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Recommended Citation

Huyen Pham & Pham H. Van, *State-Created Immigration Climates and Domestic Migration*, 38 U. Haw. L. Rev. 181 (2015).

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State-Created Immigration Climates and Domestic Migration

Huyen Pham^{*}
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ABSTRACT

With comprehensive immigration reform dead for the foreseeable future, immigration laws enacted at the subfederal level -- cities, counties, and states -- have become even more important. Arizona has dominated media coverage and become the popular representation of the states' response to immigration by enacting SB 1070 and other notoriously anti-immigrant laws. Illinois, by contrast, has received relatively little media coverage for enacting laws that benefit the immigrants within its jurisdiction. The reality on the ground is that subfederal jurisdictions in the United States have taken very divergent paths on the issue of immigration regulation.

Compiling city, county, and state immigration laws from 2005-2011, we created a unique database that enables us to build the Immigrant Climate Index ("ICI"): a measure of the divergent immigration climates created by individual jurisdictions. The reasons for this divergence have received surprisingly little analysis; existing analysis has focused on the presence and effect of immigrants and the political ideology of the subfederal jurisdictions.

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We have had the opportunity to present this paper at the Canadian Law and Economics Association's Annual Meeting (University of Toronto Faculty of Law); the Indiana University Center for Law, Society, and Culture; the American Association of Law Schools Workshop on Poverty, Immigration, and Property; St. John's University School of Law; the University of Newcastle Law School (Newcastle, Australia); Iwate University (Iwate, Japan); and the Vietnamese Economist Annual Meeting (Ho Chi Minh City, Vietnam), and we would like to acknowledge the helpful comments we received. Specifically, we thank Jack Chin, Marc Helbling and the other editors of the Migration and Citizenship Newsletter of the American Political Science Association, Carissa Hessick, Margaret Hu, and Jayanth Krishnan for their thoughtful feedback. The data collection was a labor of love, and so we are indebted to our capable and hard-working team of research assistants: Michael Doyle, Paul Elkins, Diyi Li, Carol McCord, Michael Schneider, Joakim Soederbaum, and Jessica Theriot.

Our study demonstrates that there is another important factor to consider. Instead of looking outward to the foreign immigrants moving into a jurisdiction, we look inward and study the impact of *domestic* migrants (those who moved into a state from another state within the past year). Using panel regressions incorporating our ICI scores and census data, we observe that domestic migrants are affecting the immigration climate of their new home states. Domestic migrants are more likely to be educated and to be politically active, and thus to carry their immigration preferences to their new states. Specifically, domestic migrants coming from states with negative ICI scores have a negative effect on their new states' ICI scores. Moreover, the influence of domestic migrants is magnified, and more negative, when they move from states that are predominantly white, to states with large immigrant populations. Our results support a story of intergroup conflict, in which domestic migrants react negatively to the racial, ethnic, and cultural dislocation they experience in their new home states.

I. INTRODUCTION

Immigration laws enacted at the subfederal level – by cities, counties, and states -- have become an enduring part of the United States (“U.S.”) legal landscape. Though subfederal immigration laws are still occasionally the subject of legal challenges, the focus of the national conversation in the U.S. has largely shifted from *whether* to have subfederal immigration regulation, to *what form* that regulation should take.

The significance of this shift is best appreciated through a historical lens. Though state and local governments have always been involved in the integration of immigrants within their jurisdiction, the phenomenon of direct immigration regulation at the subfederal level can be traced to the 9/11 attacks. In June 2002, Attorney General John Ashcroft invited states to enforce civil immigration laws as part of “our narrow anti-terrorism mission.”¹ This invitation created considerable controversy because it reversed the longstanding federal position that state enforcement of immigration laws was limited to criminal laws (e.g., human trafficking laws).² Using their “inherent authority” as sovereigns, Ashcroft maintained

¹ Attorney General John Ashcroft, Prepared Remarks on the National Security Entry-Exit Registration System (Jun. 6, 2002), <http://www.justice.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm> (last visited March 4, 2015)[hereinafter “Ashcroft”].

² See Memorandum Opinion on Assistance by State and Loc. Police in Apprehending Illegal Aliens, 20 Op. O.L.C. 26, (1996), <http://www.justice.gov/sites/default/files/olc/opinions/1996/02/31/op-olc-v020-p0026.pdf> (opining that local police may enforce

that states could also enforce civil immigration laws (e.g., laws prohibiting visa overstays).³

Civil rights and immigrant groups harshly criticized this invitation, arguing that immigration law enforcement by state and local police would have dire policy results, including increased criminal activity as immigrants would be reluctant to report crimes or to cooperate with criminal investigations and increased civil rights violations as police without immigration law training tried to make determinations about who has legal immigration status.⁴ These arguments, as well as legal arguments about the federal government's authority to preempt subfederal immigration regulation, have been made in many different federal lawsuits, challenging the legality of both positive and negative immigration laws.

The legal results have been mixed. The local ordinances requiring that landlords check the immigration status of potential tenants have been mostly struck down.⁵ Similarly, state laws that offer in-state tuition to college students regardless of immigration status have been largely upheld.⁶ In 2011, the U.S. Supreme Court upheld employer sanction provisions in the Legal Arizona Workers Act, ruling that state suspension of business licenses for employers who hire unauthorized workers were not preempted by federal law.⁷ A year later, the Court struck down most provisions of Arizona's SB 1070 but permitted the state to enforce its "show me your papers" law, which requires state police to check the immigration status of those they suspect are in the U.S. illegally.⁸ The differences among these cases should be emphasized; they involved different laws, different enacting jurisdictions, and different legal arguments. Yet, the overall message from the federal courts is similar: some forms of subfederal immigration regulation are legally permissible, and states, cities, and counties have to choose carefully from among those forms.

civil but not criminal provisions of the Immigration & Nationality Act).

³ Ashcroft, *supra* note 1.

⁴ See Press Release, American Civil Liberties Union, ACLU Seeks Disclosure of "Secret Law" on Local Police Enforcement of Federal Immigration Laws (Apr. 14, 2003), <https://www.aclu.org/news/aclu-seeks-disclosure-secret-law-local-police-enforcement-federal-immigration-laws>.

⁵ See, e.g., *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 535-36 (5th Cir. 2013) (holding that the city ordinance requiring tenants to show proof of legal status was preempted by federal law) *cert. denied*, 134 S. Ct. 1491 (2014).

⁶ See, e.g., *Martinez v. Regents of the Univ. of California*, 241 P.3d 855, 870 (2010) (holding that California colleges may give in-state tuition rates to students regardless of immigration status).

⁷ *Chamber of Commerce of the U.S. v. Whiting*, 131 S. Ct. 1968, 1987 (2011).

⁸ *Arizona v. United States*, 132 S. Ct. 2492, 2510 (2012).

Against this backdrop, states, cities, and counties have taken divergent paths. Some subfederal jurisdictions have been very active in enacting immigration regulations, while other jurisdictions have largely remained silent. Initially, cities and counties led the charge with law enforcement regulations (either requiring or prohibiting their law officers from enforcing immigration laws). States moved into the regulation picture later; with authority to regulate in more areas, states have surpassed city and county activity, enacting immigration laws related to education, public services, and employment, as well as law enforcement.⁹ The combined activity of states, cities, and counties has resulted in an explosion of subfederal immigration laws.

The jurisdictions that have enacted restrictive laws have received the lion's share of media attention. For example, Arizona, when it enacted SB 1070, received widespread attention and a reputation as "the state most aggressively using its own laws to fight illegal immigration."¹⁰ Thus, Arizona with its highly restrictive laws has become the popular representation of how subfederal jurisdictions regulate immigrants within their jurisdictions. In contrast, other subfederal governments have, more quietly, enacted laws that benefit immigrants within their jurisdictions. For example, the state of Illinois in 2005 enacted a law allowing unexpired matrícula consular cards (issued by the Mexican government) to be used for state identification purposes.¹¹ Additionally, at the local level, cities and counties have also enacted laws beneficial for immigrants. For example, in 2007 Middlebury, Vermont enacted a law prohibiting its police from asking about immigration status, seeking out unauthorized workers, or engaging in racial profiling.¹²

Because of these divergent paths in immigration regulation, an immigrant living in one state may have a very different experience than an immigrant living in a different state. It is this different regulatory experience that we refer to as "climate." Thus, in order to understand the immigrant experience in the United States, it is crucial to understand the divergence in subfederal immigration regulation. To that end, we created the Immigrant

⁹ This decreased local activity can be explained, in part, by state laws that preempt local activity in a particular regulatory area. For example, in 2007, California enacted AB 976 that prohibits laws requiring landlords to check the immigration status of potential tenants. CAL. CIV. CODE § 1940.3 (West 2010).

¹⁰ Seattle Times News Service, *Ariz. Immigration Law Would Be Among Strictest*, SEATTLE TIMES, (last updated Apr. 15, 2010, 9:29 AM), <http://www.seattletimes.com/nation-world/ariz-immigration-law-would-be-among-strictest/>.

¹¹ 5 ILL. COMP. STAT. 230/10 (West 2014).

¹² MIDDLEBURY POLICE DEPT., UNDOCUMENTED FOREIGN NATIONALS GENERAL ORDER 2.48 (2007), <http://vtmfsp.org/sites/default/files/Middlebury.pdf>.

Climate Index (“ICI”), a unique measure of state-created immigration climate based on hundreds of state, city, and county laws collected from multiple sources over a seven-year period (2005-2011), the most active years of subfederal regulation).¹³ By assigning a number, either positive or negative, to each immigration regulation enacted within a state, the purpose of the ICI is to express, in quantitative terms, the regulatory climate that immigrants face, allowing comparisons among states and over multiple years.¹⁴

The ICI scores confirm and quantify the divergent paths that subfederal governments have taken in immigration regulation. For example, the difference in ICI score between the most positive state (Illinois) and the most negative state (Arizona) is an astonishing 519 points. To give context within the ICI’s scale, the 519-point difference is equivalent to Arizona having almost 130 more of the most restrictive immigration laws than Illinois has. The other states’ scores fall in a continuum between the scores of Arizona and Illinois.

What accounts for the different paths that cities, counties, and states have taken on immigration issues? Given that immigration is one of the most pressing issues that the U.S. faces, this question has received surprisingly little attention. Media attention has focused on incoming immigrants as the explanation, suggesting that large flows of unauthorized immigrants cause states to enact restrictive laws.¹⁵ Academic studies, using more limited data than our study, point to political ideology as the determining factor, concluding that more politically conservative jurisdictions tend to enact more restrictive immigration laws.¹⁶

¹³ In previous work, we introduced the ICI and reported some initial ICI scores based on data from 2005-2009. Huyen Pham & Pham Hoang Van, *Measuring the Climate for Immigrants: A State-by-State Analysis*, in STRANGE NEIGHBORS: THE ROLE OF STATES IN IMMIGRATION POLICY 21-39 (Carissa Byrne Hessick & Gabriel J. Chin eds., 2014).

¹⁴ States’ ICI scores over time can also be viewed in an interactive format at http://business.baylor.edu/van_pham/ICI/.

¹⁵ See Trip Gabriel, *New Attitude on Immigration Skips an Old Coal Town*, N.Y. TIMES, (MAR. 31, 2013), <http://www.nytimes.com/2013/04/01/us/politics/lessons-for-republicans-in-hazleton-pa.html> (suggesting that restrictive laws enacted by Hazleton, Pennsylvania are a reaction to the rapidly growing Hispanic population).

¹⁶ Jorge M. Chavez & Doris Marie Provine, *Race and the Response of State Legislatures to Unauthorized Immigrants*, 623 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 90 (2009); see S. Karthick Ramakrishnan & Pratheepan Gulasekaram, *The Importance of the Political in Immigration Federalism*, 44 ARIZ. ST. L. J. 1431, 1484 (2013) (concluding that local political contexts are better predictors of law-based restrictive actions); S. Karthick Ramakrishnan & Tom Wong, *Partisanship, Not Spanish: Explaining Municipal Ordinances Affecting Undocumented Immigrants*, in TAKING LOCAL CONTROL: IMMIGRATION POLICY ACTIVISM IN U.S. CITIES AND STATES 73, 89 (Monica W. Varsanyi ed., 2010) (arguing that political factors are more important than demographic pressures in explaining restrictionist

While these explanations provide some insight, our analysis points to a third factor that provides a more complete explanation. Our results suggest that domestic migrants (those moving into a state from another state) also influence the ICI of their new state. Using domestic migration variables, which we created from the American Community Surveys of the U.S. Census Bureau, we observe correlations between the climate scores of a domestic migrant's home state and the state she moves to.

By employing panel regressions, we were able to isolate the effect that domestic migrants have on their new home states' ICI scores.¹⁷ Specifically, we observed that domestic migrants moving from more restrictive states tend to have a negative influence on their new home states' climates. The political influence of domestic migrants makes sense in light of separate studies, which conclude that people with higher levels of education are both more geographically mobile and more likely to vote.¹⁸

Furthermore, the negative effect of domestic migrants is magnified when domestic migrants move from predominantly white states to states with large immigrant populations.¹⁹ Our results support a story of intergroup conflict, in which domestic migrants move from racially homogenous states to racially diverse states and react negatively to the dislocation they experience. This negative reaction, we suggest, manifests itself in support for restrictive immigration laws and politicians who advocate for those laws.

Our results are significant for several reasons. As an initial matter, the results present a more dynamic and thus more accurate explanation for state-created immigration climates. Media attention has focused on looking outward, to the international migrants who are moving into different states, suggesting that a state's reaction to international migration depends solely on the numbers of immigrants moving to its jurisdiction.²⁰ News articles suggesting that international immigrants "cause" a reaction in the receiving states present a static and inaccurate explanation of immigration climates.

Instead, our analysis highlights the importance of looking inward, to the interaction between a state's international migrants and those already living there. Our results demonstrate that the nature of this interaction can change, depending on the composition of the international migrants *and* the domestic migrants. If, in studying state-created immigration climates, we focus exclusively on international migration, we would need to assume that the domestic population is static. But that assumption is false, as data

responses of local government).

¹⁷ See Figure 2 *infra* at 33.

¹⁸ See Section II *infra* at 30.

¹⁹ *Id.*

²⁰ See, e.g., Gabriel *supra* note 15.

shows that large numbers of people migrate within the United States every year.²¹ We account for the presence of this third group, domestic migrants, and demonstrate how they affect a state's immigration climate, thus presenting a more accurate explanation.

Finally, the support in the data for the intergroup conflict explanation raises important questions for future subfederal immigration regulation. If domestic migrants affect a state's immigration climate and domestic migrants are themselves affected by their previous interactions with international immigrants (or lack thereof), then the future implications for ICI scores are intriguing. What happens if international immigrants continue their current pattern of settling in areas beyond the traditional gateway cities?²² In the short term, there is likely to be more negative ICI scores as increased diversification leads to increased intergroup conflict. In the long term, this migration pattern would expose a broader range of domestic residents, living in different states and cities, to immigrant communities. If these domestic migrants have interpersonal interactions with immigrants in their communities, the contact theory of intergroup dynamics suggests that their attitudes about immigrants and immigration will become more positive.²³ When these domestic residents, in turn, migrate to different states, our findings suggest that they may have a positive influence on their new home state's immigration climate.

Part I of our article explains how the ICI was constructed, including our data collection methods and our weighting system for different types of laws. Part II describes our statistical methods and results, including the correlations we found between states' ICI scores and the domestic migration variables we created from Census Bureau data. Part II also explores the implications of our findings, drawing upon the political science literature.

²¹ David Ihrke, *Reasons for Moving: 2012 to 2014*, U.S. CENSUS BUREAU (Jun. 2014), <https://www.census.gov/prod/2014pubs/p20-574.pdf> ("Between 2012 and 2013, 35.9 million people 1 year and over living in the United States moved to a different residence. The mover rate for this period was 11.7 percent.").

²² Jill H. Wilson & Nicole Prchal Svajlenka, *Immigrants Continue to Disperse, with Fastest Growth in the Suburbs*, Brookings Institution Immigration Facts Series 18 (Oct. 29, 2014) <http://www.brookings.edu/research/papers/2014/10/29-immigrants-disperse-suburbs-wilson-svajlenka>.

²³ See Hood, *infra* notes 68-69. Briefly stated, this theory states that an increase in intergroup contact tends to reduce conflict among different groups.

II. THE IMMIGRANT CLIMATE INDEX

A. *Defining Climate and its Inputs*

In conventional usage, the climate of a jurisdiction can be referenced in different contexts: a politician trying to attract industry may pitch her home state as having a business-friendly climate,²⁴ or tourist websites may describe certain cities as having climates that are hospitable to gays and lesbians, or families with children.²⁵ “Climate” then can refer to concepts as diverse as laws, public opinion, or structural conditions.²⁶

Here, we use “climate” to refer specifically to the regulatory environment created by enacted immigration laws. We choose laws to measure climate for two reasons. First, we are interested in measuring the day-to-day experience of immigrants living in different states, and enacted laws are a critical part of that experience. Through legal regulation, immigrants experience prohibitions, requirements, and benefits that affect their daily lives. And because the laws in our analysis have a special link to immigrants, we can differentiate the climate experienced by immigrants from that experienced by other groups in the jurisdiction.

Second, our definition has the benefit of clarity. Though a law’s enactment does not always guarantee its enforcement, our definition provides a bright line rule for analysis. Tracking enforcement of these laws is not workable as different political subdivisions have different ways of allocating resources and recording government activity. Even if it is not rigorously enforced, the enactment of a law presents a significant possibility that it will be enforced at some later point in time; an immigrant who knows that a law *may* be enforced would rationally account for the law’s requirements in planning her actions. In that regard, the act of passing a law affects a jurisdiction’s climate for immigrants. For similar

²⁴ See, e.g., Jason Whitely, *Texans try to lure Sriracha hot sauce maker from California*, WFAA (May 13, 2014), <http://www.wfaa.com/story/news/politics/2014/08/21/14210996/>.

²⁵ See, e.g., *12 Best Kid-Friendly Destinations*, BUDGET TRAVEL (Jan. 25, 2013, 1:22 PM), <http://www.budgettravel.com/feature/family-travel-vacation-ideas-12-kid-friendly-destinations,12765/>.

²⁶ *Climate*, DICTIONARY.COM, <http://dictionary.reference.com/browse/climate?s=t> (last visited Mar. 1, 2015) (stating that climate is “the prevailing attitudes, standards, or environmental conditions of a group, period, or place: a climate of political unrest”); *Climate*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/climate> (last visited Mar. 1, 2015) (defining climate as “the prevailing influence or environmental conditions characterizing a group or period.”).

reasons, we removed laws that were repealed, either by the legislature or by courts after litigation.²⁷

What qualifies as an immigration law for our purposes? As noted earlier, the law must have a special link to immigrants. The link to immigration can be explicit, such as when a law authorizes housing for migrant farm workers.²⁸ Sometimes, however, the link is implicit: when the law, without mentioning immigration in its text, has a special impact on immigrants. For example, the typical English-only law does not reference immigrants, but its impact will be felt most strongly among immigrants, who are less likely than the native-born to be fluent in English.²⁹

Our data set is broader and narrower than those used by other studies. Our dataset is broader than other studies because our database includes laws enacted at all relevant subfederal levels: city, county, and state. Our data also includes positive laws, as well as restrictive laws, over a longer time period, which further distinguishes our study from previous studies and provides a more complete measure of immigration climate. By contrast, the Chavez and Provine study only analyzed restrictive state-level legislation enacted during 2005-2006.³⁰ Ramakrishnan and Wong reviewed restrictive laws enacted at the municipal level. Ramakrishnan and Gulasekaram analyzed restrictive and beneficial laws from 2005-2007, at both the state and local levels.³¹

Our data is also narrower than some collections of these laws.³² Because we are interested in measuring climate, we excluded laws that mention immigrants or immigration but have little or no concrete effect. Examples include resolutions calling for comprehensive immigration reform or administrative bills that renamed immigration-related agencies.³³ Finally, we excluded some laws because their net effect would likely be neutral.

²⁷ If the law was stayed during litigation but ultimately upheld, we used date restrictions to account for any time period during which the law could not be enforced.

²⁸ See FLA. STAT. ANN. § 420.9075(1)(a) (West 2015).

²⁹ See, e.g., Gadsden, Ala., Res. R-336-06 (Aug. 8, 2006) (declaring English to be the official language of the city of Gadsden).

³⁰ See Ramakrishnan & Gulasekaram, *supra* note 16.

³¹ *Id.*

³² For example, the National Conference of State Legislatures includes in its database of immigration laws all state bills that mention immigration or immigrants, including resolutions and budgetary allocations. For the reasons stated above, we do not include resolutions or budget bills in our ICI calculations. See *Immigration Enactments Database*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/immigration/immigration-laws-database.aspx> (last visited Oct. 30, 2015).

³³ See, e.g., S.R. 5081, 2009 Leg. Reg. Sess. (N.Y. 2010); see also Arizona's Immigration Enforcement Laws, *Resolutions*, NCSL, <http://www.ncsl.org/research/immigration/analysis-of-arizonas-immigration-law.aspx> (last visited Sept. 9, 2015).

For example, anti-human trafficking laws would, upon initial analysis, seem to deserve positive scores because they protect immigrants from the abuses of trafficking. But for some immigrants, restrictions on trafficking limit an important channel for them to reach the United States. One study of subfederal immigration regulation concluded that trafficking laws help immigrants, while another study concluded that they hurt immigrants;³⁴ these opposite conclusions reinforce our decision to exclude trafficking laws from our analysis.

For similar reasons, we exclude laws that provide funding for immigration-related functions. Budget bills, which are often omnibus in nature, are very difficult to disentangle; it is often challenging to know when a particular amount has been allocated for an immigration-related purpose. Even when that identification is possible, it is difficult to know whether to classify a budget law as a positive or restrictive law, without knowing whether the allocated budget is an increase or decrease from the previous year's allocation. For example, a law that allocates funding for subfederal immigration enforcement looks like a restrictive law, but if the allocated amount is actually a substantial decrease from the previous year's budget, then the law might actually be a beneficial law for immigrants. Finally, we want to avoid the problem of double counting: if a law is enacted in one bill and funded in another, we risk double counting if we count the funding bill as a separate law.

B. *Collecting Data*

The laws used to build the ICI come from many sources, collected through a multiple-year process. The state laws were extracted from the National Conference of State Legislatures, a clearinghouse for state laws.³⁵ The NCSL collects all state laws related to immigration, including resolutions and administrative laws only tangentially related to

³⁴ See *The Anti-Immigrant Movement that Failed: Positive Integration Policies by State Governments Still Far Outweigh Punitive Policies Aimed at New Immigrants*, PROGRESSIVE STATES NETWORK, (2008), <http://www.progressivestates.org/files/reports/immigrationSept08.pdf> [<https://web.archive.org/web/20091029042941/http://www.progressivestates.org/files/reports/immigrationSept08.pdf>] (concluding that human trafficking laws benefit immigrants and thus were evidence of a state's integrative policies toward immigrants); Jorge M. Chavez & Doris Marie Provine, *Race and the Response of State Legislatures to Unauthorized Immigrants*, 623 ANNALS AM. ACAD. POL. & SOC. SCI. 78, 84 (2009) (characterizing human trafficking laws as restrictionist legislation because they increase penalties for those who assist unauthorized immigrants).

³⁵ NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org> (last visited Oct. 30, 2015).

immigration. As noted previously, we are interested in a law's practical effect on the state's climate; thus, our ICI uses a smaller subset of state laws than is reflected in the NCSL's reports.

Collecting city and county laws was more complicated because there is no central clearinghouse for this type of local legislation. We started with lists of local laws compiled by advocacy organizations like the American Civil Liberties Union and the Federation for American Immigration Reform.³⁶ We combined these lists with information from federal government websites naming local jurisdictions that have agreed to enforce federal immigration laws (through 287(g) agreements). We also did our own searches of electronic news databases to find local immigration laws. For each law that we found through these methods, we contacted the local governmental entity to confirm that the law had been enacted, the date of enactment, and the substance of the laws. Wherever possible, we obtained a copy of the enacted laws. If our research indicated that the law was rescinded (because of litigation or other reasons), we noted the year of rescission in our database and adjusted our ICI calculations accordingly.

The ICI contains laws that were enacted from 2005-2011. We chose 2005 as the start date for our data collection because that is when subfederal immigration regulation started in earnest. The NCSL only started compiling reports on immigration-related laws in 2005; before that year, state laws related to immigration were few in number and largely limited to the state distribution of social service benefits.³⁷ Our own tracking of city and county level laws confirms a similar timeline for the growth of local immigration laws.

C. *Constructing the ICI*

Because laws will vary in their effect on immigrants, it is not an accurate reflection of climate to simply count the laws enacted in states. Rather, our ICI considers both a law's type and its geographic reach when calculating a

³⁶ We also used lists from these advocacy organizations: the Mexican American Legal Defense and Education Fund, Latino Justice PRLDEF, the National Day Laborer Organizing Network, and the Ohio Jobs and Justice PAC. MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, <http://www.maldef.org> (last visited Oct. 30, 2015); LATINO JUSTICE PRLDEF, <http://latinojustice.org> (last visited Oct. 30, 2015); NATIONAL DAY LABORER ORGANIZING NETWORK, <http://www.ndlon.org/en/> (Oct. 30, 2015); OHIO JOBS AND JUSTICE PAC, <http://www.ojpac.org> (last visited Oct. 30, 2015).

³⁷ Most of these pre-2005 state laws were reacting to federal welfare reform, the Illegal Immigration Reform and Immigrant Responsibility Act, which prohibited the distribution of welfare benefits to most immigrants. E-mail from Ann Morse, Program Dir., Immigrant Policy Project, Nat'l Conference of State Legislatures, to Huyen Pham, Professor of Law, Texas A&M Univ. Sch. of Law (Aug. 12, 2009, 11:47 EST) (on file with author).

jurisdiction's climate score. Regarding type, which laws have more impact? Abraham Maslow's influential hierarchy of needs model posits that humans are motivated to fulfill basic needs first (physiological needs like food and shelter, and safety needs like security, and freedom from fear) before being capable of fulfilling growth needs (like relationships, esteem, and self-actualization).³⁸ Research applying Maslow's influential hierarchy to immigrants concludes that immigrants are pushed by the disruption in their life patterns to focus on their basic needs, regardless of the personality development level they reached before immigrating.³⁹

Incorporating that research, we considered which types of subfederal laws would have the most impact on immigrants' basic needs. Though there are no laws guaranteeing or prohibiting immigrant access to physiological needs like food or shelter, there are a multitude of laws that expand or restrict subfederal enforcement of immigration laws. Subfederal laws can address direct subfederal enforcement (e.g., 287(g) agreements where local and state police are trained by federal authorities to carry out certain immigration law enforcement tasks) or indirect enforcement (e.g., laws prohibiting participation in the federal Secure Communities program, where local police officers share information about arrestees with federal immigration officials and hold those arrestees for federal pickup and deportation). These laws can have a dramatic effect on immigrants' lives. Subfederal participation in the Secure Communities program alone accounts for a majority of the deportations under the Obama administration.⁴⁰ Through these subfederal efforts, an ordinary encounter with local law enforcement, say for a traffic violation, could lead to detention and removal from the United States. Immigrants come to the United States for various reasons -- economic opportunity, family reunification, and political freedom -- but none of that is possible if they are detained or deported. Because deportation (or the fear of deportation) is at the core of an immigrant's safety concerns, we assigned the highest points (either four positive or negative points) to these types of laws.⁴¹

³⁸ Seymore Adler, *Maslow's Need Hierarchy and the Adjustment of Immigrants*, 11 INT'L MIGRATION REV. 444 (1977).

³⁹ *Id.*

⁴⁰ Julia Preston, *Republicans Resist Obama's Move to Dismantle Apparatus of Deportation*, THE NEW YORK TIMES (Jan. 15, 2015), <http://www.nytimes.com/2015/01/16/us/secure-communities-immigration-program-battle.html?hp&action=click&pgtype=Homepage&module=photo-spot-region®ion=top-news&WT.nav=top-news> ("Secure Communities, which connected local and state police departments across the country with federal immigration enforcement . . . generate the majority of the 2.3 million deportations under the Obama administration.").

⁴¹ We also include in Tier 4 laws that change a person's treatment within the law enforcement system based on immigration status (e.g., H.B. 2787, 48th Leg. (Ariz. 2007))

After laws affecting physical security, our next tier includes laws that also affect a basic need in immigrants' lives, a need that is very difficult to replace or avoid. For example, laws that impose local or state penalties on employers who hire these workers make it more difficult for immigrants to find any job of work. Immigrants without work authorization may still be able to find work (by using false identification papers or by working off the books), but these alternatives come with their own problems and high costs. For similar reasons, we include in Tier 3 laws restricting or enhancing access to government identification cards (like driver's licenses) and private housing.⁴² In our ICI calculations, these laws are assigned three points (either positive or negative).

Tier 2 laws affect an important but not crucial aspect of immigrants' lives; in many instances, immigrants whose access is restricted under these laws can find alternatives with fewer problems or cost than with Tier 3 restrictions. This tier includes laws that affect an immigrant's access to a specific type of job (like working as an insurance agent or in other jobs requiring licenses); an immigrant who wants to work in one of these licensed jobs clearly faces obstacles, but because there are alternative jobs not affected by these laws, the law's impact is more limited. Similarly, laws that expand or limit immigrant access to government-funded benefits like healthcare or college tuition are obviously important to immigrants, but because there are alternatives, these laws belong in Tier 2 and are assigned two positive or negative points.

Tier 1 laws, worth one point each, are included in our ICI calculations because they affect immigrants' lives but in a less important or less significant way. For example, laws requiring that all government transactions be conducted only in English have a negative impact on immigrants, but because linguistic concerns aren't as important as jobs, housing, and other matters regulated by laws in Tiers 2, 3, and 4, these English-only laws are assigned one negative point. For similar reasons, laws making it easier or harder for immigrants to vote and laws restricting or expanding access to legal services are also categorized as Tier 1 laws.

(denying bail to those without lawful immigration status)).

⁴² A handful of jurisdictions have enacted laws that require tenants to prove legal immigration status before they are allowed to rent housing. Most of these laws have been successfully challenged in litigation and thus are not included in our ICI calculations. See *Villas at Parkside Partners v. City of Farmers Branch*, 726 F.3d 524, 535-36 (5th Cir. 2013). The few housing laws that are in effect are categorized as Tier 3 laws; though they would appear to deny access to a basic need (shelter). Immigrants affected by these laws can still find alternatives (by living with friends or relatives with legal immigration status or by living in a neighboring jurisdiction). Law enforcement, by contrast, is pervasive and unavoidable, such that subfederal laws relating to immigration law enforcement have more impact on immigrants' daily lives.

We also weighted laws differently, depending on their geographic reach. State laws were assigned whole points (from 1-4 points depending on their tier). City and county laws were weighted to represent their more limited jurisdiction, as compared with state laws. A city or county law may be in the same tier as a statewide law (e.g., Tier 2), but its impact on the state's climate will be limited to immigrants who live in that particular city or county. Accordingly, its score is adjusted to reflect that more limited impact.

For example, Las Vegas, Nevada has signed a 287(g) with the Department of Justice, authorizing its police officers to perform specified immigration enforcement functions.⁴³ The negative four points that the 287(g) agreement would usually receive under the tier system is weighted to reflect the city's smaller population, as compared with the larger population of Nevada. The calculation is as follows:

$$\begin{aligned}
 &1,951,269 \text{ (population of Las Vegas metropolitan area)} \\
 &\div 2,700,551 \text{ (population of Nevada)} \\
 &\underline{\times -4 \text{ tier points}} \\
 &= -2.89 \text{ points}
 \end{aligned}$$

When calculating Nevada's ICI, this 287(g) agreement will contribute a negative 2.89 points to the state's score. Under this system, the laws of larger local governments (e.g., the city of Las Vegas) will have a more significant effect on their states' ICI scores than will the laws of smaller subfederal governments (e.g., Reno, Nevada).

D. ICI Results and Patterns

Adding up the positive and negative points of individual laws enacted at the city, county, and state levels, we calculated ICI scores for individual states. Figure 1 shows the geographical distribution of scores; Table A lists ICI scores by state.⁴⁴

⁴³ *Memorandum of Agreement*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Sept. 8, 2008), <http://www.ice.gov/doclib/foia/memorandumsofAgreementUnderstanding/287goldlasvegasm.pdf>.

⁴⁴ Our results in this article reflect cumulative scores for the period 2005-2011; state scores for individual years within this time period can be found on an interactive map available at http://business.baylor.edu/van_pham/ICI/.

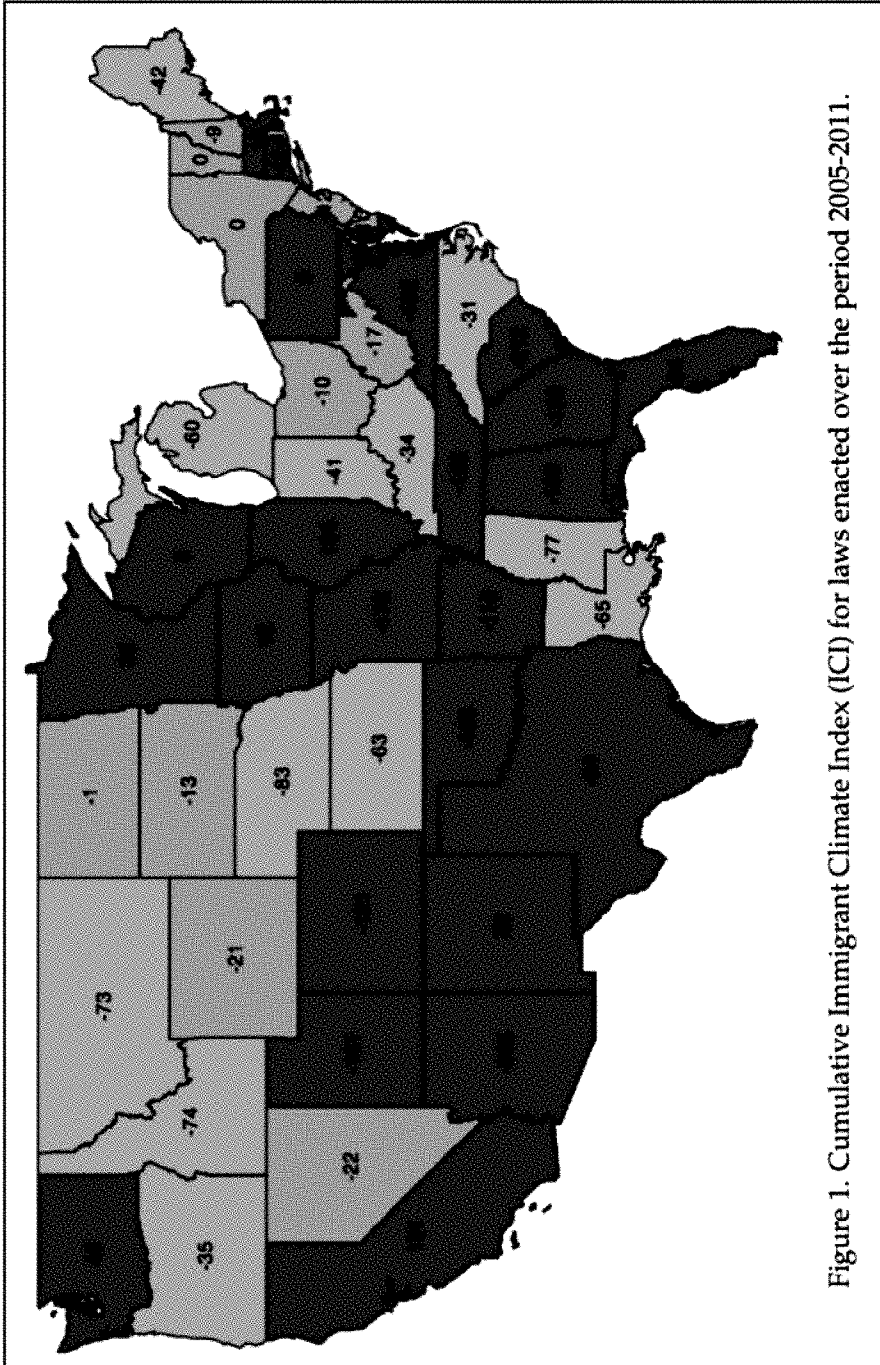


Figure 1. Cumulative Immigrant Climate Index (ICI) for laws enacted over the period 2005-2011.

Figure 1. Cumulative Immigrant Climate Index.

State	ICI Score	State	ICI Score
1 Arizona	-355	37 New York	0
2 South Carolina	-212	38 Vermont	0
3 Oklahoma	-196	39 Wisconsin	3
4 Georgia	-195	40 Pennsylvania	9
5 Virginia	-192	41 Alaska	12
6 Missouri	-176	42 Iowa	12
7 Utah	-161	43 Massachusetts	13
8 Colorado	-151	44 New Mexico	22
9 Tennessee	-123	45 Minnesota	25
10 Arkansas	-115	46 Maryland	43
11 Alabama	-109	47 Washington	45
12 Texas	-94	48 Connecticut	47
13 Florida	-84	49 California	151
14 Nebraska	-83	50 Illinois	164
15 Mississippi	-77		
16 Idaho	-74		
17 Montana	-73		
18 Hawaii	-66		
19 Louisiana	-65		
20 Kansas	-63		
21 Michigan	-60		
22 Maine	-42		
23 Indiana	-41		
24 Oregon	-35		
25 Kentucky	-34		
26 North Carolina	-31		
27 Nevada	-22		
28 Wyoming	-21		
29 West Virginia	-17		
30 Delaware	-15		
31 South Dakota	-13		
32 New Jersey	-12		
33 Rhode Island	-10		
34 Ohio	-10		
35 New Hampshire	-9		
36 North Dakota	-1		

Table 1. Immigrant Climate Index Scores Based On State and Local Legislation 2005-2011.

There are some broad trends about the scores that are worth noting. First, a clear majority of states (36) have negative scores. That Arizona tops the list of negative states is unsurprising, given the slew of highly restrictive laws it has enacted. What may be surprising is that there is a 143-point difference between Arizona and the next most negative state, South Carolina (-212). So not only does Arizona have the most negative immigration climate in the United States, but its climate is substantially more negative than the climate in other negative states. South Carolina, Oklahoma, Georgia, and Virginia cluster as the most negative states, after Arizona.

Second, a sizeable minority (14) states have neutral (net zero) or positive climate scores. The scores of Illinois and California are vastly more positive than other states, the result of proactively enacting laws benefiting immigrants within their jurisdictions. Examples of positive laws include laws granting immigrants access to benefits (like in-state college tuition rates), laws granting driver's licenses or state ID cards without regard to immigration status, and laws restricting local police enforcement of immigration laws. After Illinois and California, there is over a 100-point drop to the scores of Connecticut, Washington, and Maryland.

The most striking trend, however, is the broad divergence among state scores. For example, there is a 519-point difference between the most negative ICI score (Arizona -355) and the most positive score (Illinois 164) — the equivalent of about 130 law enforcement actions over this seven year period. Other states have ICI scores at all points along the spectrum between Arizona and Illinois. Given the opportunity, states have chosen to take very different paths on the issue of immigration regulation. What accounts for this divergence?

III. EXPLAINING THE DIVERGENCE

In media reports about subfederal immigration regulation, the press has focused on the inflow of immigrants, suggesting that current residents of jurisdictions enact restrictive laws as a reaction to that inflow.⁴⁵ Academic analyses have also linked the rise of restrictive laws to growing immigrant populations.⁴⁶ Empirical studies of this issue, working with smaller data sets than our study, focus on political ideology. Specifically, these studies

⁴⁵ See, e.g., Gabriel, *supra* note 15.

⁴⁶ Cristina Rodriguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 594 (“Communities are also jumping on the enforcement bandwagon because they seek control over their rapidly changing environments.”).

found that Democratic areas were more likely to enact pro-immigrant laws while Republican areas were more likely to enact restrictive laws.⁴⁷

While immigrant inflow and political ideology are important to understanding the divergence in immigration climate, our ICI scores raise questions about the completeness of their explanatory power. The states with the highest shares of immigrants during this time period have ICI scores across the spectrum.⁴⁸ Similarly, states with the largest populations of unauthorized immigrants have ICI scores that defy easy categorization.⁴⁹ Regarding political ideology, it is possible to discern some pattern in ICI scores along red-blue political lines. However, ICI scores in Figure 1 suggest examples of diverging scores that aren't easily explained by political ideology alone. For example, Arizona and Texas are both reliably conservative states; yet their scores are over 260 points apart (the equivalent of about 65 Tier 4 laws). Similarly, the ICI scores of Oregon and Washington differ by 80 points, though both states generally share liberal politics.

Our analysis points to another significant determinant in understanding the divergence: the flow of domestic migrants among different states. Interstate migration is an important phenomenon in the U.S. but has largely been overlooked by researchers, as well as by policy makers, in analyzing subfederal immigration laws. Informed by the data, our thesis is that domestic migrants carry their immigration preferences across states and influence the climate in destination states.

The first empirical evidence we consider is a scatter plot of the cumulative ICI score of a state from 2005-2011 and the average ICI scores of states that sent domestic migrants to the state (Figure 3 below). The simple correlation between these two variables is positive as represented by the slope of the line fitted to the data points. This pattern is consistent with our thesis: domestic migrants coming from positive ICI states have a positive effect on their new home state's ICI while domestic migrants coming from negative ICI states have a negative effect. As explained

⁴⁷ Chavez & Provine, *supra* note 16, at 83-89; Ramakrishnan & Gulasekaram, *supra* note 16; Ramakrishnan & Wong, *supra* note 16, at 88-89.

⁴⁸ Those states are California (151 ICI score), New York (0), New Jersey (-12), Hawai'i (-66), and Florida (-84). Jens Manuel Krogstad & Michael Keegan, *15 States with the Highest Share of Immigrants in Their Population*, PEW RESEARCH CENTER (May 14, 2014), <http://www.pewresearch.org/fact-tank/2014/05/14/15-states-with-the-highest-share-of-immigrants-in-their-population/>.

⁴⁹ Those states are California (151 ICI score), Texas (-94), Florida (-84), New York (0), New Jersey (-12), and Illinois (164). Jens Manuel Krogstad & Jeffrey S. Passel, *5 Facts About Illegal Immigration in the U.S.*, PEW RESEARCH CENTER (Nov. 18, 2014) <http://www.pewresearch.org/fact-tank/2015/07/24/5-facts-about-illegal-immigration-in-the-u-s/>.

below, the influence of domestic migrants is amplified when domestic migrants move from predominantly white states, to states with large Hispanic or Mexican-born populations.

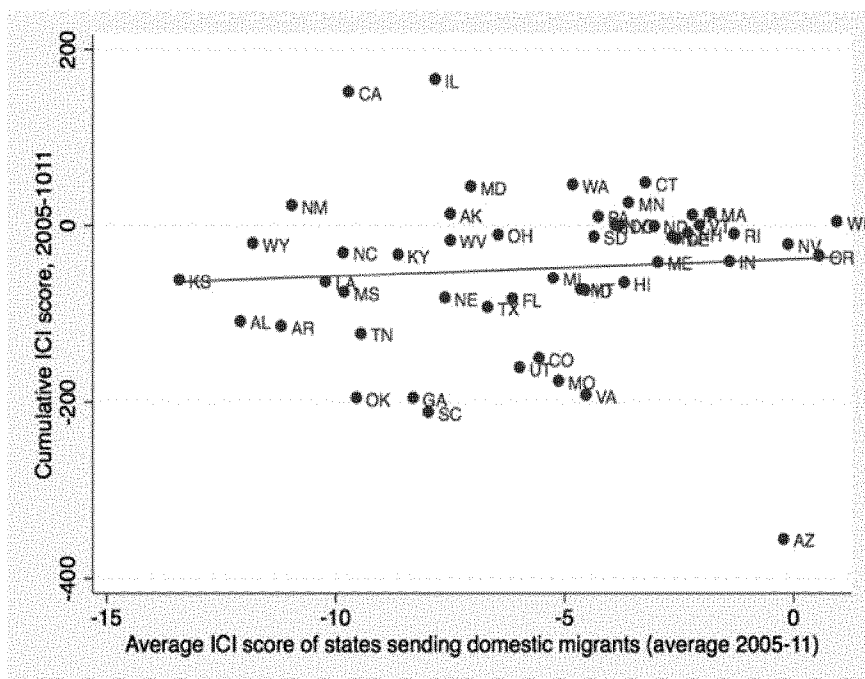


Figure 2. Domestic Migrants Carry Preferences Across Borders

A. Methodology and Statistical Results

The correlation revealed in Figure 2 is consistent with our thesis: domestic migrants carry their immigration preferences across borders to influence the immigration climates in their new home states. As we explain further in Section II.B, domestic migrants are more likely to have higher levels of education, which also makes them more politically active.

The correlation, however, may not necessarily be all due to the relationship proposed in this study. Confounding factors could contribute to this correlation.⁵⁰ That is, there may be unrelated factors that simultaneously affect both domestic migration patterns and ICI scores. For example, a state's geographical location may affect both its domestic

⁵⁰ ROBERT M. LAWLESS ET AL., *EMPIRICAL METHODS IN LAW 406* (2010) (A confounding variable is "a variable omitted from a study but that does affect the phenomenon under investigation thereby potentially leading to a false positive result.").

migration and its ICI score. Southern states have had the highest rates of in-migration for the time period in our analysis; their proximity to Mexico could also affect their residents' views about immigration and immigration enforcement. Similarly, a state's liberal or conservative political orientation may affect its domestic migration patterns (people are either attracted or repelled by the state's political climate); political orientation may also influence views about immigration laws. If either case is true, then the correlation we see between domestic migration patterns and ICI scores would not be due to the direct relationship between the two variables, but rather is explained by the effect of unrelated third variables like a state's geographical location or political orientation.

We are able to address this possible endogeneity problem with our panel data set -- we have ICI and migration scores by state over a number of years. In our regressions, we can include state dummy variables (also known as state fixed effects) that can account for differences in ICI scores due to inherent differences across states that do not change with time. These state fixed effects catch the effects of confounding factors such as geographical location or political ideology mentioned above.⁵¹ After controlling for these state fixed effects, we are effectively looking at the correlation of migration and ICI scores for the same state from one year to the next. As such, we can be more confident that this correlation is coming from the relationship between migration and ICI.

After using state fixed effects to control for possible confounding factors, we must also consider an additional source of endogeneity. It is possible that domestic migrants chose their state of residence because of the immigrant climate. For example, a person who holds restrictive views is attracted to the negative climate in Arizona. In that case, we have a reverse causal relationship -- the ICI scores of states are what is causing the flow of migrants. However, there is evidence that many domestic migrants choose

⁵¹ We estimate the following fixed-effects regressions:

$$ICI_{st} = a + b * Migration_{st} + StateFixedEffects_s + e_{st}.$$

The left hand side ICI_{st} represents the ICI score of a state (s) in any particular year (t), and the right hand side represents all the variables that could affect a state's ICI score. We are interested in the effect of domestic migration on climate scores (represented as b in the equation above). We include state dummy variables to account for possible confounding factors that do not change with time over our study period (e.g., a state's proximity to Mexico or its political orientation). $Migration_{st}$ are several different migration measures, $StateFixedEffects_s$ are a set of state dummy variables (one for each state to account for the confounding problem), and e_{st} is an error term assumed to be independently, identically distributed normal.

to move for economic reasons unrelated to preferences over immigration.⁵² Rodgers and Rodgers find that the wages of domestic migrants increase after the move by as much as twenty percent.⁵³ Though not conclusive, this result suggests that where domestic migrants choose to move is determined by job prospects, not by preference for immigration climate.⁵⁴

We also test our intergroup conflict thesis: that ICI scores are partly an outcome of domestic migrants encountering inhabitants in their new states who look very different from those in their origin states. As an initial matter, our results show that domestic migrants moving from states with large populations of whites have a negative influence on the ICI scores of their new home states.⁵⁵ Using variables that measure foreign and perceived foreign populations in receiving states, we also found that an increase in these populations also has a negative effect on ICI scores.⁵⁶ When domestic migrants move from states with large white populations to states with large immigrant populations (or populations that are perceived to be immigrants), the negative effect of domestic migrants on ICI scores is amplified. Those results are also included in Table 3. Our statistical results and more detailed explanations of our methodology are in Appendix A.

B. *Influence of Domestic Migrants*

Beyond the statistical results, what is the mechanism by which domestic migrants affect immigration climates? Because our ICI measures climate through enacted laws, we are interested in how domestic migrants affect the political process of their new home states. Though domestic migrants are a small group (less than 0.1% of a state's population), we hypothesize that they have a political influence beyond their numbers for several reasons. First, we define a domestic migrant as a person who lived in another state one year ago, but obviously domestic migrants can continue to affect the political process beyond that initial first year.⁵⁷ Second, we hypothesize that there is a large overlap between the people most likely to move within the U.S. and those most likely to vote. Specifically, individuals with higher

⁵² Joan Rodgers & John Rodgers, *The Effect of Geographic Mobility on Male Labor-Force Participants in the United States*, 21 J. LABOR RESEARCH 117, 121-26 (Jan. 2000).

⁵³ *Id.* at 124-126.

⁵⁴ *Id.* at 126.

⁵⁵ See Table 2 *infra* at 50.

⁵⁶ Specifically, for each receiving state, we measured the fraction of foreign residents, residents of Asian or Hispanic origin, residents who recently immigrated from Mexico, and the growth in Mexican immigration. Those results are included in Table 3.

⁵⁷ We use the one-year definition because the American Community Survey data for the years of our study provides information in that format (i.e., the Survey asks respondents where they lived one year ago).

levels of education are most likely to move within the United States, and also most likely to vote.

Our hypothesis is supported by separate studies of domestic migrants and voting behavior. Studies using census data have concluded that individuals with higher levels of education are more likely to migrate within the United States.⁵⁸ Malamud and Wozniak in their 2010 study observe that another year of higher education is closely associated with a large increase in the probability of moving away from one's birth state. Based on this causal link between education and mobility, they conclude that geographic mobility is one of the benefits of higher education. Using Current Population Survey data from 1980 to 2000, Emek Basker also found that education increases geographic mobility, controlling for age, state of origin, and year fixed effects.⁵⁹

Just as education substantially increases mobility, it also increases the likelihood of voting. Why people vote is a question that has long intrigued social scientists. Studies have focused on different determinants of voting, but one empirical regularity in many studies is the connection between education and voter turnout. Numerous studies have concluded that individuals with higher levels of education are more likely to turn out to vote. Studying the effect of social-economic status on voting behavior, Wolfinger and Rosenstone conclude that education has a stronger influence on voter turnout than income.⁶⁰ They find that individuals with higher levels of education are more likely to vote than individuals with higher incomes.⁶¹ Using American National Election Studies ("ANES")⁶² and CPS data, Milligan, Moretti, and Oreopoulos found that more highly educated individuals in the United States have higher rates of voting *and* higher rates of participation in other political activity, such as: following election campaigns, joining a political group, and working on community issues.⁶³ This finding of increased political activity is particularly

⁵⁸ Ofer Malamud & Abigail Wozniak, *The Impact of College Education on Geographic Mobility: Evidence from the Vietnam Generation*, 47 J. HUMAN RESOURCES, No. 4, 915-50 (2007).

⁵⁹ Emek Basker, *Education, Job Search, and Migration*, (Univ. of Missouri-Columbia, Working Paper No. 02-16, 2003), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=371120.

⁶⁰ RAYMOND E. WOLFINGER & STEVEN J. ROSENSTONE, WHO VOTES? 23-26 (1980).

⁶¹ *Id.*

⁶² A collaboration between Stanford University and the University of Michigan, ANES conducts its own voter surveys and makes the data available to social scientists, teachers, students, journalists, and policy makers. AMERICAN NATIONAL ELECTION STUDIES, <http://www.electionstudies.org/> (last visited Mar. 1, 2015).

⁶³ Kevin Milligan, Enrico Moretti, and Philip Oreopoulos, *Does Education Improve Citizenship? Evidence from the United States and the United Kingdom*. 88 J. PUB. ECON.

significant because it shows that domestic migrants can have political effects beyond just their individual votes. Because they tend to be more politically active generally, domestic migrants can influence the political attitudes of their new neighbors.⁶⁴

As noted above, our results also show that the influence of domestic migrants on ICI scores is magnified and more negative when domestic migrants move from a state with a large white population to a state with a large minority or Hispanic population. Our thesis is that natives' views about immigration are shaped, in part, by exposure to immigrants and immigrant communities. Those who live in communities with large numbers of immigrants (or descendants of immigrants) will have more positive views about immigration. Conversely, those with limited or no exposure to immigrants will have negative views, which translates into political support for restrictive immigration laws.

Our results are consistent with what social scientists have described as the contact theory of intergroup dynamics.⁶⁵ According to this theory, an increase in intergroup contact tends to reduce conflict among the groups.⁶⁶ Applied to the immigration context, the contact theory suggests that racial and social context do affect immigration attitudes.⁶⁷ Using ordered logit and ordered probit methodologies and data from the 1992 American National Election Study and the 1990 Census, Hood and Morris found that Anglos living in heavily Hispanic or Asian areas had more positive views about the potential contributions that these two groups make to society.⁶⁸

In a later study, Hood and Morris suggest that the quality of the interaction that Anglos have with immigrants is important in affecting their attitudes toward immigration.⁶⁹ Their study finds that Anglos living in areas with large numbers of authorized immigrants generally have positive attitudes, while Anglos living in areas with large unauthorized populations tend to have more negative attitudes.⁷⁰ Because unauthorized immigrants do not have driver's licenses, work permits, social security numbers, and other documents to make them "official" members of the public

1667 (2004).

⁶⁴ *Id.*

⁶⁵ *See id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ M.V. Hood & Irwin L. Morris, *Amigo o Enemigo? Context, Attitudes, and Anglo Public Opinion Toward Immigration*, 78 SOC. SCI. Q. 309 (1997).

⁶⁹ M.V. Hood & Irwin L. Morris, *Give Us Your Tired, Your Poor . . . But Make Sure They Have a Green Card: The Effects of Documented and Undocumented Migrant Context on Anglo Opinion Toward Immigration*, 20 POL. BEHAV. 1 (1998).

⁷⁰ *Id.* at 7-9.

community, their interaction with outsiders will necessarily be limited.⁷¹ The absence of that interpersonal interaction makes it difficult for unauthorized immigrants to develop the intergroup relations that are the foundation of the contact hypothesis.⁷²

Intergroup interaction and the contact hypothesis provide a useful lens for analyzing our results. In our analysis, ICI scores may be viewed as a rough proxy for integration because the subfederal laws regulate access to many benefits necessary for outside interaction: driver's licenses, employment, and even physical freedom (through the policing laws). States with positive ICI scores provide more opportunities for immigrants to develop the kind of intergroup relations that are crucial to improving immigration attitudes among Anglos. On the other hand, states with negative ICI scores limit immigrants' opportunities and interaction by limiting access to benefits. In doing so, the states arguably make all immigrants, even those with authorized status,⁷³ the "other." Without the opportunity to interact, immigrants in this state cannot develop the intergroup relations that the contact hypothesis suggests is crucial to improving Anglo attitudes about immigrants and immigration.

C. Implications

As we consider the impact that domestic migrants have on ICI scores, we see several new twists to a familiar story. Intergroup conflict that results when different cultures, races, and ethnicities meet is a phenomenon long studied by social scientists. With our focus on domestic migrants, we raise questions about where the relevant borders are and the composition of the insider/outsider groups. As previously explained, subfederal governments can create radically different climates for immigrants within their jurisdiction's borders, so an immigrant's decision to cross one state's border into another state has significant consequences.

In the immigration context, those who immigrate to the United States from another country are natural candidates to be considered outsiders, but what about those who "migrate" from another state? Domestic migrants often have to adjust to different social norms, different racial and ethnic

⁷¹ *Id.* at 11.

⁷² *Id.*

⁷³ Though many of the restrictive laws appear to apply only to unauthorized immigrants, Hispanics and Asians with authorized status are also often affected. See Orde F. Kittrie, *Federalism, Deportation, and Crime Victims Afraid to Call the Police*, 91 IOWA L. REV. 1449, 1486-87 (2006) (arguing that the complexity of immigration law leads untrained police officers who are required to enforce immigration laws to rely on race and ethnicity as proxies for immigration status).

makeups, and different legal regimes. Our data suggests that they may be outsiders in significant ways, carrying their immigration preferences across state borders and affecting climate scores in their new home states. That their influence is amplified and more negative when they move from whiter states to more racially and ethnically diverse states underscores their status as outsiders.

Thus as we consider the determinants of climate scores, we should recognize the importance of looking inward, toward the populations already present in the United States, as well as looking outward to incoming immigrant groups. Instead of a linear “more immigrants leads to a negative immigrant climate” story, our analysis suggests a more dynamic interaction among three groups: international immigrants, long-term state residents, and domestic migrants. Adding complexity to this dynamic is the probable influence of racial and ethnic context, as supported by our data above.

Looking forward, what are the implications for future climate scores? With the caveat that the influence of domestic migrants is only one small piece of the ICI puzzle, we see some possible paths emerging from our analysis. In the short run, as some states grow economically and thus attract migrants (both domestically and internationally), we can expect to see continued active, and likely negative, subfederal immigration regulation. The effect of domestic migrants on the direction of ICI scores (positive or negative) will depend, of course, on specifics: which states are “exporting” their residents, which are “importing,” and the nature of the interaction among domestic migrants, international immigrants, and long-term state residents. But in the short run, increased levels of diversification are likely to lead to negative regulation resulting from intergroup conflict.

Over the long run, however, we may see domestic migrants having a net positive effect on subfederal regulation. Domestic migrants who may initially react negatively when they move to a more diverse state may, over time, have more interaction with immigrant communities (both recent immigrants and long-term). The contact hypothesis suggests that this interpersonal interaction is the foundation for the intergroup relations that lead to more positive views about immigrants and immigration, which in turn may translate to more positive ICI scores.

The wildcard in this story, both in the short run and the long run, is the federal government. Subfederal immigration regulation is often justified as a necessary state response in the face of federal inaction. If the federal stalemate on immigration continues, we should expect that states, cities, and counties will continue to be active in subfederal regulation. If the subfederal activity reaches a tipping point in the long run (as we suggest above), the federal government may find enough consensus at the

subfederal level to move forward with immigration reform at the national level.

IV. CONCLUSION

Subfederal immigration regulation -- where cities, counties, and states enact immigration laws affecting immigrants within their jurisdictions -- has become an enduring part of the legal landscape. For immigrants, subfederal laws are centrally important because subfederal governments regulate important aspects of their lives: access to driver's licenses, employment, physical security (through policing laws), and other benefits. Given a limited green light by the courts, subfederal governments have embraced immigration regulation, taking very divergent paths. What explains this divergence?

Using our own database of subfederal laws, we are able to measure the different climates that subfederal governments have created through immigration regulation (Immigrant Climate Index scores). Using panel data techniques, our analysis indicates that domestic migrants (those who move to a state from another state) carry their immigration preferences across state lines to affect their new home state's ICI score. Briefly stated, domestic migrants coming from restrictive states tend to have a negative effect on their new home states' ICI scores; similarly, domestic migrants coming from positive states tend to have a positive effect on their new home states' scores. The effect of domestic migrants is amplified when they move from predominantly white states to states with large immigrant populations. These results provide support for a story of intergroup conflict, between domestic migrants and the diverse immigrant groups they encounter in their new home states.

As we try to understand immigration climates and their determinants, the influence of domestic migrants on ICI scores underscores the importance of looking inward to domestic migration, in addition to looking outward to international migration. This perspective gives us a more accurate understanding of the complex dynamics involved in creating immigration climates.

APPENDIX A

We created these domestic migration variables from the American Community Surveys of the U.S. Census Bureau:

- migplac1: the U.S. state or the foreign country where the respondent lived one year ago
- dommig1: fraction of a state's population that lived in another state one year ago
- scoremig1: for states receiving domestic migrants, the weighted average of sending states' ICI scores⁷⁴
- whitemig1frac: for states receiving domestic migrants, the weighted average of the white fraction (state's white population compared with total population) in sending states, using the same weights as in scoremig1

Table 2 shows results from these regressions.

The positive and statistically significant coefficient on scoremig1 suggests that domestic migrants are importing preferences from their states of origin. A drop of five points in scoremig1 leads to negative contribution of 4.3 points to the ICI, equivalent to one negative statewide Tier 4 law.

⁷⁴ Represented mathematically: $scoremig1_{st} = \sum_{i=1}^I \frac{m_{st}^i}{M_{st}} ICI_t^i$ where m_{st}^i is the number of migrants from state i to state s in year t , M_{st} is the total number of migrants in state s in year t and ICI_t^i is the ICI score in state i in year t .

VARIABLES	StateFE	StateFE
scoremig1	0.875*** [0.139]	
whitemig1frac		-1.974*** [0.596]
Constant	-1.604* [0.829]	143.239*** [45.007]
Observations	306	306
R-squared	0.656	0.618

Dependent variable is ICI for a state in a year.
Standard errors in brackets.
Regressions include state dummies.
*** p < 0.01, ** p < 0.05, * p < 0.1

Table 2. Immigrant Climate and Domestic Migration 2005-2011.

We also ran regressions to test our intergroup conflict thesis: that ICI scores are partly an outcome of domestic migrants encountering inhabitants in their new states who look very different from those in their origin states. To test this thesis, we created these other variables:

- foreignfrac: the fraction of the state population that lived in another country one year ago
- asianhispanicfrac: the fraction of the state population with Asian or Hispanic origin
- mexfrac: the fraction of the state population living in Mexico one year ago
- mexfracgrowth: the year to year growth rate of *mexfrac*.

As an initial matter, we note from Table 2 above that domestic migrants coming from sending states with large populations of whites decrease the ICI scores of their new home states. Specifically, a two percent increase in the *whitemig1frac* (average share of whites in population of migrants' sending states) leads to a statistically significant -- 4-point contribution to the ICI score -- one negative state-wide Tier 4 law. The coefficient on the *dommig1frac* variable is positive and statistically significant.

To test our thesis, we ran this regression:

$$ICI_{st} = a + b * Migration_{st} + c * Foreign_{st} + d * Migration_{st} * Foreign_{st} + StateFixedEffects_s + e_{st}$$

Foreign_{st} is some measure of the foreign born or Mexican population in state *s* in year *t*. We are interested in measuring *d*, the effect of domestic migration on ICI scores, across states with different foreign population sizes.

Our analysis demonstrates that an increase in *perceived* foreign populations in a state similarly decreases a state’s ICI score.

VARIABLES	StateFE	StateFE	StateFE
whitemig1frac	-1.165 [0.739]	-2.317*** [0.610]	-1.439* [0.825]
mexfrac	-1.275 [7.464]		
mexwhite	-0.03 [0.091]		
mexfracgrowth		8.549 [36.547]	
mexgrowthwhite		-0.113 [0.481]	
foreignfrac			-2.223 [3.674]
foreignwhite			-0.016 [0.047]
Constant	102.770* [56.714]	167.960*** [46.014]	148.675** [62.868]
Observations	306	255	306
R-squared	0.64	0.744	0.652

Dependent variable is ICI for a state in a year.
 Regressions for years 2005-2011. Standard errors in brackets
 *** p < 0.01, ** p < 0.05, * p < 0.1

Table 3. Immigrant Climate as Outcome of Intergroup Conflict

Table 3 shows results from three regressions with the ICI as the left hand side variable and the right hand side variable being *asianhispanicfrac* (the fraction of the state population of Asian and Hispanic origin), *mexfrac* (the fraction of the state population of Mexican origin), and *mexfracgrowth* (the

annual growth rate of mexfrac). The regressions include state fixed effects that control for time-invariant state differences that could be correlated with both ICI scores and state demographics. The estimates of the coefficients for asianhispanicfrac and mexfrac are both negative and statistically significant. Controlling for state fixed effects, a two percent increase in the fraction of Asians and Hispanics in the population makes ICI more negative by 7 points -- the equivalent of enacting one negative statewide tier 3 law and one negative statewide tier 4 law. The presence of Mexican descendants in the population has a bigger effect on the ICI scores. A two percent increase in mexfrac makes the ICI more negative by 8.6 points, the equivalent of more than two negative statewide laws. Faster growth in mexfrac from year to year does not have a statistically significant effect on ICI.

What happens when domestic migrants move from states with large white populations to states with large immigrant populations (or populations that are perceived to be immigrants?) Under those circumstances, we find that the effect of domestic migrants on ICI in these situations is amplified and more negative. Those results are also included in Table 3.

In the first specification, we include as regressors whitemigfrac, mexfrac, and the interaction of the two; in the second, whitemigfrac, asianhispanicfrac, and their interaction; and in the third specification, whitemigfrac, mexfracgrowth, and their interaction. The results are similar across the three specifications: point estimates for the coefficients on whitemigfrac, mexfrac and whitemigfrac, asianhispanicfrac remain negative as in the previous regressions when the variables were considered separately. The estimate for the coefficient on mexfracgrowth remains insignificant. Though not statistically significant, estimates for the interaction terms are all negative, lending some support for the culture shock hypothesis for the determination of ICI.