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## Immigration after the SB 1070 ruling

Will states follow Arizona as far as the Supreme Court allows, or is anti-immigration fervor waning?

By Tamar Jacoby  
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The Supreme Court's immigration decision is a step back from the brink, leaving much less room than many expected for state immigration enforcement.

Although the justices blocked most provisions of Arizona's controversial 2010 policing law, they upheld the one of most concern to immigrant rights advocates: the section that requires local police to inquire about the immigration status of people they stop for other reasons and whom they suspect are in the country illegally. Even this part of the opinion is more tenuous than many expected, leaving open the possibility of future reconsideration by the court. But pessimists are still anticipating the worst — that the ruling will open the way to a host of other states itching to follow in Arizona's footsteps and pass similar punitive policing laws.

Maybe — things could play out that way. The last six years have seen a revolution in immigration lawmaking, with states across the country stepping into the vacuum created by Congress' failure to act and passing tough immigration control measures of their own.

But the fears could be exaggerated. What's coming may not be as drastic as many expect. Even before the Supreme Court's decision, there were signs that voters' anti-immigration fervor may be ebbing.

The first clue came in this year's state legislative sessions. Almost exactly a year ago, an earlier Supreme Court ruling, *Whiting vs. U.S. Chamber of Commerce*, established that states may act to prevent and punish the hiring of unauthorized immigrants, requiring employers to enroll in E-Verify, the online federal program that checks employees' immigration status. Last year, as now, conventional wisdom held that every state in the nation, or most, would walk through the door the court had opened, passing employer sanctions of their own. But that didn't happen. In the five years before the *Whiting* decision, when it wasn't clear if such mandates were legal, one-third of the states passed measures requiring some employers to use E-Verify — usually state agencies or state contractors. This year, despite the justices' express permission, not a single state enacted a law imposing E-Verify on any new employers.

The states' appetite for tough immigration policing laws also appears to be waning. After Arizona charted the way in 2010, five states — Alabama, Georgia, Indiana, South Carolina and Utah — passed similar, copycat measures in 2011. But this year, no state did. Only one or two even considered it seriously. Some lawmakers were surely waiting for the Supreme Court to decide if federal law leaves room for states to act without fear of costly legal

challenges. Other legislatures were preoccupied with budget issues or pressed for time in short election-year sessions. But the debate in many states revealed that a broad array of constituencies — from employers to law enforcement officials to faith groups — were concerned about the costs of Arizona-like policing laws.

Lawmakers and others across the nation have watched those costs mount in Arizona, Alabama and Georgia. Immigrant workers, legal and illegal, have fled in droves. A study by the University of Alabama estimates that as many as 80,000 unauthorized immigrants have left that state, eliminating an additional 60,000 jobs up and downstream in the local economy and costing the treasury \$260 million in tax revenue. More than half the farmers and half the restaurant owners in Georgia reported experiencing labor shortages this year. Growers across the Southeast are planting fewer acres and moving away from labor-intensive crops.

One study, by the Public Policy Institute of California, suggests that Arizona has lost 17% of its unauthorized workforce since passing its policing law in 2010. Another estimate suggests that closer to one-third of these workers have left since the state started cracking down six years ago.

And labor shortages are only one of the costs being borne by states that have enacted harsh policing laws. Even more alarming to voters and lawmakers alike: the damage to the state's reputations. In Alabama, the damage was so severe that it appeared to deter investors from putting money into a place seen as inhospitable to foreigners. And as a result, Republican Gov. Robert Bentley backed off from his support for the state's tough immigration enforcement law.

But perhaps the most dramatic evidence that the anti-immigrant fever has broken appeared in recent weeks in the wake of President Obama's surprise announcement that immigration authorities will not deport up to 1 million young people brought to the U.S. illegally as children. To say the reaction has been muted hardly captures what happened. A more accurate description would be a great collective national shrug.

Mitt Romney and other leading Republicans criticized Obama for ruling by partisan fiat, but virtually none challenged the substance of the announcement. A poll by Bloomberg News showed nearly two-thirds of the public approving. Even hard-core Republicans at Romney rallies told reporters they thought the policy made sense. "You can't send

people back," said one man at a campaign stop in Troy, Ohio. "I don't hate immigrants," said a woman. "I don't think there's anything wrong with" the Obama decision.

What does this mean for the future? What will happen in the wake of the Supreme Court ruling? Immigrant rights advocates are preparing for the worst, but perhaps needlessly. This could be the beginning of the end of the battle. The tide of public opinion could be turning on immigration.

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