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CAUSE AND EFFECT: CRIMINALIZING THE AMERICAN DREAM

by JESSICA SANCHEZ

As one famed American lawyer writes, “[W]hen we, as a nation of immigrants, debate the immigration issue, we are defining our very identity as Americans.”¹ And if one paid close enough attention, one would see anti-immigrant laws popping up in states across the nation in an attempt to criminalize one particular group of people pursuing the American Dream.²

For example, in 2006, the town of Hazleton, Pennsylvania, passed two such ordinances, provisions of which included showing proof of legal residency in order to rent housing, sanctioning landlords for renting to undocumented per-

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sons and revoking business licenses for employers hiring undocumented workers.³

Not long after, Farmers Branch, Texas, adopted an ordinance with comparable landlord and tenant provisions.⁴ In 2010, Valley Park, Missouri, and Fremont, Nebraska, followed suit, along with a spate of other towns and cities.⁵

A BUMPY ROAD FOR ANTI-IMMIGRANT LAWS

Proponents of such laws argue that they are necessary, especially in tough economic times, because of the financial burden that undocumented immigrants allegedly place on municipal infrastructures such as schools, law enforcement and hospitals.⁶ One proponent argues, "People often see federal immigration policy as a dichotomy between amnesty and deportation. But the most rational approach is a third one: you ratchet up the enforcement so that people make their own decisions to start following the law."⁷

Ironically, these laws failed to make much of an impact on the problems they aimed to address, instead creating a pattern of financial strain, legal misfortune and a torn sense of community.⁸ They are also the frequent targets of court challenges. In Pennsylvania, both the federal district and appellate courts found Hazleton's ordinances unconstitutional, and the City incurred \$2.8 million in legal costs defending the ordinances in court.⁹

Likewise, a federal judge in Texas issued a permanent injunction against the Farmers Branch ordinance, even after the City amended it three times in hopes of withstanding legal challenge.¹⁰ And though it has appealed the ruling, Farmers Branch owes approximately \$3.7 million in legal fees as of January 2011.¹¹

From these examples, it is clear that anti-immigrant ordinances can have serious detrimental effects on towns that adopt them, as divided communities are left to bear the burden of foundering legislation followed by skyrocketing legal fees.¹² As one attorney puts it, "Across the country even the most conservative judges are seeing through these misguided attempts to legislate in a federal area of law and are striking down the laws."¹³

In addition to having questionable constitutional validity and proving to be troublesome public policy, these laws have one more striking element in common: the same author, advisor and often litigator: Kansas Secretary of State Kris Kobach,¹⁴ a man who refers to himself as the “intellectual architect of the fight against illegal immigration.”¹⁵

THE MAN BEHIND THE LAWS

“America’s Deporter in Chief,” as one reporter titled him, Kris Kobach has forged a strategic position on anti-immigration legislation using towns like Hazleton and Fremont as proxies for a larger debate.¹⁶ As Aaron Siebert-Llera, opposing counsel to Kobach in the ongoing Fremont litigation, states, “It is much easier to play on people’s fears of the other . . . when you are dealing with a smaller population. All that has to be done is to find a few people to hand out petitions and scare the voters about the ‘invading illegals.’”¹⁷

A troubling illustration of this is drawn by a town that decided against hiring Kobach.¹⁸ In 2010, the town of Albertville, Alabama, sought to retain counsel on possible immigration proceedings.¹⁹ After meeting with Kobach, the town’s City Council cited his 46 percent success rate defending anti-immigration legislation in its decision not to hire him as legal representative.²⁰ Ben Shurett, resident of Albertville and publisher for the local reporter succinctly summed up the town’s judgment:

“I fear Kobach is a very good lawyer and a terrific salesman. I think he has identified a niche market for his services,” adding, “But I fear Mr. Kobach targets towns like ours . . . as financial windfalls . . . I think he preys on the legitimate concerns, the irrational fears and even some bigoted attitudes to convince cities to hire him to represent their interests in lawsuits that may not be winnable.”²¹

More telling than Kobach’s pre-packaged inventory of laws, however, may be how he defends them.²² Assigned to work for then-Attorney General John Ashcroft at the Department of Justice (DOJ) in 2001, Kobach later became Ashcroft’s chief advisor on immigration and border security, though he was not a specialist in immigration.²³

In 2002, Kobach authored a memo for the DOJ’s Office of Legal Counsel, introducing an unprecedented interpretation regarding the preemption of state

and local law enforcement to make arrests on immigration grounds.²⁴ The memo not only took a position at odds with previous opinions issued by the same office, but this memo laid the groundwork for Arizona's notoriously harsh anti-immigrant law, S.B. 1070.²⁵ Startlingly, it is the same memo Kobach cites as authority in support of the anti-immigration laws he defends in court.²⁶

NEXT STOP, ILLINOIS?

Confident in his politics, Kobach's message is blunt: "If you want to create a job for a U.S. citizen tomorrow, deport an illegal alien today."²⁷ And it seems Kobach's message might soon spread, as he has aligned himself with likely Republican presidential nominee Mitt Romney as an immigration advisor.²⁸

As Nebraska, Missouri, Indiana and Ohio contemplate similar initiatives, Illinois should be mindful of the ills felt by other states, as it could be next to face the corrosive effects of Kobach's policies.²⁹ As one Chicago attorney predicts, "The long term ramifications of these laws is going to be very detrimental for all of us because the laws are only alienating the workers that drive this economy."³⁰

In Illinois, the immigrant population is roughly 13.6 percent of the state's total population.³¹ This number rises to 26 percent when including the children of these immigrants.³² In February 2011, Illinois Rep. Randy Ramey proposed House Bill 1969.³³ This bill maintains a close likeness to Arizona's S.B. 1070,³⁴ and would afford law enforcement officials the authority to determine a person's immigration status where there exists reasonable suspicion upon any lawful stop, detention or arrest.³⁵ As of March 2011, the bill had been referred to the Illinois Rules Committee.³⁶

In light of this, Illinois might consider heeding Phoenix Mayor Bill Gordon's statements in opposition to Arizona's S.B. 1070: "What good has this divisive law accomplished? I've seen firsthand the way it's torn apart our state, the way it's hurt us economically and hurt us in terms of security by diverting valuable resources away from catching real criminals. The only people better off for Kobach's efforts are people like him - political opportunists who want to use stereotypes and distortions to make a name for themselves."³⁷

NOTES

- 1 John Grisham, *9500 LIBERTY*, available at <http://www.9500liberty.com/synopsis.html>.
- 2 WHEN MR. KOBACH COMES TO TOWN: NATIVIST LAWS & THE COMMUNITIES THEY DAMAGE, S. POVERTY L. CTR. (Jan. 2011) at 5, 7, available at http://www.splcenter.org/sites/default/files/downloads/publication/Kobach_Comes_to_Town.pdf [hereinafter SPLC REPORT].
- 3 Lozano v. City of Hazleton, 496 F. Supp. 2d 477 (M.D. Pa. 2007), *aff'd in part, vacated in part*, 620 F.3d 170 (3d Cir. 2010), *cert. granted, judgment vacated sub nom.* City of Hazleton, Pa. v. Lozano, 131 S. Ct. 2958, 180 L. Ed. 2d 243 (2011).
- 4 SPLC REPORT, *supra* note 2, at 22-23.
- 5 *Id.*
- 6 Nomaan Merchant, *Suburb fights for ban on illegal immigrant housing*, ABILENE REPORTER-NEWS (Apr. 12, 2012, 10:52 PM), <http://www.reporternews.com/news/2012/apr/12/suburb-fights-for-ban-on-illegal-immigrant/>.
- 7 Tony Dokoupil, *America's Deporter in Chief*, DAILY BEAST (Jan. 30, 2011, 10:00 AM), <http://www.thedailybeast.com/newsweek/2011/01/30/america-s-deporter-in-chief.html>.
- 8 SPLC REPORT, *supra* note 2, at 5.
- 9 *Id.* at 10.
- 10 *Id.* at 23.
- 11 *Id.* at 12.
- 12 *Id.* at 22-23.
- 13 Email interview with Aaron Siebert-Llera, Staff Attorney, MALDEF (Apr. 13, 2012).
- 14 SPLC REPORT, *supra* note 2, at 24.
- 15 KRIS KOBACH FOR SEC'Y OF STATE, <http://www.kriskobach.org/> (last visited Apr. 28, 2012).
- 16 Dokoupil, *supra* note 7.
- 17 Siebert-Llera, *supra* note 13.
- 18 *Kobach in Albertville, AL*, POLITICAL CORRECTION (July 15, 2010, 10:32 AM), <http://politicalcorrection.org/factcheck/201007150001>.
- 19 Ben Shurett, *Kobach doesn't pass my smell test, not yet*, SAND MOUNTAIN REPORTER (Mar. 27, 2010, 12:00 AM), http://www.sandmountainreporter.com/columnists/article_3941ee01-ed11-5d1b-ac7a-81c9bcbef2f6.html.
- 20 *Kobach in Albertville, AL*, *supra* note 18.
- 21 Shurett, *supra* note 19.
- 22 Suzy Khimm, *The Man Behind Arizona's Immigration Law*, MOTHER JONES (May 7, 2010, 2:00 AM), <http://motherjones.com/politics/2010/05/kobach-arizona-immigration-law>.
- 23 SPLC REPORT, *supra* note 2, at 8.
- 24 *Id.*; see also Memorandum from Jay S. Bybee, Assistant Att'y Gen., Op. O.L.C., 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/FilesPDFs/ACF27DA.pdf>.
- 25 *Id.*
- 26 *Id.*
- 27 Amanda Peterson Beadle, *Romney Advisor Kris Kobach's Job Plan: 'Deport An Illegal Alien Today'*, THINK PROGRESS (Feb. 13, 2012, 1:00 PM), <http://thinkprogress.org/justice/2012/02/13/423790/romney-advisor-kris-kobachs-jobs-plan-deport-an-illegal-alien-today/>.
- 28 Shannon O'Neil, *Illegal Immigration and the 2012 campaign*, GLOBAL PUBLIC SQUARE CNN BLOGS (Feb. 16, 2012, last updated 6:00 AM), <http://globalpublicsquare.blogs.cnn.com/2012/02/16/illegal-immigration-and-the-2012-campaign/>; see also Evan McMorris-Santoro, *Mitt*

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Romney's Long Embrace of Kris Kobach, TALKING POINTS MEMO (Jan. 18, 2012, 9:58 AM), <http://2012.talkingpointsmemo.com/2012/01/mitt-romneys-long-embrace-of-kris-kobach.php>.

29 Julia Preston, *Lawyer Leads an Immigration Fight*, N.Y. TIMES (July 20, 2009), available at <http://www.nytimes.com/2009/07/21/us/21lawyer.html?pagewanted=all>.

30 Siebert-Llera, *supra* note 13.

31 *Immigrant Demographics*, ILL. NEW AMERS. OFF. OF POL'Y & ADVOCACY, <http://www2.illinois.gov/newamericans/Pages/Demographics.aspx> (last visited Apr. 28, 2012).

32 *Id.*

33 Bill Status of HB 1969, ILL. GEN. ASSEMBLY, available at <http://www.ilga.gov/legislation/BillStatus.asp?DocTypeID=HB&DocNum=1969&GAID=11&SessionID=84&LegID=59170> [*hereinafter* HB 1969].

34 Otherwise known as the "Support Our Law Enforcement and Safe Neighborhoods Act," Arizona Senate Bill 1070 was introduced in Jan. 2010, "requir[ing] local and state officials to try to ascertain the immigration status of anyone they come into 'legitimate contact' with if they have a 'reasonable suspicion' that the person is not a legal resident. It makes it a crime for undocumented workers to seek work or trespass on private or public lands, and also criminalizes hiring workers from a stopped car. The law makes transporting or harboring undocumented immigrants a misdemeanor punishable by a fine of at least \$1,000; if the offense involves 10 or more immigrants, it becomes a felony." SPLC REPORT, *supra* note 2, at 24.

35 HB 1969, *supra* note 33.

36 *Id.*

37 SPLC REPORT, *supra* note 2, at 8.