesses employ thousands of unauthorized immigrant workers each year).

188. Omer Gillham, *Illegal Immigrants Are Here, They Just Live in the Shadows*, TULSA WORLD, Apr. 28, 1999, at A1, available at 1999 WLNR 7790477 (describing how immigration officials were more focused on educating employers than in “strong-arming them with raids” and concluding that the immigration service “was going on a hunch that businesses want to do right and will comply when they are reminded of the rules.”)

189. *Id.*

190. See *18 Illegal Aliens Discovered in Van*, TULSA WORLD, Feb. 8, 2000, at A10, available at 2000 WLNR 9519473; *Patrol Defends Arrest of Aliens*, TULSA WORLD, Febr. 23, 2000, at A14, available at 2000 WLNR 9511033 (reporting that 65 immigrants had been arrested by highway patrol over a two week period); *Packed Van Leads to Immigrant Case*, DALLAS MORNING NEWS, Mar. 15, 2000, at 27A, available at 2000 WLNR 9432791 (reporting arrest of 11 immigrants and a citizen driver charged with smuggling); *Alien Crammed Vehicles Nabbed*, TULSA WORLD, Apr. 28, 2000, at A8, available at 2000 WLNR 9510781 (reporting sharp increase in traffic stops involving unauthorized immigrants in north central Oklahoma).

191. See *Catching Illegal Aliens on Upswing in State*, TULSA WORLD, Apr. 9, 2000, at A12, available at 2000 WLNR 9534166 (reporting 545 highway arrests in first three months of 2000); *Illegal Aliens Arrested*, TULSA WORLD, Mar. 2, 2000, at A10, available at 2000 WLNR 9530522 (reporting arrest of 38 immigrants along “a favored route for smugglers of unauthorized workers from Mexico to the Southeast” in order to avoid the more heavily patrolled southern routes).

translations of documents or interpreters for government services.¹⁹² The initiative was spearheaded by a Republican lawmaker, Carol Martin, who had failed in her efforts to push an English-only bill through the state legislature.¹⁹³ According to Martin, the initiative was necessary for the “protection” of Hispanic immigrants in the state who would otherwise be enabled in their “refusal” to learn English by government-provided translations and the abundance of foreign language media outlets.¹⁹⁴ The initiative was promoted and subsidized by two national organizations, English First and U.S. English, which advocate for the adoption of English as the official language of the United States.¹⁹⁵ These organizations provided financial and logistical support for the ballot initiative, and legal assistance to help defend against the court challenges that ultimately defeated it.¹⁹⁶ Interestingly, the proponents of the initiative all conceded that providing services to non-English speaking residents of Oklahoma was not a monumental problem for the state—either logistically or financially—at the time the measure was introduced.¹⁹⁷ Rather, the proposal was viewed as a way to ward off the potential for costly future demands for services in languages other than English¹⁹⁸ and as an important preliminary step in the groups’ efforts to have English declared the official national language.¹⁹⁹ Both of these goals were presumably responses to recent sharp increases in the Hispanic immigrant community—both legal and unauthorized—in Oklahoma and across the country.²⁰⁰ In fact, there is no evidence to suggest that the initiative was motivated by a desire to punish or discourage unauthorized immigration in

192. Ginnie Graham, *English Only Plan Draws Heat*, TULSA WORLD, July 16, 2000, at A11, available at 2000 WLNR 9503993.

193. Ginnie Graham, *Petition Draws Criticism*, TULSA WORLD, June 18, 2000, at A1, available at 2000 WLNR 9527281.

194. *Id.* (“‘Especially in the Spanish community, they don’t want to learn English,’ Martin said. ‘As long as we cater to that, they will not learn the language. That’s really a hindrance to them.’”)

195. See Arnold Hamilton, *Language Petition Splits Oklahomans; Naming Official Tongue Would Require Election*, DALLAS MORNING NEWS, June 24, 2000, at 37A, available at 2000 WLNR 9417039.

196. John Greiner, *English-Only Drive May Be Revamped Original Petition Organizer Wants Chance To Start Again*, DAILY OKLAHOMAN, Jan. 31, 2001, at 5A. In addition to a number of legal challenges, the ballot initiative was opposed by then-Governor Frank Keating and a state-wide coalition of Hispanics, Asian Americans, and Native Americans who worked to defeat it. Ginnie Graham, *Senator Seeks to Abandon Petition*, TULSA WORLD, Feb. 1, 2001, at A9, available at 2001 WLNR 11805402.

197. According to Tim Schultz, U.S. English Director of Communications, the amount of money spent by states to provide translations to non-English speaking residents is relatively small: “It is not about how much money is being wasted but about the amount of damage the government does with so little money It is money spent to disempower immigrants.” *Id.*

198. According to Carol Martin, the initiative would protect Oklahoma from lawsuits allegedly filed in other states “by residents who successfully argued they were being discriminated against because they could not read or write in English.” Hamilton, *supra* note 195.

199. According to Jim Boulet, Executive Director of English First, “state campaigns, such as the one in Oklahoma, are vital to the national drive to designate English the official language.” Traditionally, he said, a groundswell at the state level is the first “step toward federal legislation.” *Id.*

200. David Zizzo, *English Only Debate Galvanizes Opposing Factions*, THE SUNDAY OKLAHOMAN, Aug. 13, 2000, at 1A (reporting Carol Martin’s reference to a “pretty large influx of immigrants” as motivation for the initiative); see also Jim Boulet, *Assimilation Not Amnesty, Treat Hispanics Like Real Americans*, NATIONAL REVIEW ONLINE, Aug. 21, 2001, available at <http://www.nationalreview.com>.

particular, and critics of the initiative asserted that its real intent was to stop the immigration of all Hispanics to Oklahoma.²⁰¹

B. *Post-9/11 Treatment of Oklahoma Immigrants*

1. *Federal Immigration Regulation*

In the aftermath of the World Trade Center attacks, links between national security and immigration, and between terrorists and immigrants, were quickly and inextricably drawn in Oklahoma as elsewhere.²⁰² In his first run for U.S. Congress in a special election months after September 11, Republican John Sullivan was very vocal in his criticisms of the existing federal immigration system and called for immigration reforms that included tighter border security and a crackdown on illegal immigration.²⁰³ Within months of taking office he had made it his mission to increase the number of immigration enforcement officers in Oklahoma and to involve state and local police in immigration enforcement in the state.²⁰⁴ While the original motivation for Sullivan's efforts against illegal immigration are not entirely clear, his push for tighter immigration enforcement intensified following a highly publicized traffic stop in July 2002 during which a Tulsa sheriff's deputy apprehended a van carrying eighteen unauthorized immigrants.²⁰⁵ The deputy contacted the immigration service in Oklahoma City after concluding that, "none of them had credentials to be in the U.S.," but was ultimately instructed to release them because the agency lacked the resources to respond to the call.²⁰⁶ Sullivan was infuriated by the incident and by subsequent statements from

com/comment/comment-bouletprint082101.html (arguing that providing government services in Spanish prevents Hispanic immigrants from becoming "real Americans").

201. Jim Gray, *State Question On "English Only" Turns Back The Clock On Race Relations*, NATIVE AMERICAN TIMES, Aug. 31, 2000, at C2, available at 2000 WLNR 7480526 (editorial asserting that, "the code word behind the 'English Only' movement is to 'Stop Hispanic immigration into Oklahoma, legal or otherwise.'"); see also Mary Pierpoint, *Oklahoma Indians Decry Group's Initiative for English-Only Laws*, INDIAN COUNTRY TODAY, Dec. 29, 2000, available at 2000 WLNR 6367651 (reporting on State Senator Enoch Kelly Haney's conclusion that the initiative was targeting Spanish speaking residents after he was approached about putting language into the bill which would have given some protection to Native American languages).

202. See Bud Kennedy, *Hate, Ignorance Alive and Well in Small Towns*, FORT WORTH STAR-TELEGRAM, Oct. 2, 2001, at 1, available at 2001 WLNR 1229240 (describing an arson attack in Waurika, Oklahoma against an Indian-American Sikh family and threats to "kill all you Muslims"); Jo Thomas, *A Nation Challenged: Oklahoma Detainee; Hearing for Pakistani Student*, N.Y. TIMES, Nov. 15, 2001, at B6 (describing the arrest of the president of the University of Oklahoma Pakistani Student Association by the immigration service after he filed a complaint for a racially motivated attack on September 16).

203. *Colorado Congressman Endorses Sullivan*, TULSA WORLD, Nov. 27, 2001, at A20, available at 2001 WLNR 11817254 (reporting Tom Tancredo's endorsement of John Sullivan because of his stance on tough immigration reforms and Sullivan's plan to join Tancredo's Congressional Immigration Reform Caucus).

204. *INS to Hire Four Agents for its OKC Office*, JOURNAL RECORD, Aug. 15, 2002, at 1, available at 2002 WLNR 5658729 [hereinafter *INS to Hire Four Agents for OKC*].

205. Nicole Marshall, *Illegals Ordered Released by INS*, TULSA WORLD, July 18, 2002, at A11, available at 2002 WLNR 13747840.

206. *Id.*

immigration officials that student visa violators and immigrants apprehended in routine traffic stops were not high priorities for the agency.²⁰⁷ At least initially, Sullivan framed his comments in terms of national security, asserting that stricter immigration enforcement was crucial at a time when “our nation is trying to protect our country’s border from terrorists.”²⁰⁸ He pushed for the establishment of an immigration enforcement presence in Tulsa and for a more formal and active role for local law enforcement agencies in the enforcement of federal immigration law. However, other than that single traffic stop, Sullivan offered no other evidence at that time to support his claim of the substantial harms caused by illegal immigration in Oklahoma. Two years later, Sullivan was still trying to gather enough data from U.S. Immigration and Customs Enforcement (ICE) to support his contention that Oklahoma needed another ICE office.²⁰⁹

In early 2004, as the debate over border security and related immigration reforms heated up, Sullivan and other members of the largely Republican Oklahoma Congressional delegation called for border enforcement first, and vehemently opposed President Bush’s temporary worker proposals and related proposals which provided a mechanism for unauthorized immigrants to obtain legal status.²¹⁰ Their arguments referenced unauthorized immigrants’ disrespect for the rule of law and the threats they allegedly posed to national security and the economy, but the Oklahoma lawmakers’ objections to the Bush plan were not tied to any particular complaints about or evidence of the impact of unauthorized immigration in the state.²¹¹

There was also broad support among Oklahoma lawmakers in 2003 for the Clear Law Enforcement for Criminal Alien Removal (CLEAR) Act²¹² and the related Senate bill, the Homeland Security Enhancement Act²¹³ (HSEA), which both called for increased involvement of state and local government in the enforcement of federal immigration laws and affirmed the inherent

207. *INS to Hire Four Agents for OKC*, *supra* note 204 (quoting Dallas District Director as saying that the agency uses a hierarchy of priorities in cases “beginning with those that affect national security and ending with illegal aliens discovered in routine traffic stops”).

208. Marshall, *supra* note 205.

209. In January 2005, Sullivan sent a letter to Michael Garcia, ICE Assistant Secretary, demanding to know the number of ICE offices and agents in other states; the number of unauthorized immigrants detained in Oklahoma since March 1, 2003; the number of immigrants detained in the commission of a crime; and number of detainees released by ICE without judicial review. Jim Myers, *Sullivan Again Pushes a Tulsa Immigration Office*, TULSA WORLD, Mar. 16, 2005, at A9, available at 2005 WLNR 24835062.

210. *Congressional Delegation Members Criticize Bush Immigration Plan*, Associated Press Alert, Jan 8, 2004, available on Westlaw at 1/8/04 AP Alert - Municipal 08:38:12 (quoting statements from John Sullivan, Ernest Istook, Brad Carson, and Jim Inhofe in opposition to Bush’s proposal).

211. *Id.*

212. H.R. 2671, 108th Cong. (2003) [hereinafter *CLEAR Act*]. All five Congressional Representatives from Oklahoma—John Sullivan, Brad Carson, Ernest Istook, Frank Lucas and Tom Cole—were co-sponsors of the CLEAR Act in 2003 and 2005. *Co-sponsors List for H.R. 2671*, Library of Congress: Thomas, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:HR02671:@@N>.

213. Homeland Security Enhancement Act of 2003, S. 1906, 108th Cong. (2003). Senator James Inhofe was one of three co-sponsors of this bill. *Co-sponsors List for S. 1906*, Library of Congress: Thomas, available at <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SN01906:@@P>.

authority of sub-federal law enforcement agencies to investigate, identify, apprehend, arrest, or detain non-citizens in order to assist in the enforcement of federal immigration laws.²¹⁴ However, it seems likely that the lawmakers' broad support for the CLEAR Act was less of a response to the actual concerns of their constituents at home than it was an effort to appear serious about national security in an increasingly heated national immigration debate. In fact, a number of Oklahoma law enforcement agencies were critical of the push to involve them in immigration enforcement efforts,²¹⁵ and advocates for crime victims and immigrants in the state argued that the law would damage community policing efforts in immigrant communities and discourage immigrant crime victims from reporting crimes or cooperating in criminal investigations.²¹⁶ In addition, it appears that Oklahoma voters were not overwhelmingly concerned about an unauthorized immigration problem at that time. In fact, two surveys conducted in late 2003 reveal that most Oklahomans had neutral or positive views about immigrants in the state even though they were not satisfied with the Bush Administration's handling of federal immigration policy.²¹⁷

In the final weeks of his 2004 re-election campaign, John Sullivan once again publicly condemned federal immigration officials following the release in Oklahoma of seventeen people believed to be unauthorized immigrants.²¹⁸ ICE officials declared that such failures to respond to local law enforcement were infrequent and uncharacteristic of ICE's general practice,²¹⁹ but Sullivan was unconvinced and decried the incident as an absolute failure on the part of ICE, accusing ICE of lacking the courage to enforce immigration

214. CLEAR Act, *supra* note 212, at § 101 and § 102. Homeland Security Enhancement Act of 2005, S. 1362, 109th Congr. § 3.

215. Judy Gibbs Robinson, *Candidates Use Forum to Address Hispanic Issues, Seek Votes*, THE OKLAHOMAN, July 23, 2004, 8A, available at 2004 WLNR 21103574 (reporting Oklahoma County Sheriff's denunciation of CLEAR Act as abdication of federal responsibility); Judy Gibbs Robinson, *Immigration Laws' Enforcement Debated*, THE OKLAHOMAN, Apr. 5, 2004, at 1A, available at 2004 WLNR 21090811 (reporting failure of Oklahoma Sheriff's Association to endorse CLEAR Act and criticism of law by Oklahoma Association of Chiefs of Police).

216. *Id.* (reporting statement of representative of domestic violence prevention program for Hispanic women that CLEAR Act would create fear and distrust of police among immigrant victims).

217. Ginnie Graham, *Oklahoma Poll: Most Want Tighter Immigration Limits*, TULSA WORLD, Nov. 9, 2003, at A1 (reporting that more Tulsans than not supported the provision of government services in languages other than English and believed that immigrants and natives wanted the same things for their families). This article also reported that 48 percent of Oklahomans wanted to limit legal immigration to the United States and disagreed with Bush's immigration policies, but that 51 percent also believed that immigration had generally been a good thing for the United States. *Id.*

218. *Sullivan Calls Immigrants' Release a 'Slap in the Face,' AP Alert—Oklahoma*, Sept. 23, 2004, available on Westlaw at 9/23/04 AP Alert – OK 03:42:34. The immigrants were en route to Tennessee when their van was stopped in Oklahoma for speeding. When local police contacted federal immigration officials, ICE ordered the detainees released because there were no agents available to respond immediately to the call and no place for the detainees to be held in the meantime. See Rhet Morgan, *Sullivan Vows to Fight Illegal Immigration*, TULSA WORLD, Sept. 23, 2004, at A1.

219. Jim Myers, *Agency Defends Release*, TULSA WORLD, Oct. 4, 2004, at A1. According to ICE spokesman Carl Rusnok, ICE failed to respond on only one other occasion over the previous year and on 29 other occasions had responded and ultimately detained 382 non-citizens. *Id.*

laws.²²⁰ Comparing Oklahoma's single ICE office to Colorado's 17 offices, Sullivan complained of inequality in the distribution of ICE field offices across the states and said that this incident was further proof of the need for an ICE presence in eastern Oklahoma.²²¹ A week later, he introduced a bill to establish an ICE office in Tulsa.²²²

Tulsa did not get an ICE office, but Sullivan's zeal for increased enforcement in Oklahoma led him to introduce in late 2005 the Secure Our Nation's Interior Act of 2005, a bill that, among other things, would explicitly clarify the inherent authority of state and local law enforcement agencies to enforce federal immigration laws.²²³ This provision was no doubt in response to a then-recent controversy related to the Department of Justice's reversal of position regarding the authority of state and local law enforcement to make arrests for civil violations of federal immigration law.²²⁴ The Justice Department's longstanding position had been that state and local police could not—except in special circumstances—enforce the non-criminal provisions of the immigration laws.²²⁵ In 2005, a three-year old memo outlining the government's new position that police possessed inherent authority to make such arrests was finally made public²²⁶ and was immediately and widely criticized for its conflict with longstanding department policies and practices and for its deeply flawed reasoning.²²⁷ Although the Justice Department stood by its

220. *Id.*

221. *Id.*

222. *Sullivan Bill Would Add Tulsa Immigration Office*, AP Alert—Oklahoma, Oct. 7, 2004, available on Westlaw at 10/7/04 AP Alert—Oklahoma 05:08:31.

223. *Secure Our Nation's Interior Act of 2005*, H.R. 4079, § 3, 109th Cong. (2005), available at <http://www.govtrack.us/congress/bill.xpd?bill=h109-4079&tab=summary>.

224. *Federal Memo Backs Immigration Law Arrests*, ALBANY TIMES UNION, Sept. 7, 2005, at A2, available at 2005 WLNR 14149706 (reporting the release of the 2002 Justice Department memo that reversed a 1996 letter of advice from the Office of Legal Counsel stating that state and local police could enforce only criminal immigration violations).

225. See Memorandum from Teresa Wynn Roseborough, Deputy Assistant Attorney Gen., Office of Legal Counsel, to Alan D. Bersin, U.S. Attorney, S. Dist. of Cal., *Re: Assistance by California Police in Apprehending Illegal Aliens* (Feb. 5, 1996), available at <http://www.usdoj.gov/olc/immstopola.htm> (concluding that state and local police lack recognized legal authority to stop and detain an alien solely on suspicion of civil deportability, as opposed to a criminal violation of the immigration laws or other laws) (emphasis in original); Memorandum from Douglas W. Kmiec, Assistant Attorney Gen., Office of Legal Counsel, to Joseph R. Davis, Assistant Dir., Legal Counsel, Fed. Bureau of Investigation, *Re: Handling of INS Warrants of Deportation in relation to NCIC Wanted Person File* (Apr. 11, 1989), available at <http://www.aclu.org/immigrants/gen/29970lg119900101.html> (concluding that state and local law enforcement were not authorized to arrest non-citizens charged with civil violations of immigration law).

226. The government resisted repeated requests from Congress and immigrant advocates to release the memo but was ultimately forced by a federal appellate court to release the document. See *National Council of La Raza v. Department of Justice*, 411 F.3d 350 (2d Cir. 2005). In addition to setting forth the reasoning for concluding that inherent authority exists and is not preempted by federal law or the Constitution, the memo specifically withdraws and disclaims as "mistaken" the opinion issued by the Office of Legal Counsel in 1996. Memorandum from Jay S. Bybee, U.S. Dep't of Justice Office of Legal Counsel, to the Attorney Gen., *Re: Non-preemption of the authority of state and local law enforcement officials to arrest aliens for immigration violations*, (Apr. 3, 2002), available at <http://www.aclu.org/immigrants/gen/20297lg120050902.html>.

227. *Rebuttal to U.S. Dep't of Justice Memorandum*, ACLU Immigrants' Rights Project 1 (2005), <http://www.aclu.org/FilesPDFs/ACF3189.pdf>; see Huyen Pham, *The Inherent Flaws in the Inherent*

new position and some commentators have adopted some or all of the conclusions set forth in the memo,²²⁸ it is likely that Sullivan, and other proponents of more local involvement in enforcement, believed that making this authority explicit in federal law would sidestep some of that controversy and render state and local involvement more resistant to legal challenge. Indeed, the “inherent authority” provision in Sullivan’s bill appeared almost verbatim in at least half a dozen other immigration measures introduced in the 109th Congress.²²⁹ It is not surprising that Sullivan’s bill had the strong support of anti-immigration groups like FAIR and Numbers USA,²³⁰ since both organizations have embraced the Department of Justice’s revised position and consistently argued that local arrest authority is critical to successful immigration enforcement.²³¹ In the end, Sullivan’s bill did not receive adequate support for passage, and he ultimately gave his support to HR 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act,²³² but only after successfully pushing for amendments to this already very harsh enforcement-only bill that would affirm the inherent

Authority Position: Why Inviting Local Enforcement of Immigration Laws Violates the Constitution, 31 FLA. ST. U. L. REV. 965, 967 (2004) (discussing how the Constitutional mandate for uniform enforcement of immigration laws is violated when inherent authority is granted to local authorities to enforce federal laws); Michael Olivas, *Lawmakers Gone Wild? College Residency and the Response to Professor Kobach*, 61 SMU L. REV. 99, 117 (Winter 2008) (“However, it is one thing to delegate training, to share resources, and to agree to cooperate, and it is quite another to consider such non-emergency federal measures as impliedly conceding any enforcement authority; it is certainly not an indication of ‘inherent authority’ but the reverse.”)

228. Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALB. L. REV. 179 (2005); Jeff Sessions & Cynthia Hayden, *The Growing Role for State & Local Law Enforcement in the Realm of Immigration Law*, 16 STAN. L. & POL’Y REV. 323, 345-46 (2005); Christina Rodriguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 592 n.104 (2008) (concluding that states and localities are not constitutionally precluded from enforcing immigration law, but that Congress may preempt or circumscribe their authority to do so).

229. See *CLEAR Act*, *supra* note 212, at § 2; S. 1362, *supra* note 214, at § 3; Comprehensive Enforcement and Immigration Reform Act of 2005, S. 1438, 109th Cong. § 221; Border Security and Interior Enforcement Improvement Act of 2005, S. 2061, 109th Cong. § 231; Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong.; Real Guest Act, H.R. 3333, 109th Cong. § 233; Enforcement First Immigration Reform Act of 2005, H.R. 3938, 109th Cong. § 102; but see Comprehensive Immigration Reform Act of 2006, S. 2611, 109th Cong. § 240D (affirms inherent authority only to enforce criminal provisions of federal immigration law).

230. Numbers USA is a self-described “immigration-reduction organization” that supports legislative efforts to control levels of immigration, both legal and illegal, to the United States. See <http://www.numbersusa.com/content/>.

231. Sullivan Introduces Sweeping Immigration Enforcement Legislation, Press Release (Oct. 19, 2005), <http://www.sullivan.house.gov/News?DocumentPrint.aspx?documentID=57557> (quoting FAIR spokesman as saying, “the potential force multiplier effect of having state and local law enforcement agents assist in the enforcement of immigration laws could pay important dividends in preventing terrorism, apprehending criminal aliens and generally helping to discourage illegal immigration.”). Counsel for IRLI, Kris Kobach, advocated this position when he was chief advisor on immigration issues to former Attorney General John Ashcroft, and it was his reliance on the 2002 OLC Memo that contributed to the conclusion by the court in *National Council of La Raza* that the Justice Department had adopted the analysis and conclusions of the memo as official department policy. 411 F.3d at 358.

232. The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (1st Sess. 2005).

authority of state and local law enforcement to enforce immigration laws.²³³

While he was pushing for federal legislation that would empower all state and local police to enforce federal immigration law, Sullivan was also working on what would be a three-year-long effort to establish a partnership between ICE and certain Oklahoma law enforcement agencies that would allow local officers to receive training and be authorized to enforce federal immigration law.²³⁴ Although such agreements had been authorized by federal law since 1996, at the time Sullivan proposed that ICE enter into an agreement with Oklahoma law enforcement agencies only Florida and Alabama had signed agreements in place. Sullivan argued that these agreements were necessary in order to focus on “arresting illegal aliens who are committing serious crimes,” but some law enforcement officials were skeptical of either the need for or the benefits of such a program.²³⁵ Tulsa Police Chief Dave Been expressed concern that the program would send the wrong message to Tulsa’s Hispanic community and discourage crime victims and witnesses from working with police.²³⁶ Additionally, Chief Been questioned Sullivan’s assertion that there had been an increase in serious crimes committed by unauthorized immigrants in Tulsa, suggesting instead that, “most of the crimes they committed involve traffic violations.”²³⁷ Eventually, both the Tulsa Police Department and the State Highway Patrol declined to participate in the program, but in July 2007 ICE finalized an agreement with the Tulsa County Sheriff’s Office.²³⁸

Although John Sullivan has been perhaps the most outspoken and active in his efforts to rid Oklahoma of its unauthorized immigrants, both U.S. Senators from Oklahoma have also embraced a pro-enforcement, anti-legalization position. In December 2005, Senator James Inhofe sponsored the Engaging the Nation to Fight for Our Right to Control Entry (ENFORCE) Act.²³⁹ The bill would have funded the construction of a border fence,

233. Statement by Congressman John Sullivan Following Judiciary Committee Passage of Immigration Bill (Dec. 8, 2005), <http://sullivan.house.gov/News/DocumentPrint.aspx?DocumentID=57673>. In the final hours of debate in the House, CLEAR Act Sponsor Charles Norwood introduced an amendment almost identical to the “inherent authority” provision in the CLEAR Act of 2005.

234. Ziva Branstetter, *Local Officials Could Fight Illegal Alien Crime*, TULSA WORLD, Aug. 20, 2004, at A11 (reporting meeting of ICE officials with representatives from the Tulsa County Sheriff’s Department, the Oklahoma State Highway Patrol, and the Tulsa Police to discuss possibility of entering into agreement). These agreements are commonly referred to as 287(g) agreements in reference to section 287(g) of the Immigration and Nationality Act, which authorizes the Department of Homeland Security to enter into agreements with sub-federal law enforcement agencies to provide training to designated officers who will then be permitted to perform immigration law enforcement duties under the supervision of ICE. See INA § 287(g), 8 U.S.C. § 1357(g).

235. Branstetter, *supra* note 234.

236. *Id.*

237. *Id.*

238. See Larry Levy, *How the ICE Has Melted in Tulsa; Deputies Are Now Getting Immigrant Training*, THE OKLAHOMAN, Aug. 22, 2007, at A15 (noting that Sullivan’s experiences with “catch and release” program prompted his push for a Tulsa ICE office and a 287(g) program with the Tulsa County Sheriff’s Office that was finally signed and approved in July 2007).

239. S. 2117, 109th Cong. (2005).

established a National Border Neighborhood Watch program, barred unauthorized immigrants from eligibility for in-state college tuition, affirmed the inherent arrest authority of local and state police, and made illegal presence in the United States a felony.²⁴⁰ Additionally, and perhaps most controversially, the ENFORCE Act would have denied U.S. citizenship to any child born in the United States who did not have at least one parent who was either a citizen or permanent legal resident.²⁴¹ In his press announcement for the ENFORCE Act, Inhofe praised the sacrifice and energy of the Minutemen working along the border to “preserve our liberties and enforce our laws,” and relied on statistics and commentary from a number of national anti-immigration organizations, including NumbersUSA, the Center for Immigration Studies (CIS),²⁴² and the Wake Up America Foundation²⁴³ to support this effort to “empower our citizens and law enforcement officers to fight this flood of illegal immigration.”²⁴⁴ Two months later, Senator Tom Coburn co-sponsored the Border Security and Interior Enforcement Improvement Act, a comprehensive enforcement-only bill that mirrored many of the provisions in Inhofe’s bill but included a provision mandating participation in the Basic Pilot Program, the federal government’s electronic employment authorization system.²⁴⁵ Neither Inhofe’s bill nor Coburn’s bill ever made it out of committee, but they and their colleagues in the House fought vociferously against provisions in the prevailing Senate bill that provided a

240. *Id.*

241. *Id.* at § 503.

242. The Center for Immigration Studies is a spin-off organization of FAIR. The CIS website describes CIS as following a “pro-immigrant, low-immigration vision which seeks fewer immigrants but a warmer welcome for those admitted.” See Center for Immigration Studies, *About CIS*, <http://www.cis.org/About> (last visited Mar. 23, 2009). However, a perusal of the titles in the library of CIS reports and studies reveals CIS’s anti-immigration bias and the organization’s core belief that immigration—legal or not—is bad for America. *Id.* In fact, CIS Executive Director Mark Krikorian just published a book entitled: *THE NEW CASE AGAINST IMMIGRATION, BOTH LEGAL AND ILLEGAL* (Sentinel HC 2008).

243. Inhofe’s statement quoted language from Dr. Madeleine Pelner Cosman declaring that “illegal alien women come to the hospital in labor and drop their little anchors . . . and instantly qualify for public welfare aid.” 151 CONG. REC. S13,697-99 (daily ed. Dec. 16, 2005) (statement of Sen. Inhofe). Cosman, who is now deceased, was a board member of the Wake Up America Foundation, a virulent anti-immigration group, and alleged that unauthorized immigrants are sexual predators and terrorists who bring disease to the United States. See *Democracy Now: Fact-Checking Dobbs: CNN Anchor Lou Dobbs Challenged on Immigration Issues* (radio broadcast, Dec. 4, 2007), transcript available at http://www.democracynow.org/2007/12/4/fact_checking_dobbs_cnn_anchor_lou (discussing Cosman’s claims that illegal immigrants had brought 7,000 new cases of leprosy to the United States and that Mexican men were child sexual predators); Jack Williams, *Madeleine Cosman, 68; medical lawyer, author*, SAN DIEGO UNION-TRIBUNE, Mar. 11, 2006, at B7, available at 2006 WLNR 4177753 (reporting that Cosman had blamed unauthorized immigrants for a resurgence of “[h]orrendous diseases that long ago America had conquered” and said that “[h]orrific diseases common in Third World poverty and medical ignorance suddenly are appearing in American emergency rooms and medical offices”).

244. 151 CONG. REC. S13, 697-99.

245. S. 2061. This effort won Coburn a place on the list of the top ten “Immigration Hawks in Congress” by conservative *Human Events* news magazine. *Top 10 Immigration Hawks in Congress*, HUMAN EVENTS, Feb. 24, 2006, available at <http://www.humanevents.com/article.php?id=12700&offer=&hidebodyad=true>.

path to legalization for many unauthorized immigrants living in the United States.²⁴⁶ The failure to reach a compromise on the issue of unauthorized immigrants already in the United States was in large part the issue that ultimately led to the collapse of comprehensive immigration reform in June 2007.²⁴⁷

2. State and Local Efforts

In the state legislature, the response to unauthorized immigrants has been somewhat less predictable. In May 2003, almost three years to the day before H.B. 1804 became law, the legislature approved and the Governor signed a new law allowing certain unauthorized immigrant students to attend Oklahoma state colleges and universities at in-state tuition rates and to apply for state financial aid.²⁴⁸ The law provided this benefit to students who had lived in Oklahoma for at least two years before graduating from high school or obtaining a GED.²⁴⁹ The inspiration for the bill (H.B. 1559)²⁵⁰ came from various reports and news accounts of talented high school students and longtime residents of Oklahoma who were accepted at state universities but would have been unable to attend without a change in the law.²⁵¹ The bill's sponsor in the House of Representatives, Kevin Calvey, and other supporters of the bill argued that the qualifying students were "Oklahomans" and "future Americans" and that offering this opportunity to them was the right thing to do in a place where "freedom, democracy, and liberty are revered and everybody is created equal."²⁵² Despite some opposition from legislators who decried the cost to the state of implementing the program and who objected to a measure that encouraged and rewarded illegal behavior,²⁵³ the

246. Jim Myers, *Immigration: Republican Resistance: Sullivan Leads Criticism of Senate Bill*, TULSA WORLD, May 18, 2006, at A4, available at 2006 WLNR 10977993 (quoting Sullivan as saying that S. 2611 would lead to a "dangerous expansion of our immigration laws, and it would be the largest expansion of the welfare state in 35 years"); see also *Oklahoma Senators Vote For, Against Amendment in Immigration Legislation*, AP Alert, May 18, 2006, available on Westlaw at 5/18/06 APALERTPOLITICS 07:09:03 (reporting the votes of Senators Coburn and Inhofe and Representatives Sullivan and Istook against legalization provisions).

247. Jonathan Weisman, *Immigration Bill Dies in Senate, Bipartisan Compromise Fails to Satisfy the Right or the Left*, WASH. POST, June 29, 2007, at A1.

248. John Greiner, *Immigrant Tuition Bill Passes Senate*, THE OKLAHOMAN, May 8, 2003, at 11A, available at 2003 WLNR 16566814.

249. OKLA. STAT. tit. 70, § 3242 (2006).

250. H.B. 1559, 2003 O.S.L. 70-3242, 49th Leg., 1st Sess. (Okla. 2003) [hereinafter H.B. 1559].

251. Jack Money, *Immigrant Tuition Break Gets OK; House Measure Moves Closer to Law in Oklahoma*, THE OKLAHOMAN, Feb. 21, 2003, at 9A, available at 2003 WLNR 16551816 (reporting story of Antonio Martinez, who had been accepted to and offered a four-year art scholarship at Oklahoma Panhandle University, but who would have been prevented from enrolling prior to the change in law).

252. *Id.* (quoting Rep. Hopper Smith).

253. *Id.* (reporting a statement by Rep. Lance Cargill quoting an unnamed study that put "society's estimated costs of taking care of both illegal and legal immigrants at \$61 billion nationally"); see also Greiner, *supra* note 248 (quoting Senator James Williamson posing this "question to conservatives in favor of this bill . . . 'What part of illegal don't you understand?'").

bill passed both houses of the legislature with an overwhelming majority.²⁵⁴ The enactment of the law is perhaps even more surprising in light of the fact that Oklahoma was one of only four states to pass a law providing this benefit after 1996 when Congress enacted a federal statute²⁵⁵ that many have argued prohibits a state from providing in-state tuition benefits to unauthorized immigrant students.²⁵⁶ Indeed, even an effort by FAIR to convince Oklahoma voters that the measure was both costly and unfair did not manage to defeat the measure.²⁵⁷

Nevertheless, less than a year later and on the eve of the 2004 election cycle, the political climate had shifted and the same legislature adopted a resolution urging the President of the United States and the Congress to crack down on illegal immigration.²⁵⁸ Citing to Department of Homeland Security (DHS) statistics on the rising unauthorized immigrant population; a 1996 Rice University study on the cost to federal, state and local governments of providing health care, education and corrections department services to unauthorized immigrants; and 2003 FAIR estimates of the cost of providing medical care to unauthorized immigrants and kindergarten through 12th grade education to unauthorized immigrant children, the resolution pleaded with the President and Congress to develop a “comprehensive plan to deal with illegal immigration” and to sign legislation that would support law enforcement agencies in their efforts to handle this problem.²⁵⁹ The tone in the legislature in May 2004 was far less sympathetic and understanding toward the plight of unauthorized immigrants than it had been a year earlier. The sponsor of the resolution, Carolyn Coleman, admitted that she introduced it because she was “tired of illegal immigrants in this country” and believed

254. House members approved the measure by a vote of 81 to 18. Money, *supra* note 251. The Senate approved the bill with a vote of 31 to 11. Greiner, *supra* note 248.

255. Congress enacted 8 USC § 1623 as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009 (1996) (codified as amended in scattered sections of 8 U.S.C.). It provides, in pertinent part, that “an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State . . . for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.” 8 U.S.C. § 1623 (2006).

256. See Kris Kobach, *Sleeper Amnesty: Time to Wake up from the Dream Act*, HERITAGE FOUNDATION BACKGROUNDER, Sept. 13, 2007, available at http://www.heritage.org/Research/immigration/upload/bg_2069.pdf (arguing that 8 USC § 1623 clearly prohibits states from offering in-state tuition rates to unauthorized immigrant students and that states providing this benefit are violating federal law and encouraging unauthorized immigrant students to violate federal law); but see Michael Olivas, *Lawmakers Gone Wild?*, *supra* note 227, at 122-25 (arguing that IIRIRA “allows states to confer (or, importantly, not to confer) residency status upon the undocumented in their public postsecondary institutions” and that, “Kobach is simply wrong when he somehow concludes that the states are breaking the law or somehow thumbing their noses at federal law”).

257. Brittney Guest, *Alien Tuition Plan Draws Debate*, THE OKLAHOMAN, Mar. 6, 2003, at 05 (quoting FAIR Field Director Susan Tully’s claim that the law would cost Oklahoma \$10,000 per student).

258. Concurrent Resolution Urging President & Congress To Take Actions Regarding Illegal Immigration, H. Con. Res. 1083, 49th Leg., 2nd Sess. (Okla. 2004) (enacted).

259. H.B. 1559, 49th Leg., 1st Sess. (Okla. 2003), 2003 Okla. Sess. Laws 868.

they were “depleting government resources.”²⁶⁰ Her sentiment echoed the controversial statement of a colleague two months earlier who said that he believed that there were too many Mexicans and Hispanics coming to Oklahoma.²⁶¹ Representative Bill Graves made this statement during a debate on a bill to create a Latino Affairs Commission, adding that there should be a “crackdown on illegal immigration” and a “cooling off period” to slow the numbers of immigrants coming to the United States.²⁶² Graves later corrected himself and explained that he meant to say that Oklahoma had “too many illegal Mexicans and Hispanics,” but his call for a moratorium on all immigration, like Coleman’s complaints about a subculture that refuses to learn English,²⁶³ suggest that it was not only unauthorized Mexicans and Hispanics that some legislators felt were becoming too numerous in Oklahoma.²⁶⁴

Within a year, with no signs of federal immigration reform in sight, the legislature would take on the challenge of dealing with illegal immigration from the state capitol. In January 2005, Freshman Senator Tom Adelson, a Democrat from Tulsa, proposed a bill that would penalize employers who hired unauthorized workers. Adelson argued that unauthorized immigration depressed wages and was “the single greatest threat to American workers.”²⁶⁵ With the support of FAIR, Adelson proposed a bill, the Oklahoma Fair Employment Act (SB 510), that presaged in several respects provisions of H.B. 1804.²⁶⁶ The bill allowed authorized workers who had been discharged by an employer with unauthorized workers on his payroll to take legal action against the employer.²⁶⁷ The bill also required participation in the Basic Pilot Program²⁶⁸ as a condition of an award of government contracts, and exempted from SB 510’s sanctions employers who enrolled in that program.²⁶⁹ Adelson appeared on Lou Dobbs’ *Moneyline* to promote his bill and was praised by FAIR President Dan Stein who described Adelson’s

260. Judy Gibbs Robinson, *Resolution Takes Hispanic Leaders By Surprise*, THE OKLAHOMAN, May 19, 2004, at 6A. According to Coleman, “If they want to come in legally through the right channels and integrate into American culture, that’s great. But when they don’t integrate and live in their own little subculture, that’s not fair to them. They don’t learn English. That’s not right. We are not multicultural.” *Id.*

261. Tim Talley, *Lawmaker Expresses Regret over Immigration Remarks*, AP ALERT, Mar. 17, 2004, available on Westlaw at 3/17/04 APALERTMUNI 22:42:36.

262. *Id.*

263. Robinson, *supra* note 260.

264. *Id.*

265. Paul English, *Measure Targets Hiring of Illegals*, TULSA WORLD, Jan. 27, 2005, at A11, available at 2005 WLNR 24837934.

266. *Id.*; The Oklahoma Fair Employment Act, S.B. 510, 49th Leg., 2nd Sess. (Okla. 2005) [hereinafter S.B. 510].

267. Okla. S.B. 510.

268. *Id.* at § 7. The Basic Pilot Program, now called the E-Verify Program, is a federal database to verify the status of prospective employees. It is a voluntary program that was created, along with two other pilot programs, under section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

269. Okla. S.B. 510. at § 4.

bill as “first-of-its-kind legislation” that would be a “bellwether” for other states grappling with the challenges of illegal immigration.²⁷⁰ According to Stein, “Enactment of Oklahoma Senate Bill 510 would represent not only a significant protection for workers in Oklahoma, but *would be an important model for Congress and the other 49 states.*”²⁷¹

Ultimately, SB 510 was not enacted, but it was followed soon enough by other efforts by state legislators to control unauthorized immigration. State efforts like those seen in Oklahoma were becoming more and more common, especially in states where some residents were concerned about a “cultural shift” taking place as a result of a rapid rise in their foreign born, non-white, and non-English speaking population.²⁷² Some advocates argued that it was resistance to or fear of this cultural shift that led to changes in state and local laws targeting new immigrants.²⁷³ Others suggested that state legislators introduced the laws as window dressing to appease angry constituents calling for solutions to the immigration crisis.²⁷⁴ In Oklahoma, the absence of a rational, well-considered position on the issue of unauthorized immigration is best exemplified by the introduction of the Financial Assistance Immigration Reporting (FAIR) Act, by Representative Kevin Calvey in January 2006.²⁷⁵ Only one full academic year after he shepherded his resident tuition bill through the legislature, Calvey was back with a bill that would effectively repeal H.B. 1559. Calvey’s FAIR Act would have, among other things, required all public employees to verify the immigration status of anyone seeking a “government service.” And if lawful immigration status could not be verified, the bill mandated that the employee report that person to federal immigration officials.²⁷⁶ “Government service” was broadly defined, and

270. Ron Jenkins, *Bill Fights “Illegal Competition in Job Market”*, AP ALERT—POLITICAL, Feb. 21, 2005, available on Westlaw at 2/21/05 APALERTPOLITICS 15:07:18.

271. Press Release, Adelson Introduces Oklahoma Fair Employment Act, Oklahoma State Senate Communications Division (Jan. 25, 2005) (emphasis added) available at http://www.oksenate.gov/news/press_releases/press_releases_2005/pr20050126c.html.

272. Nicholas Richardi, *States Step Up Battles on Immigration*, PHILADELPHIA INQUIRER, Jan. 17, 2006, at A12, available at 2006 WLNR 876328. In 2005, three hundred bills were introduced in state legislatures relating to immigrants, 45 were passed, and 37 were ultimately signed into law. Ann Morse et al., *A Review of State Immigration Legislation in 2005*, National Conference of State Legislatures (revised Jan. 2007), available at <http://www.ncsl.org/programs/immig/IMMIGStateLegisJuly06.htm>.

273. Richardi, *supra* note 272 (reporting statement by John Trasviña, President of the Mexican American Legal Defense Fund (MALDEF), that new settlement states like Oklahoma don’t know how to deal with the increased extent of all kinds of immigration—legal and illegal—and so are “freaking out” and passing bad laws).

274. *Id.* (quoting statement by Marielena Hincapié of the National Immigration Law Center that “anti-immigrant legislation is largely for show”).

275. H.B. 2613, 50th Leg., 2nd Sess. (Okla. 2006) [hereinafter H.B. 2613].

276. *Id.* at § 3. The bill provided in pertinent part that “each public employee, at the time a person applies for a government service, shall verify the immigration status of the person requesting the government service and, if such person is a minor, of the parent or legal guardian of the person If a person and the parent or legal guardian of the person, if such person is a minor, are unable to provide the public employee with proof of legal residence, the public employee shall report the person to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland

included enrollment in public schools.²⁷⁷ Calvey confirmed that the law would require reporting the unauthorized immigrant parents of students enrolling in public schools, regardless of the immigration or citizenship status of the child, saying, "I think what it's going to do is tell a lot of people that they're not going to be able to live off the public dole if they come here illegally, and therefore I think some of those people will not come here."²⁷⁸ He made no reference to how this bill would impact the very students he advocated for just eighteen months earlier, nor did he comment on the irony of offering unauthorized immigrant students access to higher education if they graduate from a state high school, but at the same time putting them at risk of deportation if they try to enroll in a state public school, college or university. The motivation for the law was described in section two of the bill and was reminiscent of the arguments proffered by opponents of H.B. 1559 two years earlier:

Some of those from other countries, who deliberately enter the United States and Oklahoma illegally, seek not to contribute, but rather to sap public resources from Oklahoma. *Such illegal entrants seek government benefits at the expense of Oklahoma taxpayers, including taxpayers who themselves are legal immigrants.*

To provide government benefits for those who deliberately violate the immigration laws of our nation is not fair, either to hard-working, taxpaying legal immigrants, or to Oklahoma taxpayers in general.

... Oklahoma cannot possibly afford to provide government benefits for those who come here illegally. *To do so would be to make Oklahoma the welfare state for the entire world.* If any and all persons can come to Oklahoma illegally and live off the public largesse, Oklahoma could be inundated with more people living off the taxpayers.²⁷⁹

The FAIR Act did not become law, but had it been enacted it is likely to have faced immediate legal challenges. To the extent that section three of the bill would have required public school officials to request proof of legal immigration status from students and their parents, and to report to ICE unauthorized

Security within seven (7) days. This provision shall not apply to emergency medical services or to treatment provided by the Department of Mental Health and Substance Abuse Services." *Id.*

277. *Id.* at § 3(c)(1).

278. Janice Francis-Smith, *Oklahoma Lawmaker Proposes Legislation to Crack Down on Illegal Immigrants*, JOURNAL RECORD, Jan. 20, 2006, available at 2006 WLNR 10712968.

279. H.B. 2613, § 2 (emphasis added). Calvey's change of heart on the issue was attributed by some to his decision to run for Congress in 2006. See Tim Talley, *Immigration Bills Reflect Election-Year Fears*, AP ALERT—POLITICAL, Mar. 13, 2006, available on Westlaw at 3/13/06 APALERTPOLITICAL 05:00:12. As the Republican primary approached, Calvey's position became even more anti-immigrant, calling for federal legislation to reverse Plyler v. Doe, 457 U.S. 202 (1982), and deny citizenship to children of unauthorized immigrant parents born in the United States and denouncing any legalization programs, including guest-worker programs which he called "amnesty-light." Janice Francis-Smith, *Kevin Calvey, R-Del City Pushes for Immigration Reform*, JOURNAL RECORD, July 11, 2006, available at 2006 WLNR 11959725.

immigrant school children and their unauthorized immigrant parents, the bill was almost certainly in conflict with the Supreme Court's ruling in *Plyler v. Doe*.²⁸⁰ This vulnerability to a constitutional challenge may be one of the reasons that Calvey shelved the FAIR Act in order to join forces with Representative Randy Terrill in his first attempt at a state immigration measure. On the same day that Calvey introduced the FAIR Act, Randy Terrill introduced the first version of the Oklahoma Taxpayer and Citizen Protection Act (H.B. 3119).²⁸¹

H.B. 3119 was far more comprehensive than Calvey's bill and included provisions that prohibited all private and public agencies and entities in the state from issuing identification cards without proof of lawful immigration status and mandated that schools and public agencies report to ICE the names of any applicants for identification who failed to provide proof of legal status;²⁸² specified the types of documents that could be used to prove citizenship for purposes of voter registration;²⁸³ required government agencies to obtain proof of lawful immigration status from all applicants for public benefits, and to report to ICE the names and addresses of any applicant unable to provide that proof, and made it a misdemeanor for a government employee to fail to report unauthorized immigrant applicants to ICE.²⁸⁴ Additionally, the bill subjected employers to liability if they hired an unauthorized worker and failed to verify the employee's employment authorization through the Department of Homeland Security's Basic Pilot Program; liability for a violation included the costs of medically necessary services for that employee and his family member during the course of his employment.²⁸⁵ The bill also would have reversed the effect of Calvey's tuition bill by making unauthorized immigrant students ineligible for in-state tuition or financial aid.²⁸⁶ In his press conference announcing the bill, Terrill blamed the federal government for not doing their job and, adopting the "attrition through enforcement" mantra of FAIR and ILRI, promised that his bill would succeed where the federal government had failed.²⁸⁷

280. 457 U.S. 202 (1982). The explicit holding of *Plyler* is that a child cannot be refused admission to or treated in any way different from all other students enrolled in a public school because of a lack of lawful immigration status. 457 U.S. at 221. In *LULAC v. Wilson*, a provision of Proposition 187, a California anti-immigrant ballot initiative that, like the FAIR Act, required schools to verify the immigration status of children and their parents, and to report any "illegal aliens" to the Immigration and Naturalization Service was found both unconstitutional under *Plyler* and preempted by federal immigration law. 908 F. Supp. 755, 774 (C.D. Cal. 1995).

281. H.B. 3119, 50th Leg., 2nd Sess. (Okla. 2006) [hereinafter H.B. 3119].

282. *Id.* at § 3.

283. *Id.* at § 4.

284. *Id.* at § 6(E).

285. *Id.* at § 7.

286. *Id.* at § 8.

287. Janice Francis-Smith and Nicholas Pointer, *OK House Legislation Seeks to Penalize Employers of Illegal Aliens*, JOURNAL RECORD, Feb. 9, 2006, available at 2006 WLNR 10713221 (According to Terrill, "Illegal aliens won't come here if there aren't any jobs and they won't stay here if there isn't any government subsidy.").

From the beginning, Terrill's efforts had the backing of national and local anti-immigration groups.²⁸⁸ With Terrill at his press conference was Angela Bay Buchanan, sister of Pat Buchanan and President of the American Cause, an organization that, like FAIR and IRLI, supports efforts to end illegal immigration and reduce legal immigration.²⁸⁹ Buchanan is also current chair of Team America, a political action group created by conservative Republican Congressman Tom Tancredo that supports candidates for public office who are committed to securing the borders of the United States against illegal immigration.²⁹⁰ Also present with Terrill was Carol Helm, President and founder of Immigration Reform for Oklahoma Now (IRON), a group formed in 2004 to oppose the "illegal alien invasion of America."²⁹¹ Helm accuses Mexican immigrants of trying to colonize the United States and has characterized unauthorized immigration as the, "single greatest invasion without gun takeover of a nation in history."²⁹²

Those opposed to Terrill's bill included immigrant advocates, Latino organizations and faith-based groups.²⁹³ H.B. 3119 also faced substantial opposition within the legislature from fellow lawmakers who complained that the bill was too harsh and would unfairly punish organizations providing humanitarian aid to immigrants and turn state employees into border patrol agents.²⁹⁴ Some senators and the State Chamber of Commerce also argued against immigration legislation proposed by Terrill and two other Republican senators because of the harsh consequences it would impose on Oklahoma employers.²⁹⁵

Ultimately, Terrill's first attempt at state immigration reform died in the senate and, on the last day of the legislative session, a resolution sponsored

288. *Id.*

289. The American Cause—About the Cause, <http://www.theamericancause.org/index.php?page=about-the-cause> (last visited Apr. 3, 2009).

290. Team America PAC—About Us, <http://teamamericapac.org/index.php?page=about-us> (last visited Apr. 3, 2009).

291. Tom Droege, *Meeting Addresses Illegal Immigration*, TULSA WORLD, Mar. 31, 2005, at A7, available at 2005 WLNR 24871639. IRON is also part of the Coalition to End Taxpayer Subsidies for Illegal Immigrants, an alliance of conservative Oklahoma organizations including Oklahoma City-area Republican organizations, the Minuteman Civil Defense Corps, and the Oklahoma Conservative Political Action Committee. See Angel Riggs, *Coalition Urges State Anti-immigration Legislation*, TULSA WORLD, Mar. 31, 2006, available at 2006 WLNR 5397599 (quoting organizer Tom Roach's statement that H.B. 3119 was to prevent unauthorized immigrants from staying in Oklahoma to receive public benefits and services he described as the "outrageous pot of gold at the end of the rainbow" currently provided by the state).

292. Judy Gibbs Robinson, *Capitol Rally Denounces Illegal Immigration*, THE OKLAHOMAN, May 7, 2006, at 20A, available at 2006 WLNR 22929480.

293. See Tim Talley, *Immigration Bill Reflects Election-year Fears*, *supra* note 279 (noting opposition from the League of United Latin American Citizens (LULAC), the Latino Community Development Agency, and Catholic Charities); *Immigration Bill Concerns State Clerics*, THE OKLAHOMAN, Mar. 21, 2006, at 2A, available at 2006 WLNR 10834365 (reporting on joint statement calling bill, "unduly severe from Catholic, Episcopal, and Lutheran church leaders in Oklahoma).

294. John Greiner, *Senator Withdraws Senate Immigration Bill*, THE OKLAHOMAN, Mar. 28, 2006, at 3A, available at 2006 WLNR 10838269.

295. Janice Francis-Smith, *Immigration Reform Resurfaces in OK Senate*, JOURNAL RECORD, Apr. 25, 2006, available at 2006 WLNR 10716080.

by two Democratic senators creating a Taskforce on Illegal Immigration Issues was passed.²⁹⁶ The resolution directed the Task Force to study and report back to the legislature on “all issues related to the question of illegal immigration affecting the state” including education, public services, taxation, law enforcement, public safety and state and federal coordination.²⁹⁷ The Task Force conducted a number of hearings in the fall of 2006 during which the group heard testimony from representatives of Oklahoma health care and community service agencies, law enforcement agencies, education departments, and labor and industry.²⁹⁸ While testimony was given about significant unreimbursed costs to the state as a result of unauthorized immigration—most notably for incarceration by county jails and the State Department of Corrections²⁹⁹—much of the evidence provided to the Task Force did not support Randy Terrill’s portrait of Oklahoma as a state devastated economically by unauthorized immigrants, and several witnesses expressly discouraged the implementation of state efforts to control unauthorized immigration.³⁰⁰ For example, the Department of Human Services reported that only 0.3 percent of the agency’s Medicaid budget was spent on treatment for unauthorized immigrants.³⁰¹ According to the Department Director, “most illegal aliens understand that they are not eligible (for public benefits) and generally they don’t show up.”³⁰² The Oklahoma Hospital Association took the position that hospital staff are “caregivers, not regulators or enforcers of the law,” and that any state law that required a different standard of care based upon a patient’s skin color or nationality “would likely conflict with federal law and/or medical ethics.”³⁰³ The Commissioner of Public Safety stated his view of the primary responsibility of DPS as the enforcement of state laws, and that immigration law is better enforced by “federal personnel who have been provided with training specific to immigra-

296. Resolution Creating a Taskforce on Oklahoma Illegal Immigration Issues, OK SR 125, May 26, 2006.

297. *Id.*

298. REPORT OF THE TASK FORCE ON OKLAHOMA ILLEGAL IMMIGRATION ISSUES, Mar. 12, 2007, available at http://oksenate.gov/publications/issue_papers/public_safety/ITFReport.pdf [hereinafter REPORT OF ILLEGAL IMMIGRATION TASK FORCE]. The report contains summaries of testimony of witnesses from the Oklahoma Department of Human Services, the Oklahoma Health Care Authority, the Oklahoma Hospital Association, the Oklahoma Sheriff’s Association, the Oklahoma Department of Corrections, the Oklahoma Department of Public Safety, the Oklahoma Criminal Justice Resource Center, the Oklahoma Department of Education, the Oklahoma Regents for Higher Education, the Oklahoma Employment Securities Commission, the Oklahoma AFL-CIO, the Central Oklahoma Manufacturer’s Association, the Oklahoma Tax Commission, and a private agricultural company that supplies pork and beef processing plants in Oklahoma. *Id.*

299. *Id.* at 6-7.

300. *Id.*; see also Kelley Chambers, *Senate Task Force in OK Explore Impacts of Illegals*, JOURNAL RECORD, Sept. 19, 2006, available at 2006 WLNR 16270790 (discussing Terrill’s criticism of statistics that did not include services provided to “anchor babies” born to unauthorized immigrants and that gave the impression that, “no illegal aliens are receiving services”).

301. Angel Riggs, *Immigration Panel Meets*, TULSA WORLD, Sept. 19, 2006, at A1, available at 2006 WLNR 16315762.

302. *Id.*

303. REPORT OF THE ILLEGAL IMMIGRATION TASK FORCE, *supra* note 298, at 7.

tion issues.”³⁰⁴ The Oklahoma Employment Securities Commission (OESC) suggested that if legislation was enacted to open a path to legalization for currently unauthorized workers, “it would help assuage the labor shortage” in Oklahoma.³⁰⁵ On the other hand, if unauthorized workers were removed from the labor force, the OESC predicted that the unemployment rate would be negatively affected.³⁰⁶ Finally, the Oklahoma Tax Commission reported revenue of more than \$20 million in income and sales tax from unauthorized workers in Oklahoma in 2005.³⁰⁷ Ultimately, the Task Force recommended that the state request federal compensation for the costs of incarcerating unauthorized immigrant prisoners, but otherwise made no recommendations for state action to curb unauthorized immigration.³⁰⁸ Instead, the Task Force recommended that “the desirability of educating undocumented persons” and the “low impact of current undocumented persons on our higher education system receiving in-state tuition” should be determining factors when considering future legislation.³⁰⁹

Terrill was undeterred by the evidence presented to the task force and, recognizing that he would need additional support for his next attempt at immigration reform,³¹⁰ requested further legislative hearings at which he presented witnesses more likely to support his claim that the state needed to take action to stop illegal immigration.³¹¹ Once again, Terrill got the support he needed not from state agencies or fellow legislators, but from FAIR.³¹² According to estimates supplied by FAIR, approximately 83,000 unauthorized immigrants were living in Oklahoma, and the financial impact of unauthorized immigration on Oklahoma’s economy was \$207 million a year.³¹³ Fair described these figures as “estimates based on estimates” but asserted nevertheless that states needed to take action to deal with illegal immigration because federal immigration legislation could be years away.³¹⁴

304. *Id.* at 8.

305. *Id.* at 9.

306. *Id.* In concluding, the report also recognized that, although Oklahoma faced a labor shortage, the state was powerless to enact legislation authorizing the employment of unauthorized workers in the state. *Id.* at 12.

307. *Id.* at 11.

308. *Id.* at 12.

309. *Id.*

310. The Department of Labor accused Terrill of making several unsubstantiated claims in the statement of purpose of H.B. 3119, including the claim that, “illegal immigration is causing economic hardship and lawlessness in this state.” Janice Francis-Smith, *Finding Data on Impact of Illegal Immigration Proving Difficult*, JOURNAL RECORD, Sept. 7, 2006, available at 2006 WLNR 15670844 (citing to a memo from the Labor Department General Counsel saying that “facts, not opinions or emotions” will either substantiate or debunk Terrill’s claims).

311. Janice Francis-Smith, *Group Pegs Fiscal Impact of Illegal at \$207M for State of Oklahoma*, JOURNAL RECORD, Oct. 25, 2006, available at 2006 WLNR 19564519.

312. Jennifer Mock, *Immigration Laws Enforcement Urged*, THE OKLAHOMAN, Oct. 25, 2006, available at 2006 WLNR 18503296.

313. *Id.*

314. *Id.* In a conversation with staff of the Tulsa Metropolitan Human Services Commission (MHSC) in May 2008, Jack Martin, FAIR Director of Special Projects, stated that no specific estimate of the costs of illegal immigration had been completed for Oklahoma but that the figures provided to

Terrill also presented the testimony of a Department of Human Services employee who claimed that he had been punished by supervisors for trying to report to ICE the names of unauthorized immigrants applying for state public benefits.³¹⁵ According to the employee, DHS encouraged workers to look the other way when unauthorized immigrants applied for benefits and, contrary to the earlier statements of DHS supervisors, suggested that such applications were frequently made.³¹⁶

Terrill returned to the legislature in January 2007 and introduced H.B. 1804, a revised version of the Oklahoma Taxpayer and Citizen Protection Act that, with the assistance of IRLI, he had rewritten to avoid potential constitutional challenges.³¹⁷ Nevertheless, the bill contained many of the same provisions limiting immigrant access to benefits³¹⁸ and employment,³¹⁹ and conferring duties on employers,³²⁰ law enforcement officers,³²¹ and government agencies³²² that, taken together would make life very difficult for unauthorized immigrants living in Oklahoma. In the ensuing debate, Terrill and other supporters of the bill relied heavily on the fiscal estimates provided by FAIR, repeating over and over the claim that Oklahoma taxpayers spent more than \$200 million a year on costs related to unauthorized immigration but offering no data in support of this claim and others.³²³ Despite the lack of hard evidence, Terrill urged his colleagues to vote in favor of the bill, claiming that public opinion was on his side.³²⁴ As part of a senate compromise, Terrill reluctantly agreed to amendments removing certain

Terrill and others were “back of the envelope” estimates based on “an interpolation” of data for other states. According to an investigation by MHSC staff, FAIR had only conducted a complete estimate of the costs of illegal immigration for the six states with the highest foreign born population, all of which had a much higher rate of immigration and illegal immigration than Oklahoma. See e-mail from Dan Arthrell, MHSC, to Elizabeth McCormick, Assistant Clinical Professor of Law, University of Tulsa College of Law (Sept. 8, 2008) (on file with author).

315. See Mick Hinton, *DHS Worker: I Was Punished*, TULSA WORLD, Oct. 25, 2006, at A9, available at 2006 WLNR 18575007.

316. According to one DHS spokesman, state public assistance programs were audited annually by the federal government and those audits did not reveal that any unauthorized immigrants had applied for or received public benefits. *Id.* This spokesman echoed the testimony of the DHS Director to the Senate Task Force that illegal immigrants generally do not seek benefits. See REPORT OF THE ILLEGAL IMMIGRATION TASK FORCE, *supra* note 298.

317. See Janice Francis-Smith, *Immigration Proposal Before Oklahoma House Returns Again*, JOURNAL RECORD, Feb. 27 2007, available at 2007 WLNR 3851245.

318. H.B. 1804 § 8.

319. *Id.* at §§ 7, 9.

320. *Id.* at §§ 4, 7, 9.

321. *Id.* at §§ 5, 3.

322. *Id.* at §§ 4, 10, 12.

323. See Brian Ervin, *Speaking Different Languages: State Immigration Bill is Back, Morphed with “More Teeth” or “More Precision” Depending on Your Point of View*, URBAN TULSA WEEKLY, Mar. 28, 2007, available at <http://www.urbantulsa.com/gyrobase/Content?oid=oid%3A16825> (quoting House Speaker Lance Cargill’s claims of “hundreds of millions of dollars in costs to the state” and Terrill’s claim that such costs are the result of “illegal aliens accessing public benefits”).

324. Erin Boeckman, *Immigration Reform Bill Passes House Scrutiny*, OKLAHOMA INSIDER, Mar. 7, 2007, available at http://www.icapitol.net/topic_01OFOMMAHU/readstory.oki?storyid=01715ARIS (reporting Terrill’s reference to several polls showing that illegal immigration was one of the top concerns to voters).

employer sanctions provisions and restoring in-state tuition benefits for certain unauthorized immigrant high school graduates.³²⁵ In the end, despite opposition from Latino organizations, faith-based groups, and business associations, the bill passed with an overwhelming majority in both houses of the legislature, with those voting for and against acknowledging the bill's inadequacy and casting blame on the federal government for its failure to deal effectively with the national immigration crisis.³²⁶ Similarly, when the bill reached the governor for his signature, he dismissed Terrill's claims that the bill was a landmark piece of legislation, calling it a stop-gap measure to deal with a problem that is a federal government concern.³²⁷ Henry signed the bill but warned that, "until Congress enacts a comprehensive national immigration policy, citizens will see little progress on this issue."³²⁸

PART IV. WILDFIRE OR STEAM VALVE?—EXAMINING THE IMPACT OF H.B. 1804 IN OKLAHOMA AND BEYOND

A. *Oklahoma is Burning: Life After H.B. 1804*

While the debate surrounding the wisdom and propriety of H.B. 1804 rages on—and will likely continue to do so for some time—there is no question that the law has had a significant impact upon Oklahoma. It is also undeniable that H.B. 1804 has succeeded in driving thousands of unauthorized immigrants from the state and is making Oklahoma an unattractive destination for newly arrived immigrants³²⁹ even if opinions on whether this result is a good or a bad thing are highly polarized. But reducing the number of unauthorized immigrants in Oklahoma is only one of the consequences of H.B. 1804, and so measuring the effectiveness of the law requires a more comprehensive analysis of the law's wide-ranging impacts.

H.B. 1804 includes provisions that bar unauthorized immigrants from receiving public assistance,³³⁰ require employers to participate in a federal electronic employment authorization system to verify the status of all new

325. Engr. S.A. to Engr. H.B. No. 1804, sections 7 and 13. A provision prohibiting unauthorized immigrant students from receiving financial aid did remain. H.B. 1804, § 11.

326. See Boeckman, *supra* note 324 (quoting Rep. Shane Jett saying, "There is a need for reform but we could injure the state if we're too hasty in making decisions. I'm concerned about the message being sent to immigrants around the country. The system is broken beyond this and it must be fixed at the federal level This bill does not resolve the problem. It makes a statement, not a difference.").

327. See *Governor Signs Sweeping Immigration Reform Bill*, DURANT DAILY DEMOCRAT, May 15, 2007, available at <http://forum.saiga-12.com/index.php?showtopic=18106&st=0&p=154479#entry154479>.

328. *Id.*

329. See Miguel Bustillo, *Oklahoma Bill Cracks Down on Illegal Immigrants, Employers*, L.A. TIMES, Apr. 3, 2007, available at <http://articles.latimes.com/2007/apr/03/nation/na-oklahoma3> ("Illegal immigrants will not come to Oklahoma if there are no jobs waiting for them. They will not stay here if there are no government subsidies, and they certainly will not stay here if they know that if they come in contact with one of our officers, they will be physically detained until they are deported.").

330. H.B. 1804 § 8.

employees,³³¹ penalize employers who hire unauthorized immigrants,³³² restrict unauthorized immigrants' access to all forms of official identification,³³³ and encourage local law enforcement agencies to train with federal authorities so they can assist in the apprehension of unauthorized immigrants.³³⁴ Although Terrill and other supporters of H.B. 1804 claimed that the law took new and bold steps³³⁵ to combat illegal immigration, many of the provisions in H.B. 1804 mirror existing provisions in federal law and, in many respects, the actual legal circumstances of many unauthorized immigrants did not change dramatically when the law was enacted. Notwithstanding the language in H.B. 1804's preamble suggesting otherwise, employers were already required to verify that new employees were authorized to work in the United States before hiring them,³³⁶ unauthorized immigrants were already ineligible for all but a very few public benefits, and Oklahoma driver licenses and state identification cards were already restricted to citizens and legal residents. Therefore, H.B. 1804 did little to directly impact unauthorized immigrant access to these "economic incentives" to illegal immigration.³³⁷ On the other hand, provisions of the law designed to facilitate apprehension of unauthorized immigrants and to maximize efforts to enforce federal immigration law³³⁸ have had a substantial impact on the ability of unauthorized immigrants to live and make a living in Oklahoma. Essentially, H.B. 1804 has empowered, encouraged, or required thousands of business owners, private citizens, public employees, and law enforcement officers to inquire about immigration status and to report violations, and the resulting sense of heightened vigilance about immigration enforcement has fostered an atmosphere of suspicion and intolerance³³⁹ and led to a deepening siege

331. *Id.* at § 7(B).

332. *Id.* at § 7(C).

333. *Id.* at § 4.

334. *Id.* at § 10.

335. *Walker, supra* note 14 (reporting that immigration reform activists in Kansas were following Oklahoma's groundbreaking immigration effort and quoting Terrill as saying that, "Oklahoma has always been at the forefront of the immigration reform movement . . . H.B. 1804 is a model bill for immigration enforcement through attrition. It's a model, not just for Oklahoma, but for other states.").

336. The sections of the law relating to employment do impose new restrictions and penalties on employers, and these provisions have been challenged in the law suit brought by the national, state and local chambers of commerce. See *infra* notes 357-64 and accompanying text.

337. See Immigration Law Reform Institute, *Planning for State Immigration Enforcement Legislation* (2006), available at <http://www.irlr.org/Planning4StateImmEnfLeg.pdf> ("The primary goal for successful state or local immigration control legislation is to remove or reduce the economic incentives for unlawful presence.").

338. H.B. 1804, § 3 (making it a state felony for any person to transport, conceal or harbor unauthorized immigrants knowingly or in reckless disregard of their immigration status); H.B. 1804, § 5 (requiring police to check immigration status of anyone arrested and charged with a felony or driving under the influence); H.B. 1804, § 10A (directing the state attorney general to negotiate a section 287(g) agreement with federal immigration officials to enable state law enforcement to engage in immigration law enforcement); H.B. 1804, §§10C—E (prohibiting local governments from refusing to cooperate with federal immigration officials and creating a private right of action for citizens to sue a non-cooperating government official to force them to comply with this provision).

339. See Devona Walker, *Homeless Alliance Asks End to Immigration Law*, THE OKLAHOMAN, Mar. 7, 2008, available at 2008 WLNR 4552480 (quoting director of community-based non-profit

mentality in immigrant communities.³⁴⁰

As soon as Governor Henry signed the law, fear and panic in the immigrant community set in. There were rumors and a great deal of confusion about how and by whom the new law would be implemented. Church groups and other community-based organizations serving immigrants were concerned about the implications of a provision in the law that made it a felony to harbor or transport unauthorized immigrants.³⁴¹ School officials and police departments across the state were uneasy about the message that was being sent to immigrant communities, and many of these made efforts to reach out and clarify for local residents what they were and were not required to do under the law, and to explain how they believed H.B. 1804 would impact their services to the community.³⁴²

The toll on families has been great, particularly in those households with family members of mixed status. Many undocumented parents with United States citizen children have made arrangements for the care and custody of their children by friends or family in the event that the parents are arrested.³⁴³ Parents are worried about taking their children to school, afraid that immigration agents would be posted on school grounds, asking for parents' immigration documents and arresting those without lawful immigration status.³⁴⁴ Children are worried that there will be no one to pick them up from school at the end of the day. In Tulsa in July 2007, a two month old boy died from a

expressing concerns about H.B. 1804's "moral and economic ramifications" for Oklahoma, and saying that the "passage of 8104 has somehow made the expression of . . . racial intolerance OK in the public square").

340. Even state officials not directed by any provision of H.B. 1804 to do so have taken it upon themselves to make inquiries into or report immigration status or to try to deny immigrant access to certain benefits; see *Ochoa v. Bass*, 181 P.3d 727 (Okla. Crim.App. 2008) (trial court judge, relying on H.B. 1804, orders two criminal defendants with no pending criminal charges taken into sheriff's custody for ICE notification after they admitted they were unlawfully present in the United States).

341. See H.B. 1804 § 3; see also Bell, *supra* note 20 (quoting Director of Tulsa Catholic Hispanic Ministries saying that the law is causing fear and confusion to those "doing God's work"); Riggs, *supra* note 20 (reporting on statement from Randy Terrill that non-profits that do not receive government funding are not impacted by H.B. 1804's restrictions); Richard Mize, *Landlords Get Few Answers; Lawmakers Get Earful*, THE OKLAHOMAN, Dec. 15, 2007, available at 2007 WLNR 24878425 (reporting meeting of Oklahoma real estate professionals with state legislators to determine whether anti-harboring provision of H.B. 1804 requires landlords to confirm legal immigration status of renters).

342. See Nicole Marshall, *Officials: Raids Aren't Part of Immigration Law*, TULSA WORLD, Oct. 31, 2007, available at 2007 WLNR 21541338 (reporting statements from Tulsa Police, Tulsa County Sheriff, Oklahoma Highway Patrol and Oklahoma Bureau of Investigation about how H.B. 1804 will impact their interactions with the immigrant community); Dan McFeely, *Immigration Laws Send Hispanics Elsewhere: 2 States That Approved Crackdowns Have Seen an Exodus of Illegals*, THE INDIANAPOLIS STAR, Feb. 24, 2008 (reporting statement from Tulsa Public School official that Hispanic residents were "hunkered down in their homes, afraid to come out" and had to be coaxed into returning their children to school).

343. See Todd Jones, *Latinos Flee Oklahoma; New Law Hits Others, Too*, THE COLUMBUS DISPATCH, Sept. 7, 2008, available at 2008 WLNR 16971601 (reporting that one minister at a Hispanic church in Tulsa has been granted power of attorney for 50 children from his church, all citizens born to illegal immigrant parents).

344. See Tim Walker, *Caught in the Crossfire: Schools in Oklahoma Grapple with New Laws Targeting Illegal Immigration*, NEA TODAY, Jan. 1, 2008, available at 2008 WLNR 1355929.

ruptured intestine because his parents were afraid to take him to the emergency room for treatment.³⁴⁵ In light of these kinds of tragedies, public health officials have warned of the consequences for individuals and the public if fear continues to prevent unauthorized immigrants from seeking medical care. Clinics serving Hispanic clients have reported a drop off in patient visits, stating that many of their undocumented immigrant clients have said they will not go to an emergency room for treatment out of fear of arrest.³⁴⁶ Others have expressed concerns about clients who don't come in for vaccinations and who then put the public health at risk.³⁴⁷

Both Oklahoma City and Tulsa have seen a significant increase in the number of reported crimes committed against unauthorized immigrants. Police believe this is because of the fact that unauthorized immigrants are less likely to have bank accounts, so frequently have large amounts of cash on hand and because of a perception that these victims will not report crimes to police.³⁴⁸ This has led police in Tulsa and Oklahoma City to make efforts to reassure residents that they will not be checking the immigration status of crime victims and to encourage them to report and cooperate in the investigation of crimes.³⁴⁹ Despite these efforts, Hispanic residents have reported feeling targeted by police, and numerous complaints have been made about racial profiling by police, who have been accused of making pretextual traffic stops of Hispanic drivers.³⁵⁰ Law enforcement officials have repeatedly denied these claims,³⁵¹ but the high number of immigration detainees booked

345. Juozapavicius, *supra* note 15 (quoting the director of the clinic where the child was finally taken saying, "It was a total tragedy because the bill was there to create the myths and untruths and the fear.").

346. See Todd Jones, *Tougher Oklahoma Law Adds Risk to Health-Care Decisions*, THE COLUMBUS DISPATCH, Sept. 9, 2008, available at 2008 WLNR 17089100.

347. *Id.* (reporting statement from Doug Ressler, Associate Director of Tulsa Health Department, that most public health physicians believe that "health services should not be political").

348. See Devona Walker, *Immigrants Fear of Police Aids Criminals: Distrust of Officials Make Foreigners Easy Targets, Authorities Say*, THE OKLAHOMAN, May 11, 2008, available at 2008 WLNR 8998130 (reporting that forty percent of robbery victims in Tulsa are Hispanic immigrants and describing gang crimes targeting apartment complexes with many immigrant tenants). Proponents of state involvement in immigration enforcement have dismissed claims that such involvement discourages crime reporting by immigrant crime victims. *Id.* (reporting comments of Steve Camarota of the Center for Immigration Studies that immigrants are apprehensive about police because they come from countries with rampant police abuse and corruption); see also Kris Kobach, *supra* note 228, at 228 ("[T]his claim is based on the assertion that illegal aliens make a regular practice of contacting the police to report crimes—an unproven assertion that is dubious, at best.").

349. Walker, *supra* note 348 (describing Tulsa Police Department campaign to distribute cards printed in Spanish that outline circumstances that will lead to arrest and warning Hispanic immigrants that they are being targeted by criminals).

350. See Todd Jones, *Tulsa Deputies Say They're Not Picking on Anyone*, THE COLUMBUS DISPATCH, Sept. 10, 2008, available at 2008 WLNR 17169044 (reporting statement of the pastor of Tulsa's Cornerstone Hispanic Church that there was a Hispanic immigrant "witch hunt" in Tulsa in the fall of 2007); see Walker, *supra* note 348 (reporting statement by an official from the Mexican Consulate in Little Rock, Arkansas, that, "Tulsa police routinely stop people for simple traffic infractions and turn them over to the sheriff's office.").

351. "Are we going out and making car stops and asking people to show us your papers? No we are not doing that. We will not do that." *Id.* (quoting Tulsa Police spokesman Jason Willingham); see Todd Jones, *supra* note 350. (reporting denials by Tulsa County Sheriff's office of racial profiling).

into Tulsa County Jail charged only with routine traffic violations tells a different story. In August 2007, even before H.B. 1804 went into effect, the Tulsa Human Rights Commission expressed concerns about a list of detainees from the Tulsa jail indicating that “countless Hispanics” had been arrested for an improperly displayed license plate, a lack of a driver’s license, or a lack of proof of liability insurance.³⁵² The Human Rights Commissioner noted a significant increase in the number of such arrests compared to the prior year and expressed concerns about the appearance of racial profiling.³⁵³ Those numbers have only continued to rise, with more than 85 percent of immigration detainees held in Tulsa County between September 2007 and June 2008 charged only with non-DUI traffic violations.³⁵⁴

As predicted by many opponents of H.B. 1804, the involvement of sub-federal actors in immigration enforcement has had negative consequences not just for unauthorized immigrants but also for many Oklahomans who are citizens or lawful residents. In many cases, the negative consequences are related to the application of federal immigration standards incorporated into provisions of H.B. 1804. For example, in December 2007, six thousand Oklahomans—most of them non-immigrants—were dropped from SoonerCare, the state Medicaid program, because they could not meet the new, more demanding identification requirements under H.B. 1804.³⁵⁵ Although the new documentation requirements were intended to eliminate unauthorized immigrants from the SoonerCare rolls, it appears that there were few if any unauthorized immigrants among those who lost coverage. Although the Health Care Authority had no information about the immigration status or citizenship of those dropped, 18 percent were black, 13 percent were American Indian, ten percent were Hispanic and one percent was Asian.³⁵⁶ According to Chief Executive Officer Mike Fogarty, the demographic breakdown of the group suggests that those dropped had difficulty overcoming the new identification requirement but were not unauthorized immigrants.³⁵⁷

Similar problems have arisen with the implementation of the provisions regarding issuance of state identification cards and driver licenses. Under these new provisions, driver licenses and state identification cards may be

One Tulsa Deputy Sheriff responded angrily to the allegations, saying, “I don’t know who I’m pulling over in a vehicle . . . In Oklahoma we have a lot of Native Americans. We have a lot of people who spend time in tanning beds.” *Id.*

352. See City of Tulsa Human Rights Commission, Monthly Meeting Minutes, Aug. 20, 2007 (on file with author).

353. *Id.*

354. See Jones, *supra* note 343 (reporting that more than 1,200 of approximately 1,400 immigration detainees were arrested for a traffic-related offense).

355. *Id.*

356. See Randy Krehbie, *Dropped from Care: State’s Health Care Purged by Law*, TULSA WORLD, Dec. 14, 2007, available at 2007 WLNR 24792015.

357. *Id.*

issued to citizens, lawful permanent residents,³⁵⁸ and certain other legal immigrants enumerated in the statute.³⁵⁹ With the exception of citizens and permanent residents, non-citizen driver licenses and identification cards are valid only for the period of authorized stay in the United States and are to be prominently marked as temporary.³⁶⁰ Proof of United States citizenship or lawful immigration status is required for the issuance of a new document or the renewal of an expired document. Following the passage of H.B. 1804, the Oklahoma Department of Public Safety (DPS) issued a policy memo outlining the application procedures and the list of necessary documents to obtain a new license.³⁶¹ Citizens needing to renew an expired document are now required to present two identification documents, including either a United States passport or certified birth certificate, as well as a secondary form of photo identification. This requirement has been the cause of long delays and many headaches at the Department of Public Safety since H.B. 1804 went into effect.³⁶² In addition to the inconvenience to citizens who need to appear in person with proof of legal status in order to renew expired documents,³⁶³ H.B. 1804's new documentation requirements create challenges for elderly, minority, and low income citizens who are significantly more likely than average to lack valid identification documentation.³⁶⁴ There have also been reports of inconsistent treatment of authorized non-citizens seeking new licenses and identification cards, and this seems mostly reflective of a lack of understanding by DPS employees of the complexities of federal immigration visa categories and immigrant status classifications.³⁶⁵ Finally, the identification provisions are problematic for authorized immigrants who lack and are unable to obtain valid photo identification from their home country. Non-

358. See OKLA. STAT. ANN. tit.21, § 1550.42(B) (2008). A person with lawful permanent residence is commonly known as a green card holder and is authorized to remain permanently in the United States as an immigrant, provided that the status is not lost or abandoned. See 8 U.S.C. § 1101(a)(20) (2008).

359. See OKLA. STAT. ANN. tit.21, § 1550.42(C) (2008).

360. *Id.*

361. See Memorandum from State of Okla. Dep't of Public Safety, *Driver License and Identification Card Applicants, Proof of Identity and Legal Presence in the United States, Effective November 1, 2007*, (on file with author)[hereinafter *DPS Memo*], available at <http://www.dps.state.ok.us/dls/pub/DOCS.pdf>.

362. See Ja'Rena Lunsford, *Immigration Law Puts Brakes on Freedom*, THE OKLAHOMAN, at 4B, Jan. 16, 2008, available at 2008 WLNR 928847 (reporting long waits and confusion at Department of Public Safety as the law's requirements are sorted out).

363. Bazar, *supra* note 30 (reporting comment from State legislator who had voted for H.B. 1804 that he had received calls from non-immigrants complaining that they had to produce a document such as an original birth certificate or certified copy to renew an expired driver license and that this needed to be fixed).

364. See *Citizens Without Proof, A Survey of Americans' Possession of Documentary Proof of Citizenship and Photo Identification*, Brennan Center for Justice, Nov. 2006, available at http://www.brennancenter.org/page/-/download_file_39242.pdf (demonstrating that elderly, low-income and minority citizens are two to three times as likely to lack valid photo identification).

365. The University of Tulsa immigration clinic has received anecdotal reports of denials of driver licenses to applicants with valid, non-immigrant visas and issuance of temporary driver licenses to permanent resident aliens. In both circumstances the actions of the DPS worker were in direct conflict with the language of H.B. 1804.

citizens are required to produce either a valid passport or an alien registration card.³⁶⁶ However, many non-citizens with approved petitions for asylum, U Visas,³⁶⁷ or for relief under the Violence Against Women Act,³⁶⁸ do not have valid passports. Although they are eligible for work authorization and will eventually receive a work authorization card with a photograph, the work authorization card does not qualify as primary proof of identification for issuance of a state license or identification card to a non-citizen.³⁶⁹ For many of these lawful immigrants, obtaining a passport from their home country would pose a real hardship, if it is possible at all.³⁷⁰ Yet a lack of a driver license or state identification card could prevent them from working,³⁷¹ opening a bank account, finding a place to live, getting a library card, or doing any of those things associated with making a life for themselves and their families in the United States. So, even for these legal residents of Oklahoma, H.B. 1804 has succeeded in pulling in the welcome mat.

The signs of an immigrant exodus from Oklahoma were visible even before H.B. 1804 went into effect.³⁷² According to the Tulsa Hispanic Chamber of Commerce, between 15,000 and 25,000 unauthorized immigrants moved from Tulsa County alone between the time H.B. 1804 was passed and February 2008.³⁷³ Although no definitive figures exist on the number of immigrants who have left Oklahoma post-1804, there is no doubt that among those leaving prior to the passage of the bill were citizens and legal residents who left out of fear for their undocumented family members or to escape an environment that had become increasingly hostile to anyone who looked like an immigrant.³⁷⁴ Business owners in industries with a high percentage of immigrant employees, such as construction, roofing and agriculture, have reported a loss of a significant portion of their workforce,³⁷⁵

366. See *DPS Memo*, *supra* note 361 (requiring either a valid foreign passport or an alien registration card (commonly referred to as a "green card") as primary proof of identification).

367. The U nonimmigrant visa allows non-citizen victims of crime to stay in the United States and obtain employment authorization. It is intended to encourage victims of serious crimes to report the crimes, and assist in their investigation and prosecution. INA §§ 101(a)(15)(U), 214(p), 245(m).

368. See Violence Against Women Act of 1994, Pub. L. No. 103-322, 108 Stat. 1902-55, 8 U.S.C. §§ 1151, 1154, 1186a, 1186a note, 1254, 2245 (1994) (hereinafter VAWA).

369. See *DPS Memo*, *supra* note 361.

370. A person granted asylum is unlikely to be able to obtain a passport from a country from which he has fled to escape persecution by his government. Indeed, even applying for the passport could put the immigrant or any family members still in his home country at risk.

371. Even with a work authorization card, an immigrant without permission to drive is very limited in his options for work in a state without an extensive public transportation system.

372. See Andrea Eger, *Hispanic Enrollment Drops at Some Schools*, TULSA WORLD, Sept. 14, 2007, available at 2007 WLNR 18090444 (reporting an initial drop in Hispanic enrollment in Tulsa schools of 180 at the start of the school year that rebounded after a month to a total loss of forty students whose families left the state after H.B. 1804).

373. Garrett, *supra* note 24.

374. See Jones, *supra* note 343 (quoting statement from Mexican American couple from Tulsa saying they were considering selling their home and moving to Texas because they experience racism for the first time after 28 years in the United States).

375. See Robert Evatt, *Builders' Hispanic Workers Leaving*, TULSA WORLD, Jan. 24, 2008, available at 2008 WLNR 1482497 (reporting loss of legal and illegal workers afraid of implications

complained that there are no available native workers to replace them, and warned that the long term economic impact on the state will be severe.³⁷⁶ Similarly, businesses that catered to the largely Hispanic immigrant community reported a significant loss of business that forced them to cut back on employee hours or even to terminate some employees.³⁷⁷

To Randy Terrill and other supporters of the bill, the flight from Oklahoma of thousands of unauthorized immigrants was a welcome response and exactly what the law was intended to do.³⁷⁸ And it seems to have mattered little to Terrill whether most of the unauthorized immigrants leaving Oklahoma were actually leaving the country, or just moving to other states.³⁷⁹ Terrill was unsympathetic to the concerns of employers losing an unauthorized workforce.³⁸⁰ He has steadfastly refused to acknowledge that the impact of the law on the state's economy has been anything but positive. He credited the law with the drop in the state's unemployment rate between March 2007 and 2008, despite conclusions by state economic experts that the drop was more likely linked to the booming energy industry and the state's insulation from the crisis in the national mortgage and housing market.³⁸¹ Terrill also disputed the findings of a March 2008 report commissioned by the Oklahoma Bankers Association (OBA) on the impact of H.B. 1804 on the

of H.B. 1804); Bazar, *supra* note 30 (reporting significant loss of workers by farmers, nursery owners, builders following enactment of H.B. 1804); see James Pinkerton, *Immigration / Crackdown in Nearby States Brings Influx / Laws Aimed at Hiring of Illegal Workers Drive Many to Texas*, HOUSTON CHRONICLE, at A1, Feb. 3, 2008, available at 2008 WLNR 2117653 (reporting loss of workers not just to voluntary exodus but to crackdown by local police targeting immigrants for traffic related arrests that lead to deportation).

376. See Tricia Pemberton, *Hearing Both Sides: Audience Joins Immigration Debate*, THE OKLAHOMAN, Jan. 19, 2008, available at 2008 WLNR 1225686 (quoting President of State Chamber of Commerce saying that 1804 "will drive labor supply to neighboring states that will compete against Oklahoma's business community"); Bazar, *supra* note 30 (reporting statements from employers that they are unable to find citizens willing to take the ranching and farming jobs and warning that the continued loss of workers will lead to higher costs and prices for consumers).

377. Bazar, *supra* note 30 (reporting loss of customer base by restaurants, groceries and money-wiring services that serve primarily immigrant customers); *Law Pinches Some OKC Businesses*, TULSA WORLD, at A21, Dec. 30, 2007, available at 2007 WLNR 25715283.

378. See Emily Bazar, *Illegal Immigrants Moving Out*, USA TODAY, Sept. 27, 2007, available at 2007 WLNR 18924946 (quoting Randy Terrill saying the law was working exactly as it was intended to and, "It would be just fine with me if we exported all illegal aliens to the surrounding states."); Woods, *supra* note 24 (quoting chairman of Oklahoma Conservative Political Action Committee saying that the law is effectively addressing the "invasion of illegal aliens").

379. Witt, *supra* note 21 (quoting Terrill saying, "The dominoes have been flicked. The folks in the surrounding states got the message. What was our problem has now become their problem.").

380. What is surprising is Terrill suggesting that his motivation in promoting H.B. 1804 was to protect exploited workers from unscrupulous employers. See Marie Price, *U.S. Chamber Leads Challenge of State Immigration Law in Okla.*, JOURNAL RECORD, Feb. 4, 2008, available at 2008 WLNR 2226654. (quoting Terrill referring to the employment of unauthorized workers as "the functional equivalent of modern-day slavery in the economic exploitation and subjugation of a particular group of people" and saying, "It wasn't morally acceptable in the context of slavery and it's not morally acceptable in the context of illegal alien labor today."). In fact, it seems much more likely that unauthorized workers would be at risk of exploitation by unscrupulous employers in the post-1804 era because of the increased presence and involvement of state and local police in immigration enforcement.

381. Sean Murphy, *Unemployment Bucks National Trend*, AP ALERT—POLITICAL, Apr. 25, 2008, available on Westlaw at 4/25/08 AP Alert—Political 21:17:58.

state's economy. The report concluded that as a result of immigrant workers being driven from Oklahoma by H.B. 1804, the state could lose between \$786 million and \$3 billion annually, depending on the numbers of immigrants leaving the state.³⁸² The study took into account the likelihood that legal immigrant family members would leave the state with the undocumented, and with them would go the economic contributions these workers and their families were making to the state.³⁸³ Interestingly, the study accepted as true the "back of the envelope" estimate of FAIR that unauthorized immigration cost the state \$207 million per year, and still concluded that the law resulted in a substantial economic loss to the state, even if only 25,000 immigrant workers left.³⁸⁴ Pointing out that the study made no judgment about the policy choices implied in H.B. 1804, the authors insisted nonetheless that without considering the economic impact of a substantial out-migration of immigrant workers—which is after all the primary goal of the law—it was impossible to have an informed or balanced debate on the issue.³⁸⁵ Terrill issued a detailed rebuttal to the report that was likely prepared with the assistance of IRLI, but which in any event revealed the vulnerability of Terrill's repeated claim's of economic hardship by concluding that "the most basic flaw" of the report is that:

[I]t assumes the illegal immigration debate is about nothing more than pure economics. In fact, it is about unquantifiable things much more important than that. It is about a fundamental respect for the rule of law, upholding our state and national sovereignty, and about the immorality of employing cheap, illegal alien slave labor.³⁸⁶

Ironically, Terrill's statement that H.B. 1804 was primarily grounded in a non-economic "moral" argument, was anticipated by the authors of the OBA study, who suggested that the voters and citizens of Oklahoma ought to be provided with information about the real economic impact of the law in order

382. ECONOMIC IMPACT GROUP, A COMPUTABLE GENERAL EQUILIBRIUM (CGE) ANALYSIS OF THE IMPACT OF THE OKLAHOMA TAXPAYER AND CITIZEN PROTECTION ACT OF 2007 (2008), available at http://www.oba.com/usr_uploads/EIGreport.pdf (figures based on an estimate of the economic impact of the departure of between 25,000 and 90,000 immigrants from the state).

383. *Id.* at 4.

384. Ginnie Graham, *Economic Impact of H.B. 1804 Estimated*, TULSA WORLD, Mar. 26, 2008, at A1.

385. *Id.*; James Coburn and Courtney Bryce, *Study: Immigration Law Could Have Negative Impact*, THE EDMUND SUN, Mar. 28, 2008 (quoting study co-author Russell Evans saying, "We see our report not as a conclusion to research done on House Bill 1804 or immigration in Oklahoma—but an introduction . . . It is confirmation that there is an economic question here that merits further probing.").

386. Press Release, Okla. House of Representatives, *Terrill: Oklahoma Bankers Association Report Criticizing H.B. 1804 Seriously Flawed* (Mar. 28, 2008), available on Westlaw at OK H.R. News Rel., 3/25/2008 (emphasis added); see also The Federation for American Immigration Reform, In Oklahoma and New York, *Immigration Reform Activists Take Different Roads to Victory*, FAIR IMMIGR. REP., Dec. 2007-Jan. 2008, available at http://www.fairus.org/site/PageServer?pagename=research_dec07nl07 (noting FAIR's and IRLI's assistance to Terrill).

to be able to decide whether they are willing to bear these costs in order to, “achieve a greater social objective.”³⁸⁷ Indeed, the report suggests that the proponents of H.B. 1804 must have anticipated the “economic penalty” that would result from the exodus of tens of thousands of immigrant workers and found it an acceptable price to pay to achieve their policy goals, namely driving immigrants from the state. Unfortunately, whatever Randy Terrill and his supporters in IRLI and FAIR might have considered an acceptable price to pay, H.B. 1804 became law without giving voters the opportunity for a fully informed discussion of the law’s potential economic impacts.

B. *Tulsa’s Immigration Crucible*

However difficult life for immigrants might be elsewhere in Oklahoma post-1804, the situation in Tulsa has been arguably worse because of the conflagration of the implementation of H.B. 1804 and two simultaneous immigration enforcement developments. First, in May 2007, the Tulsa City Council passed a resolution directing the Tulsa Mayor to order the Police Department to question anyone arrested on a felony or misdemeanor charge about their immigration status, and if lawful immigration status could not be confirmed, to notify the federal immigration officials within twenty-four hours of the arrest.³⁸⁸ The resolution was initiated by the City Council after H.B. 1804 was enacted in order to get clarification from the Mayor on the police department’s policy. A provision in H.B. 1804 requires a status check at the jail for any person arrested for a felony or drunk driving offense.³⁸⁹ Recently retired Tulsa Police Chief Dave Been had endorsed the police department’s long standing policy of not making inquiries about immigration status, saying it would make it difficult to investigate crimes and develop relationships in the immigrant community.³⁹⁰ This policy had become a source of some controversy, particularly with Congressman John Sullivan.³⁹¹ One year earlier, Sullivan had become involved in a disagreement with the Mayor’s Office and the Chief of Police about the city’s hands-off policy about unauthorized immigrants, amid accusations from anti-immigration

387. Coburn and Bryce, *supra* note 385.

388. Resolution 7503, A Resolution Supporting the City of Tulsa’s Efforts to Determine the Immigration Status of Persons Arrested for Felonies or Misdemeanors, and If Such Status is Unlawful, to Notify the Appropriate Federal Agency; and Declaring an Emergency (May 24, 2007) (on file with author). The resolution declared that a “public peace, health and safety emergency” warranted the immediate adoption of these measures. *Id.*

389. H.B. 1804, § 5A.

390. Brian Barber, *A Tulsa Councilor Wants Police to Verify the Status of People Who are Arrested*, TULSA WORLD, May 16, 2007.

391. Jim Myers, *Accurate Immigrant Count Sought*, TULSA WORLD, May 31, 2007, at A1 (reporting that the Oklahoma Congressional delegation insisted that incomplete data from Tulsa law enforcement about unauthorized immigrant arrests was preventing them from getting an ICE office opened in Tulsa).

groups that Tulsa was a “sanctuary city.”³⁹² Carol Helm of IRON had criticized Been and called on Mayor Kathy Taylor to fire him for, “not enforcing all laws for all citizens.”³⁹³ Been explained that Tulsa was one of more than fifty major cities that had similar policies in order to support community policing efforts, but Sullivan was not impressed.³⁹⁴ In a letter to the City Council in late May 2007, Sullivan and Senators Inhofe and Coburn asked that the Council’s resolution direct the mayor to order an immigration status check of anyone encountered by police.³⁹⁵ There was heated public debate over the resolution, and though the Council did not go as far as the lawmakers’ letter had requested, the final resolution did expand the mandate of H.B. 1804 to require checks of all people arrested on a felony or misdemeanor charge.³⁹⁶

Despite the push by Sullivan and the City Council to enlist the Tulsa Police in immigration enforcement efforts, Mayor Taylor refused to sign the resolution and instead promptly issued a policy clarification indicating that no immigration status checks would take place until after a person was in custody at the jail and that police would not be stopping or questioning anyone based on a suspicion of unlawful immigration status.³⁹⁷ Since that time, the Chief of Police and other department officials have publicly stressed that they lack the resources, the mandate or the desire to investigate the immigration status of anyone prior to detention.³⁹⁸ According to Chief of Police Ron Palmer, he has concerns about an underreporting of crime in the Hispanic community post-1804 and does not believe that enforcing immigration law helps to keep the city safe.³⁹⁹ To the contrary, Palmer insists that his department’s role is more about “educating the community and attempting to restore some level of trust between the department and the city’s Hispanic community, many of whom are misinformed and alarmed by the new law.”⁴⁰⁰ Nevertheless, although the department has repeatedly said that it will not engage in racial profiling or make random inquiries about immigration status, Palmer has also warned that anyone stopped by the police for a traffic violation who is unable to produce a valid identification and proof of

392. P.J. Lassek, *Been Jabs Critics in Policy Tiff: A Group is Demanding His Dismissal Because Police Do Not Arrest All Illegal Immigrants They Encounter*, TULSA WORLD, Aug. 1, 2006.

393. *Id.*

394. The Oklahoma City Police Department has also expressed concern about the impact H.B. 1804, and declared that compliance with the law must be balanced with public trust. Woods, *supra* note 24.

395. Karl Huus, *Tulsa’s Illegal Immigration Wreck*, MSNBC.COM, July 17, 2007, available at <http://www.msnbc.msn.com/id/19466978/>.

396. Brian Barber, *City Council Approves Immigration Status Checks*, TULSA WORLD, May 25, 2007, at A13.

397. See Marshall, *supra* note 342.

398. *Id.*

399. Devona Walker, *H.B. 1804: Tulsa County Sheriff Stands Alone, Enforcement Fueling Exodus*, THE OKLAHOMAN, Jan. 13, 2008.

400. *Id.*

insurance will be detained.⁴⁰¹ As discussed above, the number of immigration detainees apprehended in the last year as a result of traffic violations has skyrocketed, and the possibility that racial profiling played a role in at least some of these arrests seems very real.

A second unrelated immigration enforcement program came to Tulsa in July 2007, when the memorandum of agreement that John Sullivan had advocated for several years between the Tulsa County Sheriff's Office and ICE was finalized.⁴⁰² This agreement authorized up to forty designated sheriff's deputies, after completing four weeks of training, to perform federal immigration law enforcement functions under the supervision of ICE officers.⁴⁰³ Between September 2007 and June 2008, twenty-eight 287(g) jail detention officers have detained 1,400 immigrants who have been removed or placed in removal proceedings.⁴⁰⁴ According to Sheriff Stanley Glanz, his office is "delivering an average of eighty-five illegal immigrants per month to the Department of Homeland Security for deportation."⁴⁰⁵ The Tulsa County Sheriff has also recently entered into an intergovernmental service agreement with ICE which allows the Sheriff's Office, for a fee, to provide detention facilities at the Tulsa County Jail for detained immigrants pending removal proceedings.⁴⁰⁶ In August 2008, when a Department of Justice report revealed a high number of detainee deaths, unsanitary conditions and excessive use of force at the Oklahoma County Jail, Tulsa County Jail became the primary immigration detention facility in Oklahoma.⁴⁰⁷ The jail has ninety-four beds for immigration detainees, and they are almost always filled.⁴⁰⁸ In a sense, Tulsa has now hit the immigration enforcement *trifecta* with the Tulsa Police Department, Tulsa County Sheriff and the Tulsa County Jail all cooperating in the enforcement of federal immigration law.

C. *Oklahoma's Experience With Immigration Regulation: Making The Case Against Steam-Valve Federalism*

Oklahoma's experience with H.B. 1804 is in many ways not unique. State

401. Debbie Blossom, *Police Chief Promise Arrests, But Officers Enforcing H.B. 1804 Won't Engage in Racial Profiling*, TULSA WORLD, Nov. 29, 2007 ("If you have a broken taillight, an improper tag or are driving on the wrong side of the road, we will arrest you. It's that simple . . . And we will do that in any segment of the community.")

402. Memorandum of Agreement between U.S. Immigration and Customs Enforcement and the Tulsa County Sheriff's Office, July 9, 2007 (on file with author).

403. *Id.* Thirty sheriff's deputies completed the training September 18, 2007. Kevin Canfield, *Deputies Unfazed by New Law*, TULSA WORLD, Nov. 13, 2007, at A1.

404. Todd Jones, *Tulsa Deputies Say They're Not Picking on Anyone*, THE COLUMBUS DISPATCH, Sept. 10, 2008.

405. Devona Walker, *H.B. 1804: Tulsa County Sheriff Stands Alone, Enforcement Fueling Immigrant Exodus*, THE OKLAHOMAN, Jan. 13, 2008.

406. Jones, *supra* note 404 (ICE pays the county jail \$54.13 per day for each detainee held only on immigration charges.).

407. See Brian Dean and John Estus, *County Looks To Ease Jail Crowds Problem Led To Conditions Cited In Report, Officials Say*, THE OKLAHOMAN, Aug. 6, 2008.

408. Jones, *supra* note 404.

and local government efforts to deal with an unprecedented influx of new non-citizen residents and to respond to the federal government's failure to effectively enforce existing laws or to implement comprehensive and effective immigration reform are at an all time high. Since January 2005, lawmakers in all fifty states have introduced almost 3,700 pieces of legislation related to immigration, and more than 530 of these have become law.⁴⁰⁹ Each year Congress has failed to act, the level of activity has intensified, with more than three quarters of these bills introduced in the last eighteen months.⁴¹⁰ Like H.B. 1804, many of the immigration-related state and local laws relate to non-citizen access to employment, education, housing, and public services. For the most part,⁴¹¹ these local laws are designed to limit or eliminate access to services for unauthorized non-citizens, penalize citizens who provide services to non-citizens, and require local officials to cooperate with and report to federal immigration agencies—all with the goal of getting rid of unauthorized immigrants. As former California Governor Pete Wilson famously said in defense of Proposition 187: "If it's clear to you that you cannot be employed, and that you and your family are ineligible for services, you will self-deport."⁴¹²

Recent challenges to a number of state and local laws related to immigration have had mixed results, and the ultimate outcome of pending legal challenges to H.B. 1804 is equally uncertain. All or parts of H.B. 1804 have been challenged in three separate law suits claiming that the act violates federal law, the United States Constitution and the Oklahoma Constitution. The first of those law suits was dismissed in December 2007 by a federal district judge who found that none of the eighteen plaintiffs, including several religious organizations and businesses and twelve unauthorized immigrants, had standing to challenge the law.⁴¹³ Two subsequent legal

409. See NATIONAL CONFERENCE OF STATE LEGISLATURES, IMMIGRANT POLICY REPORT: STATE LAWS RELATED TO IMMIGRANTS AND IMMIGRATION, JANUARY 1-JUNE 30, 2008 1 (2008), available at www.ncsl.org/programs/immig/immigreptjuly2008.htm.

410. *Id.*

411. In 2007, state laws restricting the rights or benefits of immigrants outnumbered laws benefiting them by a two to one ratio. DANIEL C. VOCK, ON THE FRONT LINES: STATES RUSH TO FILL THE IMMIGRATION VOID ON IMMIGRATION POLICY, THE STATE OF THE STATES REPORT (2008) 56-57, available at <http://archive.stateline.org/flash-data/StateOfTheStates2008.pdf>.

412. William Safire, *Self-Deportation?*, NY TIMES, Nov. 21, 1994, at A16, available at <http://query.nytimes.com/gst/fullpage.html?res=9C03EED81E31F932A15752C1A962958260>.

413. National Coalition of Latino Clergy, Inc., et al., v. Henry, 2007 WL 4390650, at 17-18 (N.D.Okla. Dec. 12, 2007) (finding that the organizational plaintiffs failed to allege specific injuries caused by 1804 to establish standing under Article III of the United States Constitution and that the unauthorized immigrant plaintiffs lacked prudential "standing to challenge the constitutionality of a state law, when compliance with federal law would absolve the illegal alien's constitutional dilemma—particularly when the challenged state law was enacted to discourage violation of the federal immigration law."). No appeal has been filed in this case but Judge Payne's self-defined "new, and narrow, prudential limitation on standing" has been criticized for its lack of supporting authority and conflict with over a century of Supreme Court jurisprudence. See Brief for Appellee at 28-29, 37 n.11, Lozano et al., v. Hazelton, 2008 WL 3989648, (3d Cir. Apr. 08, 2008) (NO. 07-3531).

challenges, one in state court⁴¹⁴ and one in federal court,⁴¹⁵ are still pending. The state court action alleges that H.B. 1804 violates various provisions of the Oklahoma Constitution, including provisions prohibiting the creation of a state immigration bureau and prohibiting the practice of log-rolling, through which legislators combine in one bill several unrelated measures that individually could not garner sufficient legislative support.⁴¹⁶ The federal lawsuit challenges provisions of H.B. 1804 that mandate employer participation in an electronic immigration status verification system for all new employees,⁴¹⁷ make it a discriminatory practice to discharge a United States citizen or legal resident employee while continuing to employ an unauthorized immigrant worker,⁴¹⁸ and impose tax consequences on contracting entities who fail to verify employment authorization of independent contractors.⁴¹⁹ In June 2008, the federal judge in the case granted a preliminary injunction preventing the state from enforcing the applicable sections of H.B. 1804, scheduled to go into effect on July 1, 2008, until a final decision is issued on the merits of the case.⁴²⁰ An appeal of the court's injunction has been filed with the Tenth Circuit Court of Appeals, but in the meantime the challenged employer sanctions provisions are not in effect.⁴²¹

The propriety of state and local government involvement in the regulation of immigrants has been extensively analyzed and debated by scholars on both sides of the issue, with arguments based both on constitutional norms and public policy principles.⁴²² This debate has addressed the appropriate role of

414. Petition for Declaratory Judgment and Injunction, Michael Thomas v. Brad Henry, Governor of Oklahoma, No. CJ-2008-46 (Okla. Dist. Court Tulsa Cnty. filed Jan. 3, 2008).

415. Chamber of Commerce v. Henry, No. CIV-08-109-C, 2008 WL 2329164 (W.D. Okla. Jun. 4, 2008) (Memorandum Opinion and Order granting plaintiff's motion for preliminary injunction to stop the enforcement of sections 7 and 9 of the Oklahoma Taxpayer and Citizen Protection Act).

416. Petition for Declaratory Judgment and Injunction, Michael Thomas v. Brad Henry, Governor of Oklahoma, No. CJ-2008-46, paras. 32 and 34 (Okla. Dist. Court Tulsa Cnty. filed Jan. 3, 2008).

417. H.B. 1804, § 7(B).

418. *Id.* at § 7(C).

419. *Id.* at § 9.

420. Order of Injunction, June 4, 2008, Chamber of Commerce of the United States v. Henry, Slip Copy, 2008 WL 2329164 (W.D.Okla.), *appeals docketed*, Nos. 08-06127 and 08-06128 (10th Cir. June 19, 2008).

421. In reference to an earlier legal challenge to H.B. 1804, Oklahoma Attorney General has made clear that, while he believes the law will withstand a legal challenge, his office is defending it because it is obliged to do so. Devona Walker, *Immigration Law Puts Edmondson in a Quandary*, TULSA WORLD, Dec. 4, 2007, available at 2007 WLNR 23917672. "If there are any positive aspects of 1804, we are not going to see them in the short term—that's if we ever see them. We are seeing many negative impacts immediately," Edmondson said. "It was my obligation to defend this. I only have to argue the legality of it. I'm very grateful I do not have to argue the morality of it." *Id.*

422. See, e.g., Peter J. Spiro, *Learning to Live with Immigration Federalism*, 29 CONN. L. REV. 1627 (1997) [hereinafter Spiro, *Immigration Federalism*]; Peter J. Spiro, *The States and Immigration in an Era of Demi-Sovereignties*, 35 VA. J. INT'L. L. 121 (1994) [hereinafter Spiro, *Demi-Sovereignties*]; Clare Huntington, *The Constitutional Dimension of Immigration Federalism*, 61 VAND. L. REV. 787 (2008); Rodriguez, *supra* note 31; Schuck, *supra* note 31; Michael Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 N.Y.U. L. REV. 493 (2001); Olivas, *supra* note 227; Pham, *supra* note 227; Howard F. Chang, *Public Benefits and Federal Authorization for Alienage Discrimination by the States*, 58 NYU ANN. SUR. AM. L. 357, 363–64 (2002); Kobach, *supra* note 228.

sub-federal actors both as immigration lawmakers⁴²³ and as enforcers of federal immigration law.⁴²⁴ In general, policy arguments against the involvement of states and localities in immigrant regulation have been premised at least in part on an assertion that such regulation is usually, if not always, unfair to or otherwise detrimental to immigrant interests.⁴²⁵ More specifically, this type of regulation is said to be objectionable because, left to their own devices state and local governments are more likely to discriminate against immigrants or to unfairly restrict their access to certain benefits and services.⁴²⁶ At least insofar as unauthorized immigrants are concerned, these objections have not swayed those commentators who welcome greater state and local government involvement precisely because it would result in stricter enforcement of immigration laws and tighter restrictions on immigrant—particularly unauthorized immigrant—access to jobs and services and lead some unauthorized immigrants to self-deport.⁴²⁷ However, a growing number of scholars arguing in favor of a broader role for state and local governments have rejected the assertion that sub-federal immigrant regulation is necessarily a bad thing for immigrants, insisting instead that non-federal lawmakers and law enforcement agencies are just as likely, if not more likely, than the federal government to be generous and sympathetic to the immigrants living in their communities.⁴²⁸ From this perspective, an exclusive federal power over all immigration-related legislative and enforcement activity, without an opportunity for states to adopt local provisions that better suit the situation on the ground in their communities, might very well work to the detriment of immigrants living in states with a small immigrant population or where public sentiment toward immigrants is more positive and welcoming. Accordingly, these scholars argue, pro-immigrant impulses at the state and local level can only be realized in a system that permits the devolution of immigration authority to sub-federal actors.⁴²⁹ By the same

423. See Rodriguez, *supra* note 31; Schuck, *supra* note 31; Olivas, *supra* note 227; Spiro, *Immigration Federalism*, *supra* note 422; Spiro, *Demi-Sovereignities*, *supra* note 422; Huntington, *supra* note 422.

424. See Pham, *supra* note 227; Wishnie, *supra* note 422; Kobach, *supra* note 228.

425. See Pham, *supra* note 227; Wishnie, *supra* note 422.

426. See Pham, *supra* note 227; Wishnie, *supra* note 422.

427. Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 TULSA J. COMP. & INT'L L. 155, 156 (2008) ("Illegal aliens can be encouraged to depart the United States on their own, through a concerted strategy of attrition through enforcement. Illegal aliens are rational decision makers. If the risks of detention or involuntary removal go up, and the probability of being able to obtain unauthorized employment goes down, then at some point, the only rational decision is to return home.").

428. See Spiro, *Immigration Federalism*, *supra* note 422; Schuck, *supra* note 31; Chang, *supra* note 422; Rodriguez, *supra* note 31, at 570; Huntington, *supra* note 422, at 831 ("In a world where some states are offering in-state tuition to unauthorized migrants while the federal government is seeking to construct a wall along the southern border, it is by no means clear that the national government will better protect the interests of non-citizens.") (citation omitted); and Spiro, *Demi-Sovereignities*, *supra* note 422.

429. Spiro, *Immigration Federalism*, *supra* note 422, at 1635; Schuck, *supra* note 31, at 70; and Rodriguez, *supra* note 31, at 570.

token, states with a high rate of unauthorized immigration or who otherwise feel unduly burdened by a surge in their immigrant population, should be permitted to enact restrictive state laws and regulations and, the argument goes, would be less likely to seek implementation of similar restrictive measures at the federal level.⁴³⁰

Peter Spiro has described a “steam valve” model of federalism which allows, “those states harboring intense anti-alien sentiment to act on those sentiments at the state level, thus diminishing any interest on their part to seek national legislation to similarly restrictionist ends.”⁴³¹ The positive benefit of devolution for the immigrant, according to Spiro, is that it leaves open the possibility of relocation to other states that are more immigrant-friendly and ultimately, with a more equitable distribution of the unauthorized immigrant population, states may “dilute some of the anti-immigrant political pressures that arguably arise only in the face of high alien concentrations.”⁴³² Spiro’s theory of steam-valve federalism was originally proposed in 1994, when four-fifths of the unauthorized immigrants living in the United States resided in five states—New York, California, Arizona, Florida and Texas—and it was primarily in these states that lawmakers were taking steps to enact measures that would reduce or eliminate the financial consequences of illegal immigration for the state.⁴³³ To the extent that immigration had at that point become “largely a state-level concern,” it was a concern for only a handful of states and for the rest, Spiro acknowledged, it was “essentially a non-issue.”⁴³⁴ Indeed, each of the examples Spiro has offered of the consequences of not allowing a state to blow off steam and realize its anti-immigrant sentiments through local measures—the Chinese Exclusion laws and the Illegal Immigration Reform and Immigrant Responsibility Act—occurred at a time when the vast majority of states were largely indifferent to the immigration-related problems experienced by California and other high-impact states.⁴³⁵

In 2008, the immigration landscape is quite different than it was in 1994 or even 2004. The burdens of unauthorized immigration are no longer the

430. See Spiro, *Demi-Sovereignties*, *supra* note 422, at 172-74 (“By allowing the states individually to let off their steam, however scalding it may be, the nation need not visit the same sins.”); see also Spiro, *Immigration Federalism*, *supra* note 422, at 1637-38.

431. Spiro, *Immigration Federalism*, *supra* note 422, at 1627 (“This analysis highlights what I will call the ‘steam-valve’ virtues of federalism in this and perhaps other contexts, under which one state’s preferences, frustrated at home, are not visited on the rest of us by way of Washington.”).

432. Spiro, *Demi-Sovereignties*, *supra* note 422, at 174.

433. *Id.* at 125.

434. *Id.* at 121.

435. *Id.* at 172-73 nn.198-99 and accompanying text; see also Spiro, *Immigration Federalism*, *supra* note 422, at 1634 (“To deploy a standard public choice analysis, California in both cases comprised a special interest with an acute concern, in the face of other states whose interests, some against further immigration and some perhaps in favor, were far less pressing. Where one interest group pits an intense preference against the more or less neutral posture of other groups, the intense preference may prevail notwithstanding the absence of genuine majority support sufficient itself to secure legislative action.”).

unique responsibility of a half-dozen southern border and coastal states. Moreover, immigration is no longer a non-issue for most states, and in the states where immigration is an issue, people are in no way indifferent to the challenges of responding to the immigrants—both legal and unauthorized—living in their communities. The sheer number of immigration related bills—forty-five states' legislatures introduced bills in the first six months of 2008—suggests that immigration was an issue of paramount concern for at least a few people in all but five states.⁴³⁶ What is less clear is whether the growing number of restrictive state immigration laws is truly reflective of, and provides an outlet for, the realization of state anti-immigrant sentiments, or whether they are instead a mechanism for spreading that sentiment from state to state in an incremental effort to impose restrictionist reforms across the nation one state at a time.

The experience of Oklahoma over the last decade suggests that even if Professor Spiro's arguments in favor of "steam-valve" immigration federalism were valid a decade ago,⁴³⁷ they no longer hold true. In particular, this examination of Oklahoma's experience with H.B. 1804 suggests that allowing states to enact immigration-related legislation does not confine the damage caused by that state's anti-immigrant preferences, but instead has an incendiary effect that sets off a wildfire of similar measures throughout the states. So, even if the devolution of immigration lawmaking authority to the states avoids the likelihood that a single state's frustrated preferences will be "visited on the rest of the country by way of Washington,"⁴³⁸ it nonetheless provides a powerful mechanism for incremental state-by-state reform by national anti-immigrant groups. Particularly in an era where comprehensive and meaningful federal immigration reforms are elusive if not unobtainable, the resulting wildfire can be devastating to immigrant interests.

Professor Spiro's "steam valve" theory seems to rely on some basic presumptions about state level immigration lawmaking that cannot necessarily be taken for granted in 2008. First is the assumption that the motivation for sub-federal immigration measures comes exclusively or at least substantially from within the state. That is, when a state legislature passes an immigration related bill it is necessarily responding to the unique circum-

436. According to the National Conference of State Legislatures, by June 30, 2008, 1,267 bills were introduced in forty-five state legislatures, with at least 175 laws and resolutions enacted in thirty-nine states and twelve others pending approval by the Governor. National Conference of State Legislatures, *Immigrant Policy Report, State Laws Related to Immigrants and Immigration*, January 1 – June 30, 2008 1 (July 24, 2008) [hereinafter *Immigrant Policy Report*], available at www.ncsl.org/programs/immig/immigreportjuly2008.htm.

437. At least one scholar has questioned Spiro's thesis that frustrated state efforts to pass anti-immigrant legislation inevitably lead states to impose their anti-immigrant preferences at the federal level. See Michael Wishnie, *Laboratories of Bigotry? Devolution of the Immigration Power, Equal Protection, and Federalism*, 76 NYU L. Rev. 493, 555–58 (2001) ("History simply does not support reliance on 'steam valve federalism' as a reason to celebrate the claimed new state freedom to discriminate against immigrants.").

438. Spiro, *Immigration Federalism*, *supra* note 422, at 1627.

stances on the ground and the preferences of the majority of the voters in that state. By allowing the state to enact its own immigration measures in response to these internal preferences, the argument goes, the anti-immigrant beast is tamed and the rest of the states are spared a federal mandate and left to act on their own preferences. Thus, in Professor Spiro's examples involving the Chinese Exclusion laws and IIRAIRAA, he suggested that, "had California been left to its own devices, and allowed to enact its own immigration control measures, there would have been a greatly reduced need and motivation for federal legislation to the same effect."⁴³⁹ However, in a world where FAIR, IRLI, NumbersUSA, the Center for Immigration Studies, Team America and other anti-immigration groups reach out on a daily basis to citizen groups and federal, state and local lawmakers and law enforcement agencies, to "educate" them about the social and financial costs of illegal immigration and to assist them with legislation to control immigration in their jurisdictions,⁴⁴⁰ there is no longer any such thing as a state left to its own devices to craft immigration policy.

In Oklahoma, national anti-immigration organizations have been involved in every effort to pass immigration-related measures at the state or federal level since at least 2000.⁴⁴¹ From the failed English-only initiative to the resolution demanding federal action on illegal immigration to half a dozen immigration-related bills offered by state and federal lawmakers, the influence of these national organizations or their local affiliates is evident and pervasive. FAIR and IRLI worked closely with Randy Terrill and others for more than two years to draft H.B. 1804 and to get it enacted, and have assisted with the defense to the subsequent legal challenges to the law.⁴⁴² U.S. English helped Terrill draft a bill that he introduced in early 2008 making English the official language of Oklahoma and restricting the provision of services by the state in languages other than English.⁴⁴³ Most recently, Team America contributed heavily to Terrill's re-election campaign, helping him win a primary election against an opponent who criticized Terrill

439. *Id.* at 1634

440. CIS, FAIR, IRLI, Numbers USA and US English are all part of an organized anti-immigration network founded and funded in large part by activist John Tanton. See The Puppeteer: The Organized Anti-Immigration 'Movement,' Increasingly In Bed With Racist Hate Groups, Is Dominated By One Man, John Tanton, INTELLIGENCE REPORT (Southern Poverty Law Center, Summer 2002) (describing the coordinated anti-immigration lobbying efforts of groups founded by Tanton to "serve the overall ideological and political battle plan to halt immigration"), available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=93>. The Southern Poverty Law Center has placed many of the Tanton-founded anti-immigration groups, including FAIR, on its list of hate groups. See Heidi Beirich, The Teflon Nativists: FAIR Marked by Ties to White Supremacy, INTELLIGENCE REPORT (Southern Poverty Law Center, Winter 2007), available at <http://www.splcenter.org/intel/intelreport/article.jsp?aid=846&printable=1>.

441. See discussion section III, *supra*.

442. Sharma Hammond, *Latest Advances in State Reform Legislation: Oklahoma H.B. 1804*, May 2007, available at <http://www.irli.org/bulletin507.html#advances>.

443. Janice Francis-Smith, *Anti-Immigration Group Applauds Oklahoma's English-Only Bill*, JOURNAL RECORD, May 2, 2008, available at 2008 WLNR 8362480 (reporting links between U.S. English, ProEnglish, CIS, NumbersUSA and FAIR).

for his work on 1804.⁴⁴⁴ Presumably these national organizations offered this assistance because well-written state immigration laws are more likely to survive legal challenge and ultimately support their anti-immigration agenda.⁴⁴⁵ In any event, without the involvement of these organizations, it is unclear whether Terrill would have even proposed an immigration bill in the first place, and it seems even more unlikely that he would have succeeded in pushing through such a harsh and comprehensive immigration package.

In the same way, John Sullivan's tough anti-immigration platform seems to have drawn a lot of its steam from national restrictionist groups. From the time of his election in 2001, Sullivan has been a member of the Congressional Immigration Reform Caucus (CIRC). The CIRC was founded by staunch anti-immigrant Congressman and founder of Team America, Tom Tancredo, and is now chaired by California Congressman and former FAIR lobbyist Brian Bilbray. The connections between the anti-immigrant lobby and the CIRC are well documented, and Sullivan has openly acknowledged the support and assistance he has received in his legislative efforts from FAIR and NumbersUSA. Thus, it is not surprising that Sullivan pressed hard on his anti-immigration agenda for Oklahoma for many years when it was not obviously an issue of great concern to his constituents or the majority of Oklahomans.

This information is not intended to minimize the current level of concern about unauthorized immigration in Oklahoma. It is undeniable that most people living in the United States today, including most people in Oklahoma, know and understand that this country has an immigration problem, even if there is no agreement about the definition of the problem or the possible solutions. However, results of periodic polls of Oklahoma voters beginning in 1993 reveal that immigration was not identified as a pressing concern by any Oklahoma voters until June 2005, and even then only two percent of poll participants mentioned immigration as a pressing issue.⁴⁴⁶ Despite claims by Randy Terrill and others that Oklahoma voters are behind their efforts to crack down on illegal immigration, the polling data over the last few years paint a less clear and somewhat volatile picture of the average Oklahoman's view on this issue. In July 2006, at the same time that the Oklahoma congressional delegation was vocally opposing any immigration reform plan that provided a path to legal status, 75 percent of Oklahomans surveyed

444. In the weeks leading up to the primary election, Baby Buchanan sent an email plea to Team America members to help raise twelve thousand dollars for Terrill. See Oklahoma Hero Randy Terrill Needs Our Help, email from bay@teamamericapac.org, July 10, 2008, posted at <http://okiecampaigns.blogspot.com/2008/07/oklahoma-hero-randy-terryll-needs-our.html>; *Randy Terrill Wins Big in Oklahoma*, July 31, 2008, available at <http://www.teamamericapac.org>. Team America also endorsed Kevin Calvey's failed bid for Congress in 2006. Press Release, Team America Endorses Calvey for Congress, July 17, 2006, available at <http://www.kevincalvey.com/teamamerica.htm>.

445. According to IRLI, their efforts on H.B. 1804 were "an important step for the IRLI strategy on incremental state-by-state reform." *Id.*

446. Randy Krehbiel, *Newcomer Hits Poll's Worry List*, TULSA WORLD, Nov. 5, 2006.

favored a program that would provide a path to citizenship for certain unauthorized immigrants already in the United States.⁴⁴⁷ This generous attitude toward immigrants, while not necessarily reflected in the positions of their congressional delegates, was probably connected to a certain optimism about the state's economy at the time, since more than three quarters of the poll participants indicated that they believed that the Oklahoma economy was okay or better, and that it would stay the same or improve in the near future.⁴⁴⁸ Not quite a year later, in May 2007, illegal immigration ranked second among pressing problems for Oklahoma voters. This is not particularly surprising since the poll took place in the final days of legislative debate over H.B. 1804, and that debate and the public outcry on both sides of the debate were receiving a great deal of media attention.⁴⁴⁹ It is also not surprising that residents of the Tulsa metro area, part of John Sullivan's congressional district, would be two to three times as likely as other residents to believe that illegal immigration was a concern for the state given Sullivan's outspoken position on the issue.⁴⁵⁰ In spite of all of the controversy and rhetoric, however, there was still substantial support at that time for a reform that included a legalization provision.⁴⁵¹ By mid-December 2007, illegal immigration was tied with education as the most pressing problem for the state, and a little more than one month after H.B. 1804 went into effect, roughly half of those polled said that the bill had been good for the state and should be strengthened.⁴⁵² Even then, however, only 16 percent of Oklahomans polled said illegal immigration was their number one concern. Most recently, in August 2008, the pendulum had swung again and illegal immigration ranked fourth behind the economy, fuel prices and education as a serious concern for the state.⁴⁵³

A second assumption that underlies Spiro's steam valve theory of immigration lawmaking is that, if the opportunity to enact restrictionist immigration legislation at the state level exists, any incentive for similar action at the

447. Randy Krehbiel, *Poll: Immigration: President Receiving Lackluster Support*, TULSA WORLD, July 21, 2006 (also reporting that statewide immigration ranked a distant third behind education and the economy as the state's most pressing concern).

448. Randy Krehbiel, *Poll: State Reviving: Voters Believe Economy is Better*, TULSA WORLD, July 30, 2008.

449. Randy Krehbiel, *Illegal Immigration a Top Concern*, TULSA WORLD, May 6, 2007 (reporting that immigration was ranked second in Tulsa but only seventh in Oklahoma City).

450. Interestingly, in August 2007, residents of the city of Tulsa ranked illegal immigration as a distant third after potholes and crime as pressing city problems, but the results here may be more of a reflection of a belief that immigration is not a problem for city government to resolve. See Randy Krehbiel, *Crime, Potholes Frustrate Tulsans*, TULSA WORLD, Aug. 1, 2007.

451. Thirty-five percent of those polled favored legalization for certain unauthorized immigrants that would not require them to leave the United States first. *Id.*

452. See Randy Krehbiel, *Immigration Up As Concern*, TULSA WORLD, Dec. 30, 2007. While ranking first as a state concern, in a separate poll in December 2007, illegal immigration ranked fifth in importance in the selection of a presidential candidate. Randy Krehbiel, *War Stays Top Issue*, TULSA WORLD, Dec. 28, 2007.

453. Randy Krehbiel, *State Economic Optimism Down*, TULSA WORLD, Aug. 10, 2008 (reporting that less than five percent of Oklahomans considered illegal immigration the state's biggest problem).

federal level will disappear. That is, a state allowed to enact measures that drive unauthorized immigrants from its territory, will have no interest in pressing for comparable federal laws designed to deter or expel these same immigrants from the country as a whole. While this assumption might well have been true in late nineteenth-century California, where concerns about Asian immigration were largely concentrated in a single state, this is not the case in 2008. Unauthorized immigration is not an isolated issue, and the only states that have not introduced immigration-related legislation this year are states that had no legislative session.⁴⁵⁴ Far from being unconcerned about federal efforts to address unauthorized immigration, states passing restrictive immigration measures in the last few years have universally cited the federal government's failure to adequately respond to this issue as their motivation for taking it on.⁴⁵⁵ These efforts at the state level have been viewed as a call to Congress to step up to the plate.⁴⁵⁶ Indeed, H.B. 1804 has been used as a lever by Jim Inhofe to try to force Congress to act on federal immigration measures.⁴⁵⁷ Both Inhofe and John Sullivan have exploited Oklahoma's now widely reported experiment in illegal immigration regulation in their so-far failed efforts to pass restrictive federal immigration legislation. Thus, even if federal reforms have remained elusive, that is not because the states engaged in immigration self-help or the national anti-immigration groups supporting these efforts have not demanded it.

Nevertheless, in the face of repeated failures to pass tough enforcement-only immigration measures in Congress, national anti-immigration groups have refocused their efforts at the state level. This has been especially true since it became clear that whoever the next President was to be, it was very unlikely that he would take as tough a position on immigration issues as these groups would like. Both Republican Presidential Candidate John McCain and President Barack Obama have indicated support for reforms that include both enhanced enforcement and an opportunity for at least some unauthorized immigrants to legalize their status, positions anti-immigration groups find completely unacceptable.⁴⁵⁸ Their response has been to try to reshape the national political landscape from the bottom up by advocating tough state

454. *Immigrant Policy Report*, *supra* note 436 (reporting that six states did not hold a regular legislative session in 2008 but that one of those six, Oregon, passed measures tightening driver license identification requirements for non-citizens).

455. See Dianne Solis, *States increasingly tackling immigration reform: Legislation tripled in '07 as federal bill stalls; work issues a priority*, DALLAS MORNING NEWS, Nov. 30, 2007, available at 2007 WLNR 23698347; Witt, *supra* note 21.

456. Jim Myers, *State Leads Immigration Issue*, TULSA WORLD, Apr. 25, 2008 (reporting statement by Executive Director of National Conference of State Legislatures that, "States are stepping up to the challenge . . . when the federal government has not . . . Congress needs to act to fix the dysfunctional immigration system.").

457. Jim Myers, *Inhofe Applies H.B. 1804 as Lever*, TULSA WORLD, Mar. 6, 2008 (reporting Senator Inhofe's suggestion that unless Congress acts, a number of other states will follow Oklahoma's lead and pass a hodge-podge of state measures).

458. Nicole Gauouette, *An Immigration End Run Around the Next President*, L.A. TIMES, June 23, 2008 (quoting NumbersUSA Executive Director saying that the current candidates represent "a

and local immigration measures and supporting state and federal legislators who take a hard line on immigration. By intensifying activity at the state level, the goal is to spark action at the federal level. This has certainly proven to be an effective strategy in Oklahoma. While the enactment of restrictive state measures like H.B. 1804 represent important victories for anti-immigration groups in and of themselves, they also represent significant milestones in their effort to achieve national reforms incrementally, one state at a time.⁴⁵⁹ Regardless of any negative consequences of H.B. 1804, Oklahoma's perceived success at reducing the unauthorized immigrant population in the state has made it a model for other states that wish to achieve the same results.⁴⁶⁰

This result is, of course, precisely what was intended by the national anti-immigration organizations that have supported Oklahoma's various immigration regulation efforts since 2000. By partnering with a growing number of local anti-immigrant activists and groups,⁴⁶¹ at least some of whom have blatantly racist motivations for their positions,⁴⁶² FAIR and IRLI managed to convince the overwhelming majority of Oklahoma legislators that their constituents demanded the harsh treatment delivered by H.B. 1804. This was true even though it seems clear now that the debate over H.B. 1804 was waged largely from the extremes, and that many Oklahomans were not paying close attention to the details of the debate.⁴⁶³ So even as citizens and legislators in Oklahoma reconsider the wisdom of H.B. 1804 and examine for

choice we don't consider a choice They're the worst, the bottom of the barrel, that ended up winning.").

459. According to IRLI Director Michael Hethmon, "We see this state and local activity as not only effective in itself . . . but there's also the long effect as, one by one, these states line up As these jurisdictions confront this issue, it builds up a positive and helpful kind of pressure on Congress." *Id.* See also Deepti Hajela, *Federal Immigration Failures Fuel State Action*, AP ONLINE REGIONAL—US, July 17, 2008, available at 7/17/08 APONLINEUS 09:11:23.

460. See Garrett, *supra* note 24; Woods, *supra* note 24; Walker, *supra* note 14.

461. Among the local groups that have been vocal supporters of H.B. 1804 are Immigration Reform for Oklahoma Now (IRON), see *supra* note 291 and accompanying text; the Minutemen Civil Defense Corps of Oklahoma, the local branch of a citizens group formed in Arizona in 2004 to patrol the southern border, see Tom Droege, *Anti-Illegal Immigration Group Forms in State*, TULSA WORLD, Jan. 7, 2006, available at 2006 WLNR 10983222; and Outraged Patriots, a group formed by two former Oklahoma Highway Patrol troopers to "wage a war on illegal immigration," see Leigh Bell, *Group Posts Notice Against "Invasion,"* TULSA WORLD A16, Mar. 30, 2007.

462. IRON Director Carol Helm has repeatedly denied claims of racist motivations for H.B. 1804 but has nonetheless defended the law as necessary to stop a burgeoning population of illegal immigrants from, "multiplying faster than the American citizen race." Witt, *supra* note 21. Other members of IRON have complained about immigrants in Tulsa "eroding the city's culture." See Jones, *supra* note 343. Immigrants are "having children, children, and children. We Caucasians are not. Pretty soon, they're going to outnumber us. That's what they're working on." *Id.* The Southern Poverty Law Center also reported a significant increase in the number of hate-groups, including neo-Nazi and Ku Klux Klan groups, in Oklahoma between 2000 and 2007, with illegal immigration becoming the sole focus of their efforts. Janet Pearson, *Quantifying Hate*, Tulsa World, May 11, 2008, available at 2008 WLNR 8879004.

463. *Support Waning for New Law Targeting Illegal Immigrants*, TULSA WORLD, Dec. 3, 2007 (reporting comments from various members of the legislature who were rethinking their votes on H.B. 1804 in light of some of the unforeseen consequences and questioning broad public support for the law).

the first time the law's real impact on the state, the bill's now legendary success at driving unauthorized immigrants from the state has taken on a life of its own, setting in motion a host of similar measures in states that, like Oklahoma, will discover too late the hidden costs of taking on the challenge of immigration regulation. Rather than providing a mechanism for Oklahoma to respond effectively to the real challenges and consequences of federal immigration regulation failures, H.B. 1804 has fueled the fire of a state-by-state immigration strategy carefully orchestrated by national anti-immigration groups.⁴⁶⁴

PART V. CONCLUSION

Almost one year after H.B.1804 went into effect, there is little question that the law has had a profound impact in the state. Whether or not that impact signals the amazing success or stunning failure of the law depends on who is making the assessment. The fact that thousands of non-citizens have left the state in the last year, either voluntarily or under an order of removal, has been applauded by some and condemned by others. And if the sole measure of success of the law is the total number of unauthorized immigrants living in Oklahoma before H.B.-1804 and after, then the law is undeniably a success. But if an assessment of H.B. 1804's impact also requires an examination of all of the costs and benefits of implementing H.B. 1804, the answer is far less certain.

Proponents of the law have argued that H.B. 1804 is about saving money, stopping crime, protecting American culture, and upholding the rule of law. But whatever the value they attach to the exodus of unauthorized immigrants from the state, it must be balanced against the impact on the Oklahoma economy caused by the loss of available workers and their contributions as consumers and taxpayers. It must also be balanced against the increased risk to the community when immigrant crime victims are too afraid to seek help from law enforcement agencies who voluntarily or by mandate are cooperating with federal immigration officials. Finally, it must be balanced against the harm to the community when a climate of fear, suspicion and hatred is allowed to flourish in a state that has a long history of welcoming immigrants in search of prosperity and opportunity. There is no evidence that H.B. 1804 has done anything to reduce crime in the state, improve the economy, or otherwise protect the citizens or taxpayers of Oklahoma. Rather, the evidence suggests that the Oklahoma Taxpayer and Citizen Protection Act has ignited a

464. See Bazar, *supra* note 30 ("Oklahoma's new law, which took effect Nov. 1, is particularly far-reaching and has begun sending ripples through the state's economy and its immigrant communities. Besides highlighting the impact of illegal immigration on Oklahoma, the law has made the state a laboratory in the national debate over immigration."); Garrett, *supra* note 24 ("Welcome to the nation's laboratory for a crackdown on illegal immigration."); Mick Hinton, *Senator Rips 1804 Author*, TULSA WORLD, Dec. 7, 2007 (quoting Sen. Harry Coates saying Terrill is "a mad scientist, and Oklahoma is his laboratory"), available at 2007 WLNR 24291879.

wild fire of anti-immigrant rhetoric and scapegoating throughout Oklahoma and in dozens of other states. Not only has H.B. 1804 done little to serve the interests of the vast majority of Oklahoma residents, it has helped to promote the agenda of national anti-immigration groups determined to extinguish any hope of fair and meaningful immigration reform.

