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Preface – LLEADS #2

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Preface – LLEADS #2

Linda Kelly Hill[*]

As the FIU Immigration Symposium goes to press, the United States Supreme Court prepares to weigh in on the federal vs. state debate on the right to control U.S. immigration. Yet the arguments being heard in United States v. Arizona[1] represent only a small fraction of the immigration issues being debated in courts, legislative halls, and other public and private meeting spaces throughout the United States. From the classrooms of the Florida International University College of Law, the *FIU Law Review* presented a broad spectrum of issues and opinions at its second "*Latinos and Latinas at the Epicenter of American Legal Discourse (LLEADS)*" Symposium.

In *LLEADS #2: The U.S. Immigration Crises: Enemies at Our Gates or Lady Liberty's Huddled Masses?*, Professor Imtiaz Hussain's piece, *Arizona's SB 1070, Copycat Bills, and Constitutional Conundrums: Costly Collisions?*, provides an overview of the efforts of various U.S. states to control immigration. Professor Hussain's work begins by presenting the current breakdown of the individual states' anti-immigration measures. This formidable exercise is followed by his thoughtful consideration of the constitutional implications, as well as the considerable political, economic and social costs which are now incurred by the states' new-found interest in controlling immigration. *The Prospects and Challenges of Educational Reform for Latino Undocumented Children: An Essay Examining Alabama's H.B. 56 and Other State Immigration Measures* further details the complexity of the federal-state conflict. Written by Dean Maria Pabón Lopez, Diomedes Tsitouras, and Pierce C. Azuma, this article systematically re-

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* M. Dale Palmer Professor of Law, Immigration Clinic Director, Robert H. McKinney School of Law, Indiana University. University of Virginia (J.D. 1992), University of Virginia (B.A. 1988). I am enormously grateful to the *FIU Law Review* for providing an ongoing forum to discuss and debate immigration law and policy.

1 United States v. Arizona, 641 F.3d 339 (9th Cir. 2011), *cert. granted*, 132 S. Ct. 845 (2011). Oral Arguments are scheduled to be heard before the Supreme Court on April 25, 2012. *See Supreme Court of the United States October Term 2011 – Granted and Noted List*, SUP. CT. U.S., http://www.supremecourt.gov/orders/grantednotedlist.aspx?Filename=11grantednotedlist.html (last visited Mar. 23, 2012).

views various provisions of recent Alabama legislation intended to deny or severely limit an undocumented child's ability to attend public grade school and college. Backed by the support of *Plyler v. Doe's*[2] guarantee that undocumented children can attend public school, the article discusses the challenges being waged against legislation aimed at curbing such right and makes predictions as to their outcomes. As Professor Hussain's article confirms, both sides of the immigration debate are closely watching the legislative enactments and court battles in Arizona and Alabama. Professor Hussain's and Dean Lopez's articles provide new insights into such debates while maintaining their practical edge.

From the federal-state preemption debate, other contributions in *LLEADS #2* forcefully remind us of the complexity of U.S. immigration law and policy. As is often repeated, it is estimated that eleven million undocumented aliens currently live in the United States.[3] At times, it seems the reactions are just as numerous. In *Faces of Immigration Reform*, Professor Steven Bender views the undocumented immigrant population as subject to today's pervasive anti-immigrant imagery. Despite the conscientious work of pro-immigrant groups to change the narrative, critical subpopulations of potentially sympathetic immigrants have become associated with negative imagery. Migrant workers are awarded with "scant appreciation."[4] Young, potential beneficiaries of the perennially proposed DREAM Act are perceived as "menacing" delinquents and criminals[5]. Even undocumented Latino military veterans are treated as nothing more than mercenary "Bracero warriors" who are welcomed to leave the United States as soon as U.S. military needs are met.[6] Professor Bender's response is to stop the futile effort to create positive immigrant images and instead focus on more practical arguments aimed at recognizing the "compelling interest convergence" shared by immigrants and U.S. citizens. For example, Professor Bender appeals to the U.S. self-interest of funding our withering social security system by recognizing the potential contributions of newly legalized aliens.[7]

Imagery is also a central focus of Professor Berta Esperanza Hernandez-Truyol's piece, *A Need for Culture Change: GLBT Lati-*

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2 457 U.S. 202 (1982).

3 Steven Bender, *Faces of Immigration Reform*, 6 FIU L. REV. 251, 258 n.28 (2012) (quoting UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS, 2010, PEW HISPANIC CTR. (Feb. 1, 2011), http://pewhispanic.org/files/reports/133.pdf).

4 *Id.* at 260.

5 *Id.* at 261.

6 *Id.* at 263.

7 *Id.* at 264.

nas/os and Immigration. From the existing "cuento normativo" of the Latino/a community and its exclusion of GLBT Latino/as, Professor Hernandez-Truyol aspires to improve the narrative. She looks at the legal and social treatment of GLBT persons throughout the world, paying particular attention to the Latino/a community in the United States and elsewhere. From such images she finds positive trends and looks to build upon them.

Notwithstanding the value of examining the "hot topics" of federal-state preemption and legal imagery, other contributions are no less valuable. Doctor John Eastman and Professor Ediberto Roman engage in a lively debate on birthright citizenship. While the Fourteenth Amendment of the United States Constitution was ratified nearly 150 years ago, scholars cannot resist debating whether *jus soli* or the "right of soil", *i.e.*, citizenship by birth in the United States, is constitutionally guaranteed. Key to such debate is the meaning of language in the Fourteenth Amendment stating that all persons are citizens if born in the United States and "subject to the jurisdiction thereof."[8] Doctor Eastman argues that the words "subject to the jurisdiction thereof" require dual consent – both of the U.S. government and the alien. From such interpretation he reasons that only children born to lawful permanent residents are entitled to citizenship. Taking a more limited interpretation of the controversial phrase, Professor Roman provides a broader interpretation consistent with today's practice. Each debater grounds his position in the history of the Fourteenth Amendment's passage while recognizing the practical implications of their arguments.

Finally, Professor Peter Margulies, in a piece titled, *Noncitizens' Remedies Lost?: Accountability for Overreaching in Immigration Enforcement*, reaches out to noncitizens raising tort claims against immigration officials. Creating a sliding scale test to address *Bivens*[9] actions for damages and the scope of the "discretionary function" exception to the Federal Tort Claims Act, Professor Margulies counters the dwindling success of tort claims against immigration officials.

LLEADS #2 provided a forum where a broad diversity of issues could be debated and opinions heard. No doubt, in the wake of further immigration measures, future *LLEADS* conferences will take place. As America continues to debate, among others, the topics addressed in the authors' articles, we are fortunate that the FIU College of Law continues to provide a safe haven to reflect upon such critical questions.

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8 U.S. CONST. amend. XIV.

9 Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971).