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Measuring State-Created Immigration Climate

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Recommended Citation

Huyen Pham & Pham H. Van, *Measuring State-Created Immigration Climate*, 1 22 (2013).

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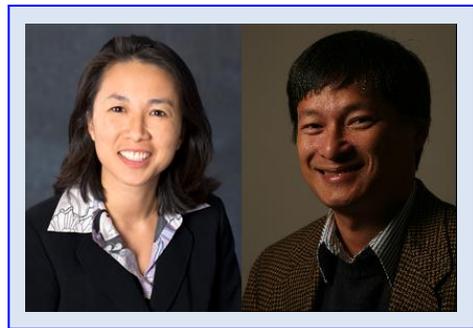
Measuring State-Created Immigration Climate

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Introduction

The phenomenon of subfederal immigration regulation, in which state and local governments enact laws regulating immigrants within their jurisdictions, has become an enduring part of the American legal landscape. Though still the subject of occasional legal challenges, the focus of the national conversation has shifted from *whether* to have subfederal immigration regulation, to *what form* that regulation should take. States have taken widely varying approaches to immigration regulation; some like Arizona and Alabama have enacted restrictive, negative laws, while other states like Illinois and California have enacted laws to benefit the immigrants within their jurisdictions. Thus, in order to understand the immigrant experience in the United States, it is crucial to understand the climate created in individual states, by both state and local governments.



Using seven years of empirical data (2005-2012), our study constructs an index to measure the immigration climate that sub-federal governments have created, on a state-by-state basis. By climate, we refer to the regulatory environment that immigrants experience in their everyday lives, as a result of the laws enacted by individual states to either benefit or restrict the immigrants within their jurisdiction. This Immigrants' Climate Index (ICI) assigns a number, either positive or negative, to each immigration regulation enacted within a state; a state's ICI score is the sum of those numbers. The purpose of the ICI is to express, in quantitative terms, the regulatory climate that immigrants face, allowing comparison among states and over a multiple year timeline.

Building the Legal Database

In collecting data, we used a broader definition of subfederal regulation, including laws that are often ignored in the policy debates. Specifically, we include immigration regulations enacted by cities and counties ("local" laws) as well as by states, and immigration regulations that benefit immigrants as well as those that are restrictive. For state laws, we turned to the National Conference of State Legislatures, a bipartisan organization that tracks state laws and has, since 2005, compiled immigration-related laws enacted at the state level.

Building our collection of local immigration laws was more complex because there is no centralized organization like the NCSL at the local level. We started our local data collection with databases of laws collected by advocacy groups like the Mexican American Legal Defense Fund and the National Day Laborer Organizing Network. We then combined these databases with information from government websites like the U.S. Immigration and Customs Enforcement agency, which list local governmental agencies cooperating with federal immigration law enforcement. Finally, we supplemented these sources with our own searches through news databases on Westlaw (an online legal research service used by lawyers and other legal professionals). From these different sources, we created a master list and then contacted each local governmental entity to confirm that it had enacted the law; wherever possible, we obtained a written copy of the law. Once confirmed, the local law was entered into our legal database for analysis. This confirmation process was essential to ensuring accuracy; during our data collection, we occasionally found that laws were described as enacted (by news reports or advocacy organizations) when, in fact, the laws had only been proposed or were later tabled for various reasons.

Scope of subfederal regulation

The laws used to calculate ICI scores can be divided into six broad categories. The government benefits category is broadly defined to include access to welfare programs, workers' compensation, healthcare, public housing, naturalization and refugee assistance, and education programs. By enacting a law, a subfederal government can choose to limit that access (for example, by limiting the benefit to U.S. citizens or those who can prove legal status) or to enhance that access (for example, by funding medical clinics for migrant workers or granting in-state tuition rates to unauthorized college students). A second category consists of laws controlling access to employment or employment benefits based on immigration status. For example, some laws require that employers verify the lawful immigration status of all their employees or face state and local penalties. Other laws place restrictions on the workers, requiring, for example, that applicants for a specific professional license (like a Certified Public Accountant license) prove legal immigration status before obtaining the license.

The third category, law enforcement, includes laws that enhance or restrict a police department's authority to enforce immigration laws or laws that change a defendant's treatment in the criminal justice system, based on immigration status. These laws have received a lot of media attention, including Arizona's SB 1070 law that, among other provisions, requires state police to determine the immigration status of a person who is stopped, detained, or arrested, when there is reasonable suspicion that the person is in the United States illegally (Archibold, 2010). There are also smaller categories for housing (affecting the ability of immigrants to obtain private housing), voting (making it easier or more difficult for immigrants to vote), and legal services (typically laws that regulate the legal market to prevent immigrants from being defrauded).

Though many states have enacted human trafficking laws,¹ we did not include them in our analysis because their net effect would likely be neutral. At first glance, human trafficking laws would seem

1. Colorado's human trafficking law, enacted in 2009, is typical of the trafficking laws enacted by states: it revises the criminal offense of involuntary servitude to include the act of withholding or threatening to destroy a person's immigration documents and the act of threatening to notify federal immigration

to benefit immigrants because the laws offer protection from the abuses of trafficking. But by clamping down on trafficking, the laws also limit a channel that immigrants use to reach the United States. Others who have studied subfederal regulation have taken opposite views about the effects of trafficking laws on immigrants (PSN 2008) (Chavez and Provine 2009, 84), reinforcing our decision to exclude them from our analysis.

Because we are interested in measuring the climate for immigrants, we also excluded laws that do not have a concrete effect on immigrants' lives. For example, we excluded resolutions, through which a subfederal government expresses an opinion about an immigration policy, like Illinois' HR 913, adopted in 2006, urging Congress to enact the DREAM Act (Watanabe 2010)² and Richmond, California's 2006 resolution, asking Congress to adopt comprehensive immigration reform.³ Though resolutions may reflect local opinion about immigration issues (either positive or negative), they do not take any policy action and therefore do not concretely affect immigrants' lives.

We excluded laws that have only a *de minimis* effect, for similar reasons. For example, Wyoming's HB 144, enacted in 2006, allows a foreign passport or green card to be used as identification to rent a keg of beer; while this law may benefit immigrants in Wyoming, the benefit is so minimal that it does not have a concrete effect on their lives.⁴ Another example is Indiana's HB 1182, a 2009 law that details health care reimbursement rates for prisoners without private health care coverage, a group that also includes unauthorized prisoners; the effect on immigrants is solely administrative and therefore *de minimis*.⁵

We started our data collection in 2005, the year that subfederal immigration regulation began in earnest. Certainly, there was some subfederal enforcement before 2005, but these laws were largely isolated in nature. One prominent pre-2005 example was California's Prop 187, a 1994 voter initiative that prohibited unauthorized immigrants in California from receiving health care, public education, or other state services; however, this initiative was never enforced because of legal challenges (Nieves 1999). The National Conference of State Legislatures, a bipartisan organization that tracks state legislation, did not compile immigration-related laws until 2005 and estimates that from 1999-2004, only 50-100 such laws were introduced by state legislatures (Ann Morse, pers. comm.). Our tracking of local regulations shows a similar pattern.⁶

Calculating ICI scores

In calculating a state's ICI score and thus its climate for immigrants, we recognize that different types of immigration laws will have different effects on immigrants' lives. So rather than simply count the number of laws enacted within a state, we assigned a weight to individual laws, based on

authorities of a person's illegal immigration status. COLO. REV. STAT § 18-3-503 (2009) (revoked and replaced § 18-13-129 but kept immigration related provision.).

2. H.R. 913, 94th Gen. Assem., Reg. Sess. (Il. 2006). The DREAM Act would offer a pathway to citizenship for undocumented young people who attend college or serve in the military.

3. Richmond, Cal., Resolution 11-07 (Feb. 6, 2007).

4. WYO. STAT. ANN. § 12-2-503 (2006) (amended 2013).

5. IND. CODE § 11-10-3-6 (2009).

6. The pattern for local laws is very similar: 2005 (20 enacted), 2006 (65 enacted), 2007 (85 enacted), 2008 (49 enacted), and 2009 (19 enacted).

the law's type, whether it provides a benefit or a restriction, and its geographic reach. Regarding type of law, we divided the laws, state and local, into the following four tiers:

Tier 4:

Definition: laws that affect many aspects of life for immigrants, laws that will have the most impact on climate

Examples: laws related to law enforcement, including laws that authorize or prohibit subfederal police from enforcing federal immigration laws

Score: ± 4 points

Tier 3:

Definition: laws that affect a crucial aspect of life for immigrants, an aspect that is difficult to avoid or replace

Examples: laws that make it harder or easier for immigrants to obtain private housing (as contrasted with government-provided housing), identification (like driver's licenses), or any kind of employment

Score: ± 3 points

Tier 2:

Definition: laws that affect an important but not crucial aspect of life for immigrants, an aspect that can be replaced with alternatives (albeit, not easily)

Examples: laws that make it harder or easier for immigrants to obtain specific jobs (including work as day laborers), specific work licenses, or access to social welfare benefits like education and healthcare

Score: ± 2 points

Tier 1:

Definition: laws that affect a practical aspect of immigrants' lives but in a less important or less significant way

Examples: English only laws, laws that make it harder or easier for immigrants to vote, or legal services laws

Score: ± 1 point

We also differentiated between state and local laws in assigning weights, recognizing that local laws will have more limited effect, as compared with state laws. A local law may be in the same tier as a statewide law (e.g., Tier 3), but its impact on the climate for that state will be limited to its particular jurisdiction. Accordingly, we weighted a local law to reflect that more limited impact, by multiplying its tier points with the fraction local jurisdiction population ÷ state population.

As a concrete example, Cobb County, Georgia has signed a 287(g) with the Department of Justice, in which the county allows its police to enforce various aspects of federal immigration law. The negative four points that the law receives under the tier system described above is weighted to reflect the county's smaller population, as compared with the larger population of the state.

688,756 (population of Cobb County)
 ÷ 9,687,653 (population of Georgia)
 × -4 tier points
 = -0.28 points

When calculating Georgia's ICI score, this 287(g) agreement will contribute -0.28 points to the state's total score. Thus the laws of larger local governments (like Los Angeles County) will have a more significant effect on their states' ICI scores than will the laws of smaller local governments.

Results and future work

The following are ICI scores (calculated using data from 2005-2009):

Table 1. Immigrant Climate Index (ICI) Scores Based on State and Local Legislation Enacted 2005-2009

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

We are using the ICI index to track the evolution of states on immigration issues and to study the interaction between these laws and economic growth, demographic movement, and other outcomes. Specifically, we observe that states have created widely divergent climates for immigrants with subfederal regulations. Arizona has the most negative score (-#), Illinois has the most positive score (#), and the remaining 48 states' scores fall in between. Thus, the climate that an immigrant experiences in the United States very much depends on which of the 50 states s/he lives in. What accounts for this divergence? In our current project, we explore different explanations for these widely divergent climates.

In analyzing subfederal immigration laws, media reports have focused on the incoming immigrant community, linking the prevalence of the laws to, for example, the size of the state's Hispanic population or the size of the unauthorized immigrant population. We propose to shift the focus to the characteristics of the non-immigrant population: specifically, we look at the characteristics of a state's "domestic" migrants (migrants moving to a state from another state). Our preliminary findings suggest that states' ICI scores reflect the immigration preferences of their domestic migrants' home states. For example, there is a strong positive correlation between a state's ICI and the ICI of the states from which recent domestic migrants come. This correlation may result from two dynamics: domestic migrants are attracted to states with immigration climates that reflect their preferences or domestic migrants affect the immigration climate of their new home states. Moreover, states with domestic migrants coming from states with higher fractions of the white population tend to also have more negative ICI scores. These latter two effects are stronger when the receiving states have larger Mexican populations, suggesting that there may be a conflict between these populations.

These results suggest that subfederal immigration regulation is not only a reaction of the "native" population to the inflows of foreign immigrants. Rather, climate scores are strongly correlated, positively or negatively, with the scores that domestic migrants bring with them. Our preliminary results add an important dimension to the oft-told story of conflict between immigrant and receiving communities.

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