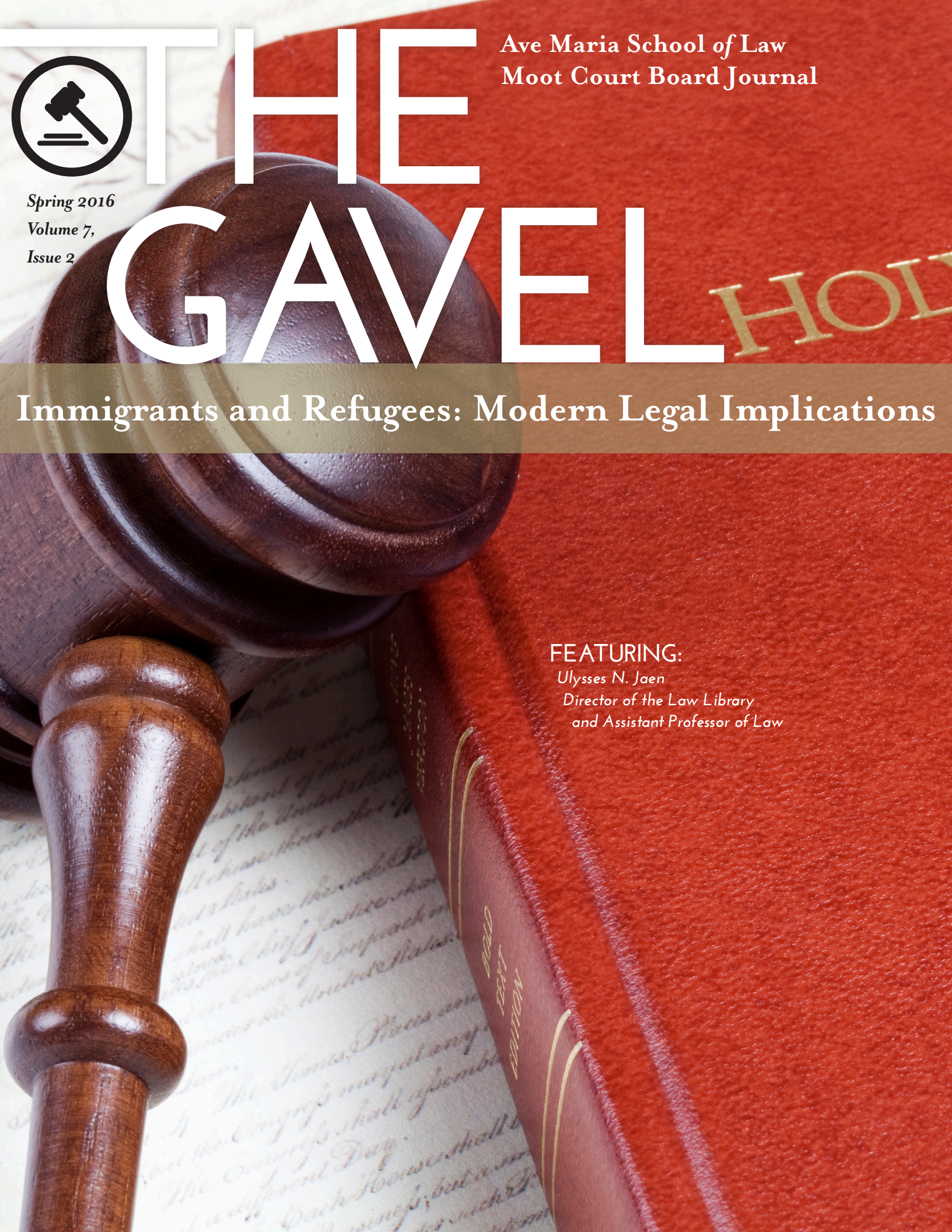

THE GAVEL

Ave Maria School *of* Law
Moot Court Board Journal

Spring 2016
Volume 7,
Issue 2

Immigrants and Refugees: Modern Legal Implications

FEATURING:
Ulysses N. Jaen
Director of the Law Library
and Assistant Professor of Law

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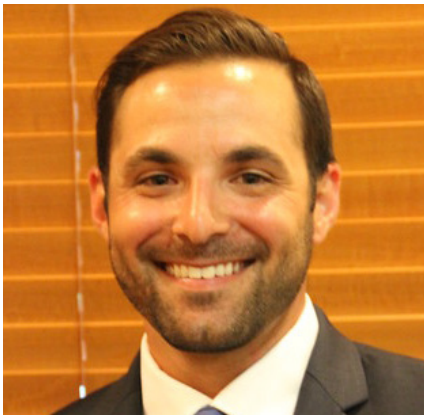

MOOT COURT BOARD PRESIDENT'S MESSAGE

Another semester has come and gone, marking my last semester as the President of this esteemed Board. I could not be more proud of this group of impressive men and women. Over the past year, I have witnessed so many positives, which only goes to show that all of our hard work has paid off. We've again shown improvements in our external competitions. In particular, we had phenomenal performances at the New York City Bar, Saul Lefkowitz, and Tulane competitions. At the New York City Bar Appellate Competition, one of our very best, Maria Contreras, finished the first round with a perfect score from the judges. But, it was the Bedell competition where our Board really showed that we were not to be taken lightly. Andrew Riordan and Carrie White etched themselves into Ave history by becoming the first team to ever advance to the quarterfinals of the Chester Bedell Mock Trial Competition. I had the privilege of watching their team compete, and never have I seen a team more deserving of such an honor.

Our internal competitions were also a huge success. Congratulations to two of our very own, Daniel Whitehead and Aimee Schnecker, for winning the Robert Bork Appellate Competition. Our next and final internal competition, The St. Thomas More Trial Competition, will be held this spring. I am excited to see the talent that each team will showcase throughout this competition.

The Ave Maria Moot Court Board attracts a certain type of person, a different breed, so to speak. Our current Board is no different. Never before in my life have such talented and outstanding people surrounded me. Words can never truly express how honored I am to have served as President of this Board. Each of you, in one way or another, made me a better competitor, a better leader, and most importantly, a better man. This Board has understood the importance of the Moot Court Board, and their work ethic was nothing short of astonishing.

I would like to extend a special thank you to my Executive Board: Andrew Riordan, Ashley Dorwart, Antonette Hornsby, Aimee Schnecker, and Jorge Rodriguez-Sierra. Without you all, I would be a lost soul. Because of your tremendous efforts, the Moot Court Board ran like a well-oiled machine, and I will forever be grateful.

Lastly, because this is the last time that I will ever get to reach this many people, I would like to leave you all with a little advice. Work hard. Never miss an opportunity to do something great. Be good to one another. Do not shy away from making mistakes; that's how we learn. No matter what happens today, always remember that tomorrow brings with it a new day and a new opportunity. Most importantly, always set out to be the best possible version of yourselves.

God bless and good luck to you all.

Jovanni C. Fiallo
President, Moot Court Board, Ave Maria School of Law
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INSIDE

THE IMMIGRATION DILEMMA

By Ulysses N. Jaen
Director of the Law Library and
Assistant Professor of Law

On this continent, too, thousands of persons are led to travel north in search of a better life for themselves and for their loved ones, in search of greater opportunities. Is this not what we want for our own children? We must not be taken aback by their numbers, but rather view them as persons, seeing their faces and listening to their stories, trying to respond as best we can to their situation. To respond in a way which is always humane, just and fraternal. We need to avoid a common temptation nowadays: to discard whatever proves troublesome. His Holiness Pope Francis, addressing joint meeting of Congress, Sept. 2015.

The intoxicating call of freedom brings dreamers from all over the world, inspiring people to face extreme challenges in its pursuit. Many do not make it, but this is a special land of opportunity to those who do. The United States of America is unique because its formation came from people who trekked from other lands to come here. Founded on principles derived from God and written in a permanent social contract, the U.S. guaranteed a representative republic to protect the people represented. The founding declaration makes these sentiments clear: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."[1]

Time after time, these American legal principles have suffered deformations, and often resurface in reformed legislation, transformed by the experience. New generations come to power and question or forget what wisdom was gained. Concerns about culture, competition, or safety resurface.[2] As legal professionals, we must look beyond the rhetoric and closely inspect the "criminal" charges against immigrants when their crimes derive directly from their efforts to survive. It is true that entering without inspection or overstaying a legally issued visa violates federal immigration law, but civil penalties punish these civil violations.[3] In addition, the Constitution affords legal options and due process to all people regardless of documentation.[4]

We must stand with justice and engage with an eye towards our nation's future. We must provide guidance and clarity so that errors of the past are not repeated. Some say immigrants don't assimilate to U.S. customs. On the contrary, post-recession immigrants are more assimilated than those who arrived before the recession.[5] Immigration laws must change to withstand the test of time because it is the right thing to do.

A principal tenet of Catholic Social Teaching[6] is that human beings are "the clearest reflection of God's presence in the world"[7] and all humans are created in the image of God.[8] If we truly understand and accept that all people, regardless of nationality, are our brothers and sisters as children of God, we must respect their right to exist and to improve their lives just like our ancestors did. The Catholic Church consistently defends the human rights of immigrants regardless of legal status. His Holiness, Pope Francis, is explicit on the subject:

> **[A] change of attitude towards migrants and refugees is needed on the part of everyone, moving away from attitudes of defensiveness and fear, indifference and marginalization – all typical of a throwaway culture – towards attitudes based on a culture of encounter, the only culture capable of building a better, more just and fraternal world.[9]**

We must abandon provincialism and embrace a better world based on human dignity and respect for one another, not on prejudice, hate and fear. The Catholic Catechism instructs the faithful that good government has two duties, both of which must be carried out and neither of which can be ignored. The first is to welcome foreigners out of charity and respect for the human person. Persons have the right to immigrate, and thus government must accommodate this right to the greatest extent possible, especially financially blessed nations.[10] The second duty is for political authorities to subject immigration to judicial conditions for the sake of the common good. Furthermore, immigrants must be grateful to their adopted country, obey its laws, and assist in carrying out its civic burdens.[11]

As a nation, we must think long term, not in 4-year electoral cycles. Immigration laws represent our nation's principles to the entire world. These laws affect commerce, international sentiment, and make us friends or provoke enemies. Letting

ambitious politicians use misrepresentations of immigrants to manipulate voters and instill fear, anger, or even a false sense of superiority may constitute a sin of omission.[12] We are instructed not to follow directives that are contrary to the moral order like persecuting immigrants indiscriminately and "obey God rather than men."[13] These laws affect everyone - both those alienated or removed as well as our communities, friends, workforce, and even future taxpayers that subsidize social security for our aging population.[14]

Collective action, fueled by individual pursuit changed our world. We are the product of coming together and overcoming the harshness of primitive life. Immigrants have always benefitted the USA and enacting more restrictive anti-immigrant laws would deprive us of their contributions. Study after study concludes that immigrants provide a net benefit to the nation and cannot be ignored.[15] These contributions include: immigrants started 28% of new businesses in 2014[16]; immigrant-owned businesses employed over 4.7 million people in 2007[17]; Latino immigrant purchasing power will reach $1.5 trillion by 2015[18]; immigrants founded +40% of Fortune 500 companies[19]; 29% of scientists are immigrants[20]; 50% of PhDs in math/computer science and 57% of PhDs in engineering are immigrants[21]; immigrants constituted ⅓ of patent growth in the 1990s[22]; immigrants started 25% of public US companies.[23]

Furthermore, fixing our broken immigration system is critical to bilateral trade and U.S. exports. Investments to strengthen the border and facilitate more efficient trade with both Mexico and Canada will strengthen the U.S. economy. Canada and Mexico are our second and third trading partners in the world, respectively, together accounting for nearly one-third of U.S. exports in 2012 and more than $3.1 billion two-way trade per day in 2013.[24] An increase in exports means more jobs right here in the U.S.

Reforming immigration laws will increase international travel and tourism to America and to tourism dependent states like Florida. In the U.S, the largest service-export industry is tourism with over $220.8 billion in exports and supporting more than 8 million jobs in 2014. The economic impact and importance of travel and tourism will continue to grow as emerging economies continue to expand their middle classes.[25]

Immigration laws are good and necessary, but like all laws, they must be fair to withstand the test of time. Many past immigration laws have slapped us in the face. We cannot with one hand declare our values and with the other enact laws that trample them. Employers are in need of workers, yet families are separated because they cannot legalize their status. At an enormous cost to taxpayers, we detain individuals who could be working.[26] It would cost far less to pay them to work rather than paying for profit prisons to deprive them of their freedom.

Congress should examine the root causes of migration, including violence, under-development and poverty, and seek long-term solutions with our neighbors. The remedy to the problem is sustainable economic development and less predatory lending practices.[27] Globalization with an eye on the importance of managing trade with the objective of achieving development goals is essential. The World Bank estimates that reform of international trade rules could take 300 million people out of poverty.[28]

In an ideal world, migration should be driven by choice as the needs of our economy expand or contract, and immigration should be regulated by a logical and flexible system of laws. Most immigrants would certainly follow the laws and immigrate legally if that were a realistic option. Current laws restrict family reunification and delay immigration processes by decades with expensive and problematic bureaucratic burdens. Farmers who need help at harvest time should be able to find workers who want to do the job and want to be able to go back to their homes afterwards. We need serious practical reforms that eliminate abuse and improve the human condition, "[A] world where human rights are violated with impunity will never stop producing refugees of all kinds."[29]

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CAN WE HAVE IMMIGRATION WITHOUT ASSIMILATION?

By Aimee Schnecker

For over two centuries, millions of immigrants from around the globe have come to the United States in search of a more prosperous life and often fleeing from poverty, famine, religious oppression, and despotic governments. In other words, immigrants come to our country seeking the "American Dream." Our country has been called a "melting pot," and Theodore Roosevelt called our great country "a nation of immigrants," but today our society is a nation of immigrants that largely self-segregate from the general population of American citizens; we are in a period of balkanization, rather than assimilation. Rather than embrace a distinctly American lifestyle and value system, which is presumably the reason that they immigrated here to begin with, immigrants hold on to native customs. This harsh divide has caused the civil society to become more concerned with "politically correctness," and less concerned with embracing American exceptionalism so as to empower everyone.

In his book *Who Are We? Challenges to America's National Identity*, Harvard professor Dr. Samuel Huntington writes that our country has "been a nation of immigration and assimilation, and assimilation has meant Americanization."[1] Our history has seen huge waves of immigrants enter the United States, followed by a period of assimilation. Today, however, this period of assimilation has dropped out of the picture and the concept of Americanization has been given a negative connotation.

The massive influx of unassimilated immigrants is taking its toll on American citizens, particularly the rising generation. Americanization and assimilation into American society is crucial to maintain what nationally syndicated talk-radio host and president of Landmark Legal Foundation calls "the civil society." In his latest *New York Times* bestselling novel *Plunder and Deceit*, Levin hones in on the real issue surrounding unassimilated immigration: if floods of immigrants continue to pour into America without any meaningful Americanization or assimilation, what kind of society will we and our children live in?[2]

Today we are facing a period of unrestricted immigration and the lack of assimilation has caused a complete societal transformation. The surprising thing is that it all started as a result of legislation that virtually none of the American people voted for. The 1965 Hart-Cellar Act or "the Kennedy Immigration bill," is primarily responsible for the spike of unassimilated immigration.[3] Last year marked 50 years of the Hart-Cellar Act, which established the basis of today's immigration law. It was originally sold to the American people as "a modest increase in immigration from

the four decades of low immigration and some blatantly discriminatory policies. Americans were ensured that the bill would not fundamentally alter the character – political, social, or fiscal – of this country."[4]

At the time Hart-Cellar was enacted, the aim was to put immigrants of all nationalities on equal footing and eliminate the "blatantly discriminatory policy" of the national origin quota system. But in reality, the Act fostered a pattern of chain migration and empowered immigrants in the United States to stimulate further immigration into the country through family reunification. Levin calls Hart-Cellar "the most thoughtless of the many acts of the Great Society,"[5] because for the first time in history a higher preference was given to the relatives of American citizens and permanent resident aliens than to applicants with special job skills.

To compound the effects of Hart-Cellar, President Barack Obama has offered up the Deferred Action for Parents of Americans and Lawful Permanent Resident Aliens ("DAPA"). Under DAPA, the President seeks to legalize nearly 5 million illegal aliens who are the parents of a U.S. citizen or a lawful permanent resident. DAPA is a flagrant attempt to grant amnesty to all immigrants and will have even more dramatic results on the civil society than Hart-Cellar ever could have envisioned.

Under DAPA, any immigrant who can manage to get into the United States, legally or illegally, can claim benefits at the expense of the American people. Under this program there is absolutely no incentive for these immigrants to become Americanized – DAPA makes their status as legal or illegal virtually irrelevant. Younger people stand to suffer most under this policy, as they are already poised to inherit a massive debt, and bankrupt Social Security, and Medicare systems. On top of these existing liabilities, young people will have to deal with immigrants claiming these benefits even though they do not have legal status.

Although U.S. District Judge Andrew Hanen has found DAPA unlawful and the 5th Circuit Court of Appeals upheld that decision, the Supreme Court has yet to decide the issue. The Court has agreed to hear *Texas v. United States* in the spring term.[6] However, it is significant to note that had the Court chosen not to take up the case at all, the Obama administration would have lost and DAPA would have been defeated. As it stands now, DAPA could be implemented before the President leaves office.

DAPA and Hart-Cellar have taught us that going forward the next president must listen to the voice of the American people who are predominately opposed to these policies. The Pew Research Center found that 69 percent of Americans want to restrict and control immigration rates and oppose the current policies.[7] Furthermore, Gallup reports that by two to one, Americans want immigration levels reduced.[8] Thoughtless immigration policies encourage massive immigration and provide no incentive for such immigrants to assimilate into the civil society. A balkanized society cannot thrive and the rising generation stands to suffer the most, unless the next president implements a major change.

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SANCTUARY CITIES:
HIDDEN IN THE WAVES OF IMMIGRATION

By Alexander Scarselli

What is the status of immigration today? Well, immigration is currently all the rage. It is the new "hot topic." Who is going to build a wall? How will it all be done? Immigration has always been a concern in the United States. With 11.3 million unauthorized immigrants in the U.S. during 2014 making up 3.5% of the nation's population,[1] it is no wonder that immigration is shifting to front and center.

A sanctuary city does not yet have a "legal definition" per say. In essence, sanctuary cities are places that have policies or laws that limit what law enforcement and other government employees can do and how far they will go to assist the federal government on immigration matters.[2] San Francisco is probably now the sanctuary city that has been in the limelight the most due to the murder of Kate Steinle back in July of 2015. However, there are over 200 state and local jurisdictions that can be referred to as "sanctuary cities." On their website, the city and county of San Francisco lists several sanctuary cities in the United States. The list includes Los Angeles, California; Denver, Colorado; Miami, Florida; Chicago, Illinois; Baltimore, Maryland; Detroit, Michigan; New York, New York; and Durham, North Carolina.[3]

Each jurisdiction may have a variation to its sanctuary city regulation but there is a commonality between all of them. Take this regulation for example: "No department, agency, commission, officer or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information regarding the immigration status of individuals in the City and County of San Francisco unless such assistance is required by federal or State statute, regulation or court decision."[4] The common theme is that the state will not assist the federal government.

I do not agree with these sanctuary city regulations. As a preface, I have no issues with immigration, but it must be *legal* immigration. However, that is a discussion for another time. I disagree with sanctuary city regulations because they undermine the supreme law of the land: The United States Constitution.

Granted, in this country we have a separation of powers between the state and federal government. One can argue that it is within the jurisdiction of the state to create a sanctuary city regulation, because it is in the best interest of the state to protect its citizens. However, the supremacy clause in our Constitution says otherwise. It states that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby."[5] Immigration falls explicitly within the federal jurisdiction of our government. These sanctuary cities circumvent the federal laws by stating that the law enforcement of that city will not cooperate with federal officials.

Arizona, for example, wanted to pass its own immigration policy that directly contradicted federal rules and regulations. Arizona law, in summary, allowed total control over immigration in the state. Under Arizona law it was a crime for "unauthorized immigrants" to fail to carry registration papers or other government I.D. This law authorized police to arrest illegal immigrants without a warrant where "probable cause" existed. Sanctuary cities would argue that they do not "interfere" with federal law enforcement like the Arizona law attempted to do. Sanctuary cities state the reverse; they are "limiting their resources" by not partaking in federal immigration investigation. The laws are the opposite of Arizona's law, but have the same legal effect. Sanctuary cities circumvent federal immigration law and hinder it whereas Arizona tried to create their own immigration law.

Sanctuary city ordinances interfere with the fundamental purpose of federal immigration enforcement. By holding back state resources they are limiting the ability of the federal government. This is a direct circumvention of the law itself. U.S. Immigration and Customs Enforcement ("ICE") is an American federal law enforcement agency under the United States Department of Homeland Security ("DHS") and is responsible for identifying, investigating, and dismantling vulnerabilities regarding the nation's border, economic, transportation, and infrastructure security.[6] ICE is a federal government branch operating under the federal government's jurisdiction. Sanctuary city regulations directly affect ICE's job as described above. Let's make the connection. We have a federal department created by the United States government and acting under federal law. Now, while doing their job, federal officials are hindered by sanctuary city regulations. Granted, sanctuary cities are not trying to directly enforce federal immigration policy like Arizona was, but sanctuary cities are circumventing the operation of a federal division. How is this any different from when the FBI or CIA enters a scene and takes over the investigation and uses the state's resources to aid their investigation? Is it simply because we are more familiar with the terms FBI and CIA and not ICE?

Sanctuary cities are a new legal loophole that hinder the enforcement of government immigration operations and therefore undermine the federal immigration laws. Perhaps, it is simply that not enough people are aware of sanctuary cities and what they do, and this is why no action against them has been taken.

I support immigration. I also am a proponent for the enforcement of federal laws and the separation of state and federal powers. Sanctuary cities are a problem because they circumvent the federal laws. That is where my issue lies. That is why sanctuary cities need more attention.

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THE TRUMPINATOR: DOES THE EXECUTIVE HAVE THE POWER TO DECREE A TEMPORARY BAN ON ALL MUSLIMS?

By: Andrew Riordan

In terminator fashion, Donald Trump, a billionaire businessman with no political experience, has emerged as the frontrunner for President of the United States. So, is Trump here to save the human race, or is he here to destroy it? Unfortunately, Sarah Connor is not writing this article, so I will have to make due.[1] Before we open the Pandora's Box of Donald Trump, let us sink our teeth into the meat of what has fueled Trump's success in the presidential race: controversy.

The Syrian Civil War has been raging since March 15, 2011. Yet, up until September 1, 2015,[2] Americans didn't notice the background noise type of media coverage coming from the Middle East. Instead, America's sudden outrage came after nearly half of a decade of bloodshed, which resulted in 250 *thousand* dead Syrians, and the rise of a new radical terrorist organization: the Islamic State of Iraq and Syria.

The Syrian Refugee Crisis' media attention peaked in late 2015 when the Presidential primary campaigns for the Republican and Democratic parties began to steamroll. The candidates catapulted the topic from social media trends to fulltime mainstream media headliners. Mainstream media focused its full limelight on the news of 11 million displaced Syrians left without food, water, and shelter.

However, rather than becoming a humanitarian concern, the "Syrian Refugee Crisis" became perceived as a threat to national security. It was at this point that the frontrunner of the Grand Old Party ("GOP"), Donald Trump, vaulted the trending topic into the limelight through his controversial viewpoints. He coupled the idea of a Syrian Refugee terrorist with the resounding threat exposed in the 2015 Paris, France, terrorist attack and the 2015 San Bernardino, California attack. As a result, his words echoed throughout the country: "I propose a temporary ban on all Muslims entering our Country."[3]

Trump's response to the terrorist attacks carried out by Islamic State of Iraq and Syria ("ISIS/ISIL") members in Paris, by Syed Rizwan Farook, an American born Muslim of Pakistani descent, and Tashfeen Malik, a Pakistani Muslim immigrant, sparked an outrage amongst media stations.[4] Yet, the statement hit home for many Americans.

In 2014, the Arab Center for Research & Policy Studies, headquartered in Doha Qatar, conducted the largest survey of Arab viewpoints on terrorism in history. That survey's results included:

- 37% of Syrian refugees oppose U.S. airstrikes on the Islamic State terrorist group.
- 31% disagree with the objective of defeating ISIL, while 38% do not believe defeating ISIL is even achievable.
- 36% oppose any Arabic support in defeating ISIL.
- 43% oppose U.S. and Western Ally ground support against ISIL.
- 13% of Syrian Refugees stated they have a positive view of ISIL.[5]

The average American can be criticized for many things, but simple math isn't one of them. In the midst of the presidential primaries, President Barack Obama (D) proposed to bring 10,000 Syrian Refugees onto U.S. soil.[6] The statistics gathered by the Arab Center for Research & Policy Studies, provided the following results:

- 1,300 of those Refugees have positive views of terrorist organizations.
- 3,100 oppose defeating terrorist organizations at all.
- 3,700 oppose U.S. airstrikes of terrorist organizations.
- 4,300 oppose U.S. and Western Ally ground support against terrorist organizations.
- 3,600 oppose even Arab countries fighting terrorist organizations.

Yet, the imperative question that underlies it all is whether Trump, if elected President, could actually ban Muslims from entering our country?

In June 1952, a Democratic majority in both the House of Representatives and the Senate passed 8 USC 1182. Section (f) grants the President the power to "suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate."[7] This power may be exercised at the discretion of the President, "[w]henever the President finds the entry of any aliens . . . detrimental to the interests of the United States."[8]

No President would be crazy enough to actually halt the entry of immigrants into the United States of America, right? What has happened to "give me your tired, your poor, your huddled masses yearning to breathe free?"[9] Well, unfortunately for American Poet, Emma Lazarus, Democratic President James Earl Carter didn't share her sympathies for the tired, poor, or huddled masses. Say it ain't so Jimmy!

In 1979, in response to an Iranian terrorist attack on the American Embassy in Tehran, President Jimmy Carter executed an Executive Order invalidating all visas issued to Iranian citizens for future entry into the United States. This was a sanction against Iranian citizens because of the actions of terrorists. The order required some 50,000 Iranian students who were in America to report to immigration offices to determine whether they should be deported.[10]

How does this relate to what is going on today? Let us not forget about Osama Bin Laden. After a decade long manhunt, the Pakistani government offered intelligence to the Central Intelligence Agency ("CIA"), which led to the capture of good Ol' Bin Laden who was found hiding within Pakistani borders.[11] More specifically, he was found in a fortified compound located the distance of a football field from the front door of Pakistan's Top Military Academy, which was the equivalent to the United States' West Point Military Academy.

Why mention that the San Bernardino terrorists were Pakistani or that Osama Bin Laden was hiding in a Pakistani fortress? Court precedent does not pose a significant challenge to a proposed ban on Muslims. Further, precedent heavily favors a ban on immigration from countries that have sponsored terrorist activity and have displayed hostility towards the United States.

Now, let us fast-forward four years to the terrorist attacks by Muslim-Pakistani descendants, or Pakistani born terrorists, and the statements of Republican frontrunner Donald Trump. The more logical political approach is to propose a ban on immigrants from designated Middle Eastern countries with high rates of terrorist activity.[12] Donald Trump's endgame is to temporarily ban all Muslims entering the country until we can figure out what is going on.[13] Can the President in-fact stop people of Muslim faith from entering the United States? Well, an Executive Order is by its nature, law, and 8 USC 1182(f) gives the President the power to regulate immigration at his discretion. But, what about the whole "freedom of religion" thing that's found in our Constitution?

The First Amendment of the U.S. Constitution plainly states that Congress shall not make a law that would discriminate on the basis of religion.[14] Yet, right wing "Trumpers" are waving their fists, claiming that the Constitution protects the rights of American citizens and not the rights of persons who are not U.S. citizens, especially those without any physical presence on United States soil. That is not to say that immigrants do not have rights when affected by U.S. law.[15] In fact, the Equal Protection Clause, and not the Free Exercise Clause, provides that Muslim immigrants are provided protection under the law. The Court has addressed the extent of this protection when it involves illegal aliens who reside *on* U.S. soil.[16] Yet, Trump's proposed ban affects the Equal Protection rights of aliens-immigrants who are *not* on U.S. soil. In effect, there is no law that guarantees a Muslim access to United States soil.

Thus, while Donald Trump's proposal to temporarily ban all Muslims may be volatile to some, it may be seen as a boon to national security for others. Further, while his proposal may violate important American values, it *just may* be Constitutional.

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THE MULTILINGUAL LAWYER

By Ashley Dorwart

Seven thousand one hundred two: that is how many different living languages are reportedly spoken around the world.[1] Of these 7,000 languages, how many would you estimate are actively spoken throughout the United States? If you guessed over 300, you would be correct.[2] For over 166 years, the United States Census Bureau ("USCB") has been making inquiries regarding the languages spoken by the people of the United States of America.[3] However, it is statistically difficult to figure out exactly how many languages are spoken within the United States, especially since the USCB's survey does not necessarily include people who know one, or more, languages other than English if the language is not spoken in the home.[4] Even if we are to use the statistical number provided for only second-language speakers (other than English) in the home, it totals nearly a quarter of the entire population of the United States, and that is a staunchly conservative number.[5]

With over 60,000,000 people actively speaking languages other than English in the home, it is no wonder that politicians in various areas of the political arena have pushed for inquiries into English as-a-second-language programs. Nor is it any wonder that sub-agencies of the government have been dedicated to limited English proficiency and state governments have sought to declare English as an "official" language of their states.[6]

After putting these numbers, statistics, and political feelings aside, one thing is certain: attorneys face increasing demands to provide full services to their clients, including services in their native languages. In fact, in 1978, Congress enacted legislation entitling both criminal and civil defendants the right to understand their proceedings by using English certified interpreters, if the defendants faced prosecution on behalf of the United States.[7] Further, while the Court Interpreters Act affects only the cases brought by the US Government, many states have begun to require hearings and trials for defendants in a "known tongue." Outside of legislation, the court's ability to have a qualified interpreter has also seen an increase in its price tag. Two examples, though hundreds of miles apart, demonstrate the increasing demand for interpreters—in just one decade New Mexico saw an increase of nearly 76% in the demand for court interpreters from $4.2 million in 2004 to $7.4 million in 2014.[8] Far to the north, in Ohio, an increase from $55,000 in 1998 skyrocketed to over $1.1 million in 2010.[9] As diversity in the melting pot that is America expands, demand for multilingual abilities steadily rises as well.

These costs only reflect the costs just two states are spending yearly, but do not break the surface of the costs expended by even larger populations or private firms. For those who have persevered to learn a language other than English, the great news is that you may have a new avenue to explore for success in the future. The National Center for State Courts provides a program for forty states called the Consortium for State Court Interpreter Certification. Through a series of orientations in ethics, vocabulary, and skills, along with both a written comprehension exam and an oral examination of sight, consecutive, and simultaneous interpreting skills, and a few fees, one can become a certified court interpreter in the following languages: Arabic, Bosnian/Serbian/Croatian, Cantonese, Chuukese, French, Haitian, Creole, Hmong, Ilocano, Korean, Laotian, Mandarin, Marshallese, Polish, Portuguese, Somali, Spanish, Tagalog, Turkish, and Vietnamese.[10]

While it may be too late for some lawyers to turn back the clock and spend the time and dedication to learn another language during their undergraduate studies, there is no shortage of opportunities to still commit time to learning a new language. Whether through private tutoring, courses at a local college, or even through an online university, the necessity of the ability to speak, read, and write in a language other than English is only increasing. As with emerging technologies or trends in the legal field, investing in a language skill can be invaluable not only for the lawyer, but also for the clients. Finally, for the individual who already fits the profile of a multilingual-master, then becoming an official court interpreter is another great option to both further his or her career and provide a service to those in need.[11]

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WHERE ARE YOU FROM?

By Brian Ashby

The famous poet Emma Lazarus wrote "[g]ive me your tired, your poor, [y]our huddled masses yearning to breathe free" as well as the "wretched refuse of your teeming shore."[1] These familiar words are engraved on the Statue of Liberty's pedestal. They have greeted every immigrant who passed through Ellis Island. The poem promises a new world. It speaks of a place where, if you are willing to work hard, you can achieve anything, regardless of your race, religion, or creed. It is a promise that brought my mother and father to this country, and one that draws millions of people to the United States each year. It is the promise of hope: hope for a better life.

Although most immigrants express a willingness to work hard to attain the better life, some Americans view such willingness as insufficient. For example, Donald Trump, the leading Republican presidential candidate, has called "for a total and complete shutdown of Muslims entering the United States."[2] Such a stance is shameful in a country of immigrants. The people that come to America want to be judged on their own actions and not the actions of their native country. While disappointing, this stance is neither new nor novel. In fact, this country has routinely banned immigrants from coming to this country because of race and origin.

For example, in the 1800s, California experienced a significant increase in Chinese immigrants. Many of these immigrants were part of the gold rush of 1849 and were primarily laborers in the mines.[3] Americans who felt threatened by the influx of Chinese immigrants described the immigration of the Chinese as "a menace to [the United States'] civilization" and claimed that "their immigration was in numbers approaching the character of an Oriental invasion." Americans criticized the Chinese immigrants as refusing to assimilate into the American culture because they often "retained the habits and customs of their own country."[4] As their numbers grew, the people of California sought to stem the tide of Chinese immigrants. Congress eventually relented and granted their wish by enacting The Chinese Exclusion Act.[5] The first section of the act banned the immigration of Chinese citizens into the United States for a period of ten years.[6] This, in turn, resulted in many Chinese immigrants not being able to come to the United States. In the case of Chae Chan Ping, a Chinese immigrant who left the United States to visit China, the Chinese Exclusion Act kept him from being able to *return* to the United States.[7] The Supreme Court of The United States upheld Chae Chan Ping's exclusion from the United States on the grounds that it was the prerogative of a sovereign nation to determine who could enter and who could not enter its borders.[8] The Supreme Court did not take into consideration that the Chinese Exclusion Act was a broad and sweeping generalization of an entire country of people.

Moreover, since the *Chae Chan Ping* case, the United States Supreme Court and the lower courts have stated that Congress enjoys broad discretionary power to determine who may enter the United States and who may not.[9] Still, the second circuit stressed that Congress's ability to deny entry would be "an abuse of discretion if [such denial] were made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis such as an invidious

discrimination against a particular race or group."[10]

However, when Congress moved away from the National Origins Quota System of 1921, which only allowed for a certain amount of immigrants per year from a particular region, there seemed to be a move to a more individualized immigration system.[11] Yet, Congress still retained the broad power to ban entire countries from immigrating into the United States.

It is this broad power to deny an entire country of people that makes Mr. Trump's statements and stance worrisome. Banning a country is an effective way of banning a religion, a race, or an ethnicity. Most countries are not like the United States. Instead, many countries are significantly more homogenous than America. However, that is not to say that people within any given border are all the same. They have differing thoughts, views, and opinions. While some may never want to visit the United States, others dream of calling the the United States' "spacious skies and amber waves of grain[12]" their home.

When Congress bans an entire country, it stereotypes all of the individuals in that particular country. Doing so implies that the people from the stereotyped country have no individual identity outside of their country of origin. However, here in the United States, the negative effects of stereotyping are felt everyday. Therefore, able citizens should speak up and decry stereotyping thoughts, actions, and laws. If people do not speak for others in their time of need, then they only have themselves to blame if they meet a similar fate. As the great poet Martin Niemöller so eloquently stated:

> First they came for the Socialists, and I did not speak out—Because I was not a Socialist. Then they came for the Trade Unionists, and I did not speak out— Because I was not a Trade Unionist. Then they came for the Jews, and I did not speak out— Because I was not a Jew. Then they came for me—and there was no one left to speak for me.[13]

We all came from somewhere. I came from Barbadian immigrants. Where are you from? O

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THE WET-FOOT, DRY-FOOT POLICY:
THE CONTROVERSIAL MAKING OF A *LEGAL* IMMIGRANT

By Cameron Colledge

Immigration is one of the hottest and most debated political topics in the United States. One of the main reasons is the rising cost of illegal immigration. Taxpayers are forced to foot the bill for housing, health care, education, and the justice system. These costs are estimated to be in the billions annually.[1] The United States of America's answer to the illegal immigration problem is to secure the borders. In essence, America's answer is to build higher walls and add more border patrol agents, both of which will stop illegals from entering. However, there is a human element that should not be forgotten. Many illegal immigrants are not just coming to the United States; rather, they are actually trying to escape something else. Many are trying to get away from poverty stricken countries, oppressive governments, wars, and conflicts. In essence, coming to America may be their only option for survival. Yet, even with the high stakes of life, not all immigrants are created equally.

The United States of America has a policy in place that if an illegal alien is caught in the United States they will be punished. An illegal alien's first offense can result in a fine, serving up to 6 months in prison, or both. For any subsequent violations, an illegal alien faces heftier fines, up to 2 years in prison, or both.[2] Then, after serving their time in prison, they will be deported to their country of origin. Under the United States immigration policy, the following are subject to these penalties: "[a]ny alien who: (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful

concealment of a material fact."[3] This standard is applied pretty much across the board, unless you are Cuban.

Cuban nationals are not held to the same illegal immigration standard as most other countries. In the mid 1990's, the Bill Clinton administration responded to a mass influx of Cuban immigrants by revising the Cuban Adjustment Act of 1966.[4] The new policy became known as the "wet-foot, dry-foot policy." This policy called for the return to Cuba of any Cuban immigrants intercepted at sea. However, any of those Cuban immigrants who reached United States soil were allowed to stay. Basically, Cuban immigrants who reached the shores of the United States were allowed to make the United States their home, could qualify for expedited resident status, and could possibly attain United States citizenship.[5] The reasons underlying the Cuban policy were: "1) to ensure national security; 2) to provide a safe haven for victims of persecution; 3) to reduce administrative burdens; and 4) to channel migrating Cubans into the American workforce."[6]

While these policy reasons seem commendable, wouldn't the United States and immigrants from countries *other than Cuba* benefit from similar immigration policies? Even if a Cuban national enters the United States' soil through another country, they are still entitled to the wet-foot, dry-foot policy and are allowed to stay in the United States. Many immigrants from other countries view this as a "slap in the face." For example, Yasiel Puig, a Cuban national and now professional baseball player for the Los Angeles Dodgers, was smuggled into the United States via Mexico.[7] Mr. Puig was transported from an isolated beach in Cuba to a fishing village near Cancun, Mexico via a drug cartel's smuggling boat.[8] Mr. Puig then eventually entered the United States by crossing the border into Brownsville, Texas.[9] The smugglers and the financier were charged with crimes in Mr. Puig's case.[10] Mr. Puig, however, was allowed to stay in the United States.

Part of the reason that Mr. Puig came to the United States via Mexico was to avoid the MLB draft rules that would handcuff his earnings for the first five years of his career.[11] This fact is not really at issue. What is at issue is the fact that Mr. Puig was able to flee Cuba to Mexico, enter the United States of America, and upon entry was granted the same wet-foot, dry-foot status as any other Cuban national. Many Cubans are now trying to gain entrance into the United States via Mexico, which is the same way that Mr. Puig did. The International Business Times reported on September 10, 2015, that "Texas is on pace this year to set a new record for the number of Cubans trying to enter the United States through the Lone Star State, with about 60 percent more migrants from the island nation."[12] Many of these illegal immigrants will be allowed to stay, when under any other circumstances, a similar illegal immigrant from

a country other than Cuba would be facing fines, jail time, and deportation. The wet-foot, dry-foot policy is not fair to anyone, including the United States of America.

"Criminals" is the label that is given to most illegal immigrants from Mexico and many other countries. They are treated as if they are ruining the United States. Yet, Cuban refugees are treated as victims and are more readily allowed to stay in America, even if their entry into the United States comes via Mexico. Congress has recently introduced bills that involve the repeal of the Cuban Adjustment Act and wet-foot, dry-foot policy because of the recent reestablishment of relations with Cuba. These repeals are rooted in the idea that the "special treatment Cuban nationals receive under the Cuban Adjustment Act and wet-foot, dry-foot policy are no longer applicable and fail the "urgent humanitarian reasons" and "significant public benefit" tests."[13] Members of Congress who have called for the repeal have noted that the repeal is necessary because "Cuban nationals should be treated under the same immigration rules as nationals of other countries with which the United States has diplomatic relations and should not receive preferential treatment."[14] I'm not arguing that the United States should do away with the wet-foot, dry-foot policy, even though it seems unfair to immigrants from other countries. However, if the United States is going to keep this policy in place, Congress needs to find and implement new alternative policies that treat all refugee and immigrant

groups the same.

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FINDING THE PROPER STANDARD

By Daniel Whitehead

One of the undisputed benefits of an open immigration policy is that it leads to a broader consideration of issues. The introduction of a different perspective can illuminate the dimensions of a problem hidden to its first viewers. Thus, "diversity" is celebrated. A perspective, though, is good only because it is reasonable. An unreasonable, or suprarational, perspective has no place in American jurisprudence. Unfortunately, the plurality of perspectives flowing into the United States poses a threat to our common law.

I cite the introduction of Islamic standards of rationality into American law because it is instructive. In *S.D. v. M.J.R.*, the appellate court found that the lower court erred in concluding that a Muslim man, who repeatedly engaged in nonconsensual sex with his wife, was not guilty of criminal sexual conduct because his demands for sex from his wife were "consistent with his practices.[1]" The Muslim husband believed that his sexual prerogatives were "according to [his] religion" and that he was permitted to "do anything" to his wife. Furthermore, he was of the persuasion that she "should submit" to anything he desired.[2] The lower court had determined that no criminal intent existed, because the Muslim husband did not believe he was doing anything wrong.[3] Accordingly, it determined not to issue a restraining order against the Muslim husband to protect his wife.

Thankfully, the appellate court disagreed and ordered the lower court to issue a restraining order. Right reasoning emerged in the appellate court, but there are more instances of the lower court's judicial temperament plaguing the common law. The problem lies in the inability of the courts to define the contours of reasonable behavior. The lower court was not relying upon an objective standard of correct behavior. Instead, it adopted the arbitrary moral posturing of the Muslim defendant. This adoption presupposes an incorrect understanding of what makes up reasonable behavior. The lower court believes that the Muslim, Christian, Hindu, and atheist should be subject to different legal standards. In other words, it believes that different persons should be subject to different standards of reasonable behavior.

This position is contrary to the nature of the common law. The common law is rooted in the fertile soil of the *lex naturale*. The natural law is nothing other than conformity to what is actual. Gravity is actual.[4] A person conforming his conduct to the actual existence of gravity, does not leap off tall buildings. The natural law is applicable in the case of rape. Rape is nonconsensual sex. A person conforming his conduct to the correct attitude about rape does not rape. Rape is not defined arbitrarily. It is as real as gravity. Muslims, Christians, and atheists should not leap off tall buildings nor rape. They should not do these things because they are reasonable and because each is able to conform his conduct to what is actual.

The conclusion of the lower court brings into relief one of the problems our common law is struggling with in the face of religious and ideological pluralism. If the courts are not referring to a normative standard applicable to all reasonable persons, it must resort to an arbitrary one. Statements like "at the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life" erode a proper understanding of law's purpose.[5] Decisions endorsing this view promote the adoption of unreasonable and arbitrary perspectives which tolerate even cases of rape. Only a judiciary which has lost its sense of purpose could have devolved into the unconfident state it finds itself in now. In the absence of an objective standard and confronted by the innumerable standards being introduced to the United States, it grasps for reasons to set arbitrary limits, endorse unreasonable views, and condone vile behavior (like rape). If our judicial system is to escape the specter of unsound reasoning and inconsistent application of law, it must return

to the natural law.

Again, the natural law means knowing what is actual and conforming one's conduct to it. A reasonable person conforms his conduct to what he knows. An unreasonable person does not. Law promotes reasonable conduct and dissuades us from unreasonable conduct. The same holds for case law. Reasonable conduct leads to a good state of affairs. Unreasonable conduct does not. A legal understanding rooted in what is actual would be able to direct us toward what is reasonable. It would certainly be able to condemn rather than condone instances of rape. Diverse perspectives are only valuable if they promote reasonable conduct rooted in knowledge. Knowing what is actual leads to extraordinary things. Knowing what gravity, thermodynamics and chemical combustion are lead to things like space exploration. Knowing what law, justice, and equity are lead to peace and progress.

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AMERICAN SECURITY AGAINST FOREIGN ENEMIES ACT

By John Manni

Immigration has been vital to America since its birth. Hopeful individuals seeking opportunity and refuge were welcomed and helped build America into a great nation. Today there are over 40 million immigrants within the U.S. and millions more still seeking a life behind its border.[1]

Those seeking entry must be accounted for and cleared as safe because there is a real threat that one among them will enter with intent to do harm. Individuals like these have already entered our country and their acts have terribly wounded the lives around them.[2]

Our biggest threat right now comes from enemies who set aside personal gain on a quest to destroy Americans and those with similar cultures. ISIS is a terrorist organization holding land in Syria. Their path of destruction has disrupted the lives of millions across the globe. The conflict ISIS began places a new group of Syrian refugees on our doorstep. Though welcoming, America must be cautious and think first and foremost about its national security. While testifying before Congress, FBI Director James Comey stated, "there is a risk associated with bringing anybody in from the outside, but especially from a conflict zone like that."[3]

The House of Representatives recognized this threat when it introduced H.R. 4038, the American Security Against Foreign Enemies Act ("SAFE"). SAFE passed the House in a 289-137 vote on November 19th, 2015. The bill's purpose was to tighten up security screening of refugees from Syria and Iraq.[4] The bill would "expand background checks on Iraqi and Syrian refugees hoping to enter the United States."[5] On January 20th, 2016 the Senate blocked SAFE in a 55-43 vote to advance, failing by five votes.[6]

By voting down SAFE, the Senate created a high-risk threat to our homeland. Though the vast majority of the refugees are peaceful, the current refugee program leaves the U.S. vulnerable to terrorist infiltration.[3] FBI Director James Comey admitted that there are "certain gaps … in the data available to [the agencies]" but failed to address who will exploit those gaps.[3]

ISIS is on a rampage spreading terror and destruction around the world. On Friday November 13th, 2015, ISIS attacked Paris, France.[7] Gunmen and suicide bombers targeted stadiums, restaurants, bars, and concert halls and killed 130 people. President Francois Hollande described the attack as an "act of war."[7] While suicide bombers aimed their attack at the town's stadiums, gunmen massacred the popular nightlife locations around the town's center. The deadliest attack of the night occurred at a concert venue when three armed men rushed into the back of the hall and opened fire, killing eighty-nine and sending at least ninety-nine more to the hospital in critical condition. These attackers potentially entered France though the Syrian rebel program as a part of their plan to attack Paris. Waiting for the perfect time, they struck when they could do the most damage and killed hundreds of people.

On November 16th, 2015, ISIS released another video to the world. In it, ISIS threatened the U.S. and named American soil as its next target. Surrounded by men with guns, an ISIS member exclaimed, "I swear to God, as we struck France in its stronghold Paris, we will strike America in its stronghold Washington."[8]

The Syrian refugee program offers ISIS and other terrorists the opportunity to infiltrate our borders and make good on their promise. Like the Boston Marathon bombers who were granted asylum status as children, terrorists now can exploit the refugee program's weaknesses to cause harm to America.[3] Unlike other areas of crisis, the refugees here are from a part of the world heavily influenced by this group set on destroying America and Western society.[3]

Though SAFE was portrayed as imposing harsh rules,

the Act simply required that a refugee be cleared by the FBI, DHS, and DNI before being allowed into the country. Attorney General Loretta Lynch stated that to ask her or other members of the administration to make "personal guarantees would effectively grind the program to a halt."[9] In reality, the threat we are facing requires serious measures. Individuals fleeing high-risk areas need to be cleared in all departments to strengthen our national security.

Though House Homeland Security Chairman Michael McCaul affirmed how vital it was for SAFE to pass legislation, it failed and left Americans without adequate protection. Something must be done for "we have been informed by our intelligence community that individuals linked to terrorism in Syria have already attempted to enter our country through the refugee program, and just this month the FBI arrested two Iraqi refugees inside the United States with ISIS ties."[6] SAFE called for collaboration between the security departments to fill the gaps in the nation's security. Though it is impossible to make our nation completely safe, by mandating that agencies work together to clear a potential threat, we can fortify our borders.

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THE REAL ID ACT:
OUR DE FACTO NATIONAL IDENTIFICATION SYSTEM

By John Spurlock

In 2005, Congress enacted the Real ID Act ("Act"), which officially established federal standards for the state-issued driver's license system. Although the Act was founded on national security concerns, the means used to further that purpose frustrates the relationship between the state and federal governments. Specifically, the Act fails to use the appropriate means to preclude terrorist immigrants from obtaining fraudulent identification because it violates the Constitution by commandeering the states' legislative process. This article addresses the Act's purpose and text, analyzes the constitutional considerations, and finally offers reasonable alternatives to replace the Act.

U.S. Rep. Sensenbrenner, the Act's sponsor, suggested the legislative purpose was rooted in national security concerns, and specifically sought to prevent terrorists from obtaining state-issued identification:

> **Just as the September 11th hijackers exploited loopholes in our U.S. immigration system, they also exploited loopholes in state driver's license systems. The terrorists moved freely [into and] throughout our country prior to September 11th. They took flying lessons, purchased airline tickets, rented cars, airplanes and condos. They were able to do these things because, as the 9/11 Commission found, the 19 hijackers had at least 30 pieces of identification, most fraudulently obtained. They ultimately used these identification documents to board the airplanes with which they murdered over 3,000 innocent people.**[1]

The Department of Homeland Security ("DHS") regulates and enforces the Act. The Act prescribes certain federal standards for State-issued driver's licenses to be used for official purposes. The Act defines "official purpose" broadly, including but not limited to accessing federal facilities (including access to courthouses), boarding federally regulated commercial aircrafts, entering nuclear power plants, and *any other purposes that the [DHS] Secretary shall determine*.[2] This definition is vague, nearly without limit, tending to indicate that the Act established a national identification system, giving DHS unilateral power to make rules, which are binding on the states. Further, Congress failed to establish clear standards to guide the Secretary's exercise of discretion in determining the meaning of "official purposes."

Additionally, the Act is burdensome. States must verify, *inter alia*, the applicant's immigration or citizenship status, social security number, physical address, and

true name. States must also confirm the cancellation of any other previously issued state identification and meet other special requirements that are subject to change without notice from the Secretary. The Secretary may offset the burdensome requirements by issuing federal funds to the states, but this is discretionary money and largely insufficient compared to the total cost required for the states to comply with the Act. In the event that the state identification system does not satisfy the federal licensing requirements, the Act is still applicable, and state identification cards must clearly indicate "on its face that it *may not* be accepted by any federal agency for federal identification or any other official purpose."[3] Also, states shall maintain and share that information in a database with other states and the federal government.[4] The heaviest burden is that states are subjected, under the Act, to adhere to federal standards rather than their own.

The Act actually commands the states, but not everyone agrees. According to the Attorney General of New Mexico ("AG"), the Act does not facially command that states must adopt the federal licensing standards.[5] The reason is likely based on the argument from Section 202(a)(1) of the Act which states: a "federal agency [not the states] may not accept, for any official purpose, a driver's license or identification card issued by a State to any person unless the State is meeting the requirements of this section."[6] The AG argues that the plain language of the Act instructs federal agencies alone, not the states.

However, the case is not nearly this clear-cut since the entire statutory scheme commands the states to follow the federal standards. The Act includes the language "State shall" ten times. For instance, "a State shall adopt the following practices in the issuance of drivers' licenses and identification cards."[7] Last, the language "federal agency or DHS shall" can be found within the Act, but it still indicates the states are being commanded by federal agencies. Specifically, in Section 202(a)(2), the language is crucial: "DHS shall determine whether a State is meeting the requirements [by the states submitting certifications]. Such certifications shall be made at such times and in such manner as [DHS and other federal agencies] may prescribe by regulation." The AG's argument fails when the Act is analyzed *in toto*. The Act commands the states and DHS is charged with commanding the states to implement a mandatory federal program.

The Act is unconstitutional. Congress does not have the power to command the states or use the states to implement a mandatory federal program. In *New York v. United States*, it was undisputed that Congress could, under the Commerce Clause, regulate the interstate market in waste disposal. However, "Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'"[8] The Court opined that the Commerce Clause "does not authorize Congress to regulate state governments' regulation of interstate commerce."

Similarly, the Act unconstitutionally employs state governments as mechanisms to enforce the federal licensing requirements. Even if the federal government could employ the states under the Act, the punishment for noncompliance still violates the constitution as it precludes individual citizens' right to travel and access to federal buildings. Specifically, the Act forces state legislative bodies to decide whether their citizens should suffer the consequences of being denied the ability to board commercial airlines or to enter federal buildings, if said citizen presents a state driver's license for purposes of such access and are denied access because of the state's inability to adhere to federal license standards.[9]

Accordingly, the Act is a significant overstep of federal power by converting states into instrumentalities of federal agencies and denying individual citizens travel and access to federal courtrooms. Alternative means that could fix the unconstitutional nature of the Act are as follows: require every airplane passenger to acquire a passport before boarding, create a federal identification system by way of the preemption doctrine, or propose a uniform set of rules similar to the Uniform Commercial Code or the Model Penal Code whereby the states have the option to help reduce fraudulent issued state identification cards to terrorist immigrants.

We must continue to foster a good relationship between the states and the federal government in order for our system of dual sovereignty to survive. The Constitution established that relationship by making plain boundaries that states and the federal government must adhere to and jealously guard, so that no single institution gains too much power. Statutes like the Real ID Act serve to create friction between our governments, while frustrating the original purpose to keep Americans safe. ○

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THE RACE TO PROTECT AMERICA'S IMMIGRANT FAMILIES THROUGH THE IMPLEMENTATION OF THE DEFERRED ACTION FOR PARENTS OF AMERICANS AND LAWFUL PERMANENT RESIDENTS PROGRAM ("DAPA") AND THE DEFERRED ACTION FOR CHILDHOOD ARRIVALS ("DACA")

By Maria Contreras

In June 2012, the Department of Homeland Security ("DHS") implemented the Deferred Action for Childhood Arrivals program ("DACA"). In the DACA Memoranda sent to agency heads, the DHS Secretary "set[] forth how, in the exercise of . . . prosecutorial discretion, [DHS] should enforce the Nation's immigration laws against certain young people." In doing so, the DACA Memoranda listed five "criteria [that] should be satisfied before an individual is considered for an exercise of prosecutorial discretion."[1]

Later, in November 2014, DHS expanded DACA by broadening eligibility and extending the period for which DACA and the accompanying employment authorization is granted to three-year increments rather than two years. The DHS Secretary also directed USCIS to establish DAPA, which is a process that applies to "individuals who . . . have, as of November 20, 2014, a son or daughter who is a U.S. citizen or lawful permanent resident" and meet five additional criteria.[2] The implementation of this executive action furthers the most important of the administration's objectives: to keep families united.

The profound importance of family unity is codified in the nation's immigration laws and recognized as a protected liberty interest under the U.S. Constitution. See, e.g., *Moore v. City of East Cleveland*[4] ("[O]ur decisions establish that the Constitution protects the sanctity of the family precisely because it is deeply rooted in the Nation's history and tradition."); *Stanley v. Illinois*[5] (noting that "[t]he Court has frequently emphasized the importance of the family"). The truth is that families are routinely torn apart through deportation. Additional objectives for implementing DAPA and expanding DACA include the following: providing as many as five million immigrants with temporary relief from deportation, increasing U.S. gross domestic product, increasing tax revenue, and raising wages.

Lamentably, twenty-six states challenged DAPA under the Administrative Procedure Act ("APA").[6] The states sued to prevent DAPA's implementation on three grounds: First, they asserted that DAPA violated the procedural requirements of the APA as a substantive rule that did not undergo the requisite notice-and-comment rulemaking. If DAPA conferred some sort of benefit, then it would probably constitute a rule within the APA.[7] However, the DAPA Memorandum only provides guidelines for the exercise of prosecutorial discretion and does not itself confer any benefits to DAPA recipients. Second, the states claimed that DHS lacked the authority to implement the program even if it followed the correct rulemaking process because DAPA was substantively unlawful under the APA.[8] Third, the states asserted that DAPA was an abrogation of the President's constitutional duty to "take care that the laws be faithfully executed.[9]"

In *Texas v. United States*[10], the district court, issued a nationwide injunction that has the direct effect of harming the public interest across this country.[11] The grant of the court's preliminary injunction and corresponding delay in the implementation of the executive action is contrary to the public interest because the executive action would have increased public safety by encouraging immigrant residents to trust and cooperate with law enforcement and fueled economic growth through job creation and new tax revenue.[12] Additionally, the executive action would have facilitated the full integration of immigrants into their communities and promote family unity. Therefore, the district court failed to consider the potential harm to the public interest that its preliminary injunction would cause.

As an immigrant and a mother, I empathize with the millions of mothers who wake up every day and wonder if they will be separated from their children due to their legal status. The implementation of this executive action will provide a wide variety of benefits. More importantly, it will keep families together, allow parents to feel safe when they take their kids to school, and allow thousands of families to live without the fear of waking up one day without their children next to them. ○

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UNDOCUMENTED IN DEPENDENCY COURT

By Monica Kelly

With the best interest of Florida's children in mind, the Florida Department of Children and Families ("DCF") aims to protect abused, neglected, and abandoned children by subjecting parents to the jurisdiction of dependency court. The system can be further complicated by the undocumented status of one or both of the child's parents. With the ultimate goal of DCF being reunification of parent and child, the added obstacles facing illegal immigration results in fewer reunifications and far more incidents of termination of parental rights than necessary to protect these children.

When a child is removed from the care of their parents, DCF has three options: (1) withhold adjudication, (2) dependency, and (3) termination of parental rights. Withholding adjudication allows the child to remain in his or her home while requiring the parent(s) to complete a case plan addressing their specific parenting issues. Depending on the needs of the parent, case plans are tailored to each family and can involve: requirements of regular visitation with the child; substance abuse treatment; parenting classes; domestic abuse treatment/classes; securing a job; etc. A dependency option requires a child to be removed from the home while the parents complete a case plan. Termination of parental rights generally follows a substantially failed case plan or egregious conduct by the parent or parents, where the parent(s) permanently lose all rights to that child. Unfortunately, the latter option is more common among undocumented individuals, often because of their inability to complete their case plans.

According to the Pew Hispanic Center, approximately 5.5 million children live in households where at least one parent is an unauthorized immigrant, proving problematic for dependency courts across the country.[1] In twenty-six months, between July 2010 and September 2012, roughly 205,000 parents of U.S. citizen children were deported.[2] In cases involving child abuse, neglect, or abandonment, undocumented parents face extra difficulties in accessing and completing the services required by their case plan because their status as illegal immigrants prevents them, either physically (through detainment) or in practice, from procuring the services.

Detainment poses the most difficult set of circumstances for parents trying to reunify with their children. Parents detained by the Immigration and Customs Enforcement Agency ("ICE") have no way to complete their case plan tasks because none of the ICE detention facilities provide the programs required by the case plans. Further, detained parents are generally not able to participate in dependency court proceedings because ICE has not enacted adequate policies allowing them to appear via teleconference or in person. In the court's eyes, the failure to be present is evidence of the parent's unwillingness or inability to care for the child.[3]

Illegal immigrants that are not detained by ICE still face significant obstacles to reunification with their children. The undocumented status of these individuals often prevents them from participating in the programs required by their case plans because they are not registered citizens. Additionally, illegal immigrants have difficulty gaining, maintaining, and demonstrating employment sufficient to satisfy the requirements of their case plan because of their illegal status.

The child welfare system faces significant problems. One of the most heartbreaking issues is the termination of

parental rights based on immigration status and collaterally the inability to be available as a caretaker. Solutions are needed on the state and federal level to preserve the constitutionally protected right to raise children.

In 2011, the Applied Research Center produced "Shattered Families: The Perilous Intersection of Immigration Enforcement and the Child Welfare System," which received extensive media attention, sparking legislation.[4] In 2012, California passed *The Reuniting Immigrant Families Act*, which prevented the separation of families when the children of such families are stuck in the child welfare system.[5] This was the country's first piece of legislation addressing the separation of families resulting from the immigration enforcement system. The bill allows the children of California's undocumented parents to remain outside of the child welfare system whenever possible. If the families are involved in the child welfare system, it helps the parents access the appropriate care and case plan tasks and allows them due process.

In 2013, the Border Security, Economic Opportunity and Immigration Modernization Act (S.744) was introduced which, among other issues, addresses immigration reform specific to the needs of children.[6] This bill would change the national landscape by allowing states the power to delay termination of parental rights proceedings by considering an undocumented parent's detention or deportation. If passed, it would further require these state agencies to comply with certain criteria before filing a termination of parental rights. This 2013 Act would reform immigration on a national level by heightening the standards for state child welfare agencies.

There are still significant improvements to be made in the child welfare system regarding undocumented individuals, and by keeping the children's best interest at the center of these new pieces of legislation, the system will continue to improve.

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IMMIGRANTS, REFUGEES, AND TRUMP-SUPPORTERS! OH MY!

The Current Migrant Problem From A Catholic Social Teaching Perspective

By: Nicholas Michels

During the height of the news cycle coverage of the refugee crisis, memes that depicted the nativity while referencing the irony of hating refugees but celebrating a Middle Eastern couple were floating all over Facebook. What I found interesting was that it was a lot of devout Christians who were posting these kinds of memes. On the one hand, this was understandable. After all, Christian morality is built on the recognition of the inherent dignity of every human person: a dignity that was being forgotten by many. On the other hand, I couldn't figure out how so many people could dismiss the fact that this crisis would very possibly weaken a given nation's security if that nation were to let in these refugees. After all, there is good reason to believe that some of those refugees might identify as terrorists. Clearly, the situation today is not the same as it was during the time of Luke's Gospel.

Those really are the two extremes of the argument though, aren't they? Whether we are talking about the Syrian refugee crisis, or the immigration issue more keenly felt at our country's southern border, there tend to be two schools of thought. On the one side, there are those who advocate for completely opening a country's borders to whomever wishes to come inside because it is the humane thing to do. On the other side, there are those who advocate for completely sealing-off a country's borders because migrants bring nothing but trouble: some are terrorists, they will all take our jobs, they will vote a certain way, etc.

Both sides have their points. Since the anti-government protests and riots of the Arab Spring in 2010, nearly half of Syria's population has been killed or forced to flee from home.[1] Those who have survived can't get access to basic necessities such as food, water, and medical care. The result is millions of sojourners who are in dire need of help. On our side of the world, approximately 300,000 unauthorized immigrants enter the United States each year.[2] Most of these immigrants come from nations struggling with severe poverty, where it is often impossible for many to earn a living wage and meet the basic needs of their families. Given this reality, it is easy to understand why some people wish to throw open their borders to these suffering people.

However, this reality is only half of the picture. Since the mass migration of refugees from Syria into Europe began, problems have arisen. The November 2015 terrorist attacks in Paris by ISIS bolster the position of those who

would close the borders to Syrian refugees. In addition, there has been an increasing number of sexual assaults on European women by immigrants.[3] Meanwhile, in the United States, the widely recognized problem is that businesses will often hire illegal immigrants because they can get away with paying them significantly less than American citizens. This scenario results in unemployment for the American worker and the exploitation of undocumented workers. Given this reality, it is easy to understand why some people wish to completely seal off the borders.

But somewhere in between these two positions, one can carve out a position built on strong Catholic Social Teaching principles. On November 15, 2000, the United States Conference of Catholic Bishops (USCCB) issued a pastoral statement entitled *Welcoming the Stranger Among Us: Unity in Diversity*. In this statement, the USCCB laid out three important principles on Catholic Social Teaching on immigration that should govern any conversation on the topic.

Firstly, people have the right to migrate to sustain their lives and the lives of their families. This principle is rooted in the understanding that the fruits of the earth belong to all people for the sustaining and flourishing of human life. This is not to say that the Church refuses to recognize the rights of individuals to own private property. However, one does not have the right to use his or her private property without regard for the common good. Thus, if a person cannot achieve a meaningful life in his or her native land, that person has the right to migrate.

Secondly, a country has the right to regulate its borders and to control immigration. Like the first principle, this principle is rooted in regard for the common good. While people have the right to move, no country is bound to accept all those who wish to resettle there. Doing so risks putting that country's social and economic life in jeopardy. One could even argue that it merely shifts the problem from one country to another. After all, historically speaking, a mass influx of migrants tends to be a problem because the opportunity for a safe and secure life does not exist in the migrants' own land. But those opportunities won't likely exist in the destination they are seeking if the borders in that country aren't regulated properly.

Finally, a country must regulate its borders with justice and mercy. A nation may not merely decide to provide for its own people and no others. A sincere commitment to provide for the needs of all people must exist. Thus, if a nation finds itself in a position where it must limit immigration, that decision must be based on justice, mercy, and the common good, not on its own self-interest. This will often mean taking into account important factors such as the right of families to live together.

These three principles, rooted in Catholic Social Teaching, have at their core the interest of all parties involved in the debate. What these principles look like as embodied in actual policy is as diverse as the men and women to whom they would apply.[4] What they illustrate, however, is that the two leading schools of thought on the migrant issue need not be at war with one another. They can and should work together with a view toward the common good of all people.

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IMMIGRATION REFORM AND OBAMA'S EXECUTIVE OVERREACH

By Nicole Staller

Every four years, an American citizen stands before the nation, raises his right hand, and takes an oath swearing to "preserve, protect, and defend the Constitution of the United States."[1] President Obama has twice stood before this nation and taken the Presidential oath of office.[2] The United States Constitution places upon the President a duty to "take Care that the Laws be faithfully executed."[3] President Obama has failed to uphold his duty because executive actions authorizing the Deferred Action for Parents of Americans and Lawful Permanent Residents ("DAPA") and the Deferred Action for Childhood Arrivals ("DACA") are flagrant violations of the Constitution.

DACA is a 2012 executive action deferring the deportation of individuals who came into the country illegally as minors.[4] In addition to the deferment of removal proceedings for a period of two years, undocumented individuals who qualify under DACA receive a two-year renewable work permit.[5] In order for an individual to be eligible for DACA, the following criteria must be satisfied: he or she came to the United States under the age of sixteen; has continuously resided in the United States since June 15, 2007; was present in the United States on June 15, 2012; is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States; has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and is not above the age of thirty as of June 15, 2012.[6]

In November 2014, the Obama administration authorized an executive action expanding DACA.[7] The DACA expansion seeks to remove the age cap, extend the deferment and work permits to a three-year period, and adjust the entry date requirement to January 1, 2010.[8] Additionally, the same executive action seeks to implement DAPA, which defers the deportation of individuals who are in the country illegally but have a child who is a US citizen or permanent legal resident.[9] Undocumented individuals seeking deferment under DAPA must meet the same eligibility criteria as those applying for DACA and will also be eligible for legal work status.[10] While neither program offers a path to citizenship, or legal immigration status, there is no limit on the number of times the deferment action may be renewed.[11]

Although DACA in its original form has been allowed to proceed since its inception, the DACA expansion and DAPA are subject to on-going litigation.[12] In Texas v. United States, twenty-six states challenged the constitutionality of the DACA expansion and DAPA programs.[13] The district court found in favor of the states and issued a preliminary injunction enjoining the implementation of the DACA expansion and DAPA.[14] The Fifth Circuit Court of Appeals subsequently affirmed the district court's holding.[15] President Obama vowed to take the fight to the Supreme Court of the United States, and in January 2016 the Court announced that it would hear oral arguments during its current term, with a decision expected by June 2016.[16] With the unexpected passing of Justice Scalia in February 2016,[17] there is some uncertainty about how the Court may split without the staunchly conservative justice and also disagreement about when the Court will ultimately hear oral arguments and issue an opinion.[18]

The court was correct in enjoining the implementation of the DACA expansion and DAPA programs because they violate the "take care" clause of the Constitution. Under the take care clause of the Constitution, the President "shall take Care that the Laws be faithfully executed."[19] The take care clause imposes upon the President a mandatory duty to ensure care is exercised in the faithful execution of the laws that have been promulgated by Congress.[20] President Obama, both individually, and through his administration, has an absolute duty to enforce existing immigration laws in good faith. The DACA expansion and DAPA fail to do so. Instead of being a proper exercise of prosecutorial discretion, as President Obama and his administration assert, the DACA expansion and DAPA are an attempt to circumvent existing immigration laws.

Additionally, the DACA expansion and DAPA violate the separation of powers. The legislative, executive, and judicial branches are each endowed with powers enumerated in

the Constitution.[21] The power to enact and change laws is vested with the legislative branch.[22] While the Obama administration asserts that the programs are an acceptable exercise of prosecutorial discretion, and are allowed under the Constitution, this is disingenuous at best. President Obama has stated he "took an action to change the law" by authorizing the DACA expansion and DAPA.[23]

Allowing unconstitutional executive actions, such as the DACA expansion and DAPA, to take effect can have far-reaching, negative consequences. In a statement to the committee on the judiciary, Josh Blackman[24] argues that non-enforcement of immigration laws under the guise of prosecutorial discretion represents a dangerous precedent that could erode the rule of law.[25] While one group may see DACA and DAPA as an appropriate exercise of non-enforcement prosecutorial discretion, that group may feel differently if the justification is used in a different set of circumstances. For example, the same group may not be as supportive if a future administration adopts a non-enforcement policy towards tax-code provisions, healthcare regulations, or "entitlement" programs.

Comprehensive immigration reform is urgently needed. There are approximately 11.3 million unauthorized immigrants in the country.[26] However, the DACA expansion and DAPA are unconstitutional attempts at immigration reform. Productive dialogue is necessary, but as long as President Obama forces his will on the American people, this country will be unable to adopt effective constitutional immigration reform. ○

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THE BRAIN DRAIN:
THE CURE FOR A SHIPWRECKED AMERICAN MEDICAL SYSTEM

By Paul T. Udouj

The rise of the Affordable Care Act and the increasing number of aging "baby boomers" have pushed the United Sates medical system to a breaking point. Unfortunately, in all the discussions about expanding our system, we forgot a major point: we will not have enough doctors or nurses to sail this new "big boat." Congress' inability to repeal "ObamaCare" leaves us with few options. Presently, "caregiving costs are at an all-time high"[1] and continue to escalate. Therefore, as these new and uncertain tides begin

to turn, we must either make policy changes in our current immigration system or suffer a catastrophic failure that will sink the whole *ship*.

Historically, when such economic conditions presented themselves, the capitalist system looked to its private sector to save itself. However, the rising cost of recruiting new doctors from overseas has made this a difficult task for hospitals. The few doctors that are recruited constitute but a fraction of what we actually need. The problem has grown beyond the capacity of private businesses to handle on their own.

Still, the shortage of doctors and nurses occurred even before we expanded our medical system. For example, "Kansas has been unable to recruit the maximum 30" medical professionals a year that it needs in order to keep its care at acceptable levels.[2] Congress attempted to solve this problem by passing the Nursing Relief for Disadvantaged Areas Act and the Immigration and Nationality Act. The Nursing Act allowed "foreign-born nurses to work in the United States" while the Immigration and Nationality Act, which replaced the quota system with a system that focused on immigrants' skills, targeted states like Kansas.[3]

Even urban communities that have historically been overstocked with medical professionals are now facing shortages as the new waves of immigrants pour in. Statistics show that minority communities "are crying out for medical practitioners who can understand their language and culture."[4] Thus, the only solution for our failing medical system is to set a new course by recruiting more doctors who can relate to the new growing immigrant population.

Congress will not be able to use our country's medical schools to steer this misguided ship away from disaster. The United States has traditionally been a hub worldwide for training medical professionals. However, countries may not wish to send their students to the United States if they feel we are poaching their staffs. The current J-1 Visas that allow a medical student to stay in the United State are rarely used because doctors would be expected by their sponsoring countries to return home. Even the number of doctors who stay in the United States after specialized training is so low that each state's health department cannot fill their current "*30* waivers of the J-1 home residency requirement for international physicians each year."[5] If we begin targeting visiting students and doctors, we would not increase our overall numbers enough to justify the damage to our reputation. It would hurt our medicals schools by making outside countries consider schooling locations that would not attempt to plunder their medical "assets."

The solution to our medical deficiencies is a forced "brain drain." A brain drain occurs when educated or professional people leave a particular place and move to another one that gives them better pay or improved living conditions. For example, many Latin American countries suffered brain drains caused by their weak economies. However, our system does not have the time to wait for the slow evolution of events to bring about such a migration. Instead, we should speed up the process by targeting medical personnel. This could include sending American diplomats into a country, such as Syria, which is in a growing crisis.

Syria is experiencing the beginning phases of a brain drain and would be an ideal location for this type of medical recruiting. We could offer US citizenship to the country's doctors and nurses thereby forcing the drain to pour into the United States. While liberals in the past have asserted that brain drains prevent a country from recovering after a crisis, such "worries about the 'brain drain' and its supposed effects appear to have diminished in the last decade or so."[6] The United States should use these assets instead of allowing them to drain into other markets across the globe like Russia, Turkey, and Saudi Arabia. We are not pirates taking what is not ours. The United States would simply be engaging in the free flow of the market by throwing the net wide open to catch qualified foreign personnel.

Moreover, not all the doctors who pour into the United States need to be put into the general system. Instead, we can create a new type of license that would allow specially recruited doctors to only practice in areas where we have shortages. For example, we can send our new Chinese doctors to American cities where the Chinese immigrant populations have boomed. The United States government can help hospitals reduce their cost when recruiting overseas. The immigration of doctors and nurses must no longer be reactive, but proactive. The U.S. government must go out in the world and bring home more medical personnel to pull this ship away from the dangerous waters filled with baby boomers and steer us clear of the rocks built by the Affordable Care Act. O

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