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Introduction

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INTRODUCTION

JOHN J. AMMANN*

The Hazleton, Pennsylvania, City Council. The Arizona Legislature. The Valley Park, Missouri, Board of Aldermen. The Congress of the United States. When it comes to regulation of immigration, the first three legislative bodies have been more active in the last few years than the fourth, even though there is a strong argument to be made that Congress, and only Congress, has authority to regulate immigration. What is more troubling is that there is more discussion of immigration at rallies, demonstrations, and on blogs than there is in any legislative forum.

In this issue entitled *The Future of Immigration Law and the New Administration*, the authors and editors acknowledge that real immigration reform will have to take place in Congress, and that while there is an intersection of some state law with federal law when it comes to the status of people not born in the United States, it will be laws and properly promulgated regulations that will ultimately be the framework for a peaceful, thoughtful, and compassionate system of immigration control, and not voices on the fringes of the political debate seeking attention.

Contributing author Professor Kristina M. Campbell describes the current political climate in this field as evidencing the “continuing delegation of immigration regulation to state and local governments.” In her article, *Imagining a More Humane Immigration Policy in the Age of Obama: The Use of Plenary Power to Halt the State Balkanization of Immigration Regulation*, she argues that current policy, which sees Congress abdicating much of its authority on immigration to local government, undermines the line between federal and state authority to regulate immigration. Congress and the President should “forcefully” reassert the federal government’s supremacy over immigration matters, according to Professor Campbell. She demonstrates that allowing state and local governments to step into immigration regulation has given rise to racial profiling and hate crimes toward immigrants. She cites the need for a “complete reinvention of American immigration law and policy,” and calls for a policy which is founded on global concerns much as the

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immigration policies adopted by the European Union. She specifically calls for a halt to the so-called 287(g) program, which allows the federal government to delegate some of its enforcement of immigration law to state and local law enforcement. Professor Campbell believes any rewrite of federal immigration law should clearly delineate between federal and state control, and should be based upon the “inherent human right of migration.”

While Professor Campbell calls for a reassertion of federal control over immigration to the exclusion of state and local law, another article in this edition recognizes that in the criminal-law context, state law determining when a person is “convicted” of a crime has a significant role to play in whether an immigrant is removed from the United States after facing criminal charges. Federal law requires the removal from the United States of persons who are convicted of certain crimes, including state crimes. Professor Amany Ragab Hacking, in *Plea at Your Peril: When Is a Vacated Plea Still a Plea for Immigration Purposes?*, argues for a bright-line rule on defining convictions. Professor Hacking demonstrates how the Board of Immigration Appeals (“BIA”) and some federal courts have liberally defined “conviction,” and have required the removal of some persons even though their convictions have been vacated. The BIA will still consider the original conviction as requiring removal if the conviction was vacated specifically to avoid the hardship of removal. Professor Hacking argues that a vacated conviction, regardless of the reason, should not be used as a foundation for the removal of a person. If a conviction is no longer a conviction under state law, it should not be a conviction for purposes of U.S. immigration law. She argues that because it is difficult in most states to have a conviction vacated, the BIA and the federal courts should not have “too much freedom to second-guess the motives” of state courts which vacate convictions.

While Professor Hacking’s article looks at criminal defendants who have had their convictions vacated, another piece in this edition focuses on the *victims* of crime and how their immigration status can be affected by local law enforcement. In *The Dual Purposes of the U Visa Thwarted In a Legislative Duel*, Professor Jamie Abrams first notes the increased role of local law enforcement in immigration policy in recent years, and then describes how that increased role is affecting victims of domestic violence who are supposed to be protected under recent federal legislation. Professor Abrams tells the story of Rose, who left her home in El Salvador as a young woman and came to the United States. Once here, she was severely abused by her husband’s brother. With the help of Professor Abrams, Rose successfully obtained a U visa, which allows undocumented persons who are victims of certain crimes such as domestic violence to petition for lawful status if they cooperate in the investigation and prosecution of the criminal activity. While Rose was successful in obtaining the U visa, victims of domestic violence face not just the fear of being abused, but also the fear of being deported if they come

forward to report the abuse to law enforcement. Abusers also threaten to report their victims to immigration authorities as a method of control. Professor Abrams reviews the history of regulations implementing the federal law establishing the U visa, and as only interim regulations are in place now, she makes several concrete proposals for making the process more predictable in the final regulations. She is critical of the interim regulations which call for the head of a police agency to certify that a victim has cooperated in investigating and prosecuting the abuser since this takes the determination away from others in the police department who work directly with victims and who might have more knowledge of the cycle of domestic violence. In addition, having a police chief or sheriff be the one to certify cooperation can politicize the determination because in many cities and counties, police chiefs and sheriffs are the most vocal in calling for a crackdown on the presence of undocumented residents. Professor Abrams demonstrates that by requiring local police officials to certify a victim's cooperation in any respect "positions law enforcement as the gatekeeper to U visa relief" and can yield inconsistent results depending on the jurisdiction of the crime. The sad result is that women who have been victimized are less likely to come forward. They remain in the shadows, fearing their abuser, and fearing being sent back to the land they fled.

Once immigrants clear the hurdles to legal status discussed in this edition, the question then becomes how society helps those immigrants succeed in the face of American society's discrimination against minority ethnic groups. The idea that the election of President Obama would thrust the nation into a "post-racial" era has proven to be founded on hope and not reality. The U.S. poverty rate is increasing, and as has always been the case, poverty among minorities remains more pervasive than it is for whites, at least in part due to discrimination and oppression. In *Black and Brown Coalition Building During the "Post-Racial" Obama Era*, Professor Karla Mari McKanders suggests that because African Americans suffer discrimination that is parallel to, although not identical to, Latinos, there would be benefit to coalition building between these two minority groups. She advises, "The common history of discrimination can serve as a common basis for African Americans and Latinos to build coalitions to address civil- and human-rights violations." She makes a strong case for encouraging African Americans and Latinos to form coalitions to enhance opportunities for their constituents, particularly in the area of employment. As both minority groups have unequal access to employment and by all statistics find themselves at the bottom of the economic ladder, Professor McKanders calls for a coalition strategy built around access to jobs. She recognizes that both groups would have some fear that their separate agendas could be diluted, but she does not hesitate to call for what she labels a "a coalition that acknowledges differences."

This edition also includes an article by Professor John O'Brien of Saint Louis University on the issue of hearsay and the Confrontation Clause.

We thank the authors and editors of this edition for significantly contributing to the resolution of the tension between local efforts to address immigration issues and the federal government's unfulfilled role in regulating immigration. Their analyses and concrete proposals for statutory and regulatory changes to federal immigration law should help educate federal policymakers because the authors' thoughtful approach to these issues brings the calm reflection that the debate requires.