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978-1-107-11196-7 - The New Immigration Federalism
Pratheepan Gulasekaram and S. Karthick Ramakrishnan
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THE NEW IMMIGRATION FEDERALISM

Since 2004, the United States has seen a flurry of state and local laws dealing with unauthorized immigrants. Though initially restrictionist, these laws have recently undergone a dramatic shift toward promoting integration. How are we to make sense of this new immigration federalism? What are its causes? And what are its consequences for the federal-state balance of power?

In *The New Immigration Federalism*, Professors Pratheepan Gulasekaram and S. Karthick Ramakrishnan provide answers to these questions using a combination of quantitative, historical, and doctrinal legal analysis. In so doing they refute the popular “demographic necessity” argument put forward by anti-immigrant activists and politicians. They posit that immigration federalism is instead rooted in a political process that connects both federal and subfederal actors: the Polarized Change Model. Their model captures not only the spread of restrictionist legislation but also its abrupt turnaround in 2012, projecting valuable insights for the future.

Pratheepan Gulasekaram is Associate Professor at Santa Clara University School of Law. He has published widely on immigration federalism and the constitutional rights of noncitizens both in popular media platforms and prominent legal journals. Before entering academia, Gulasekaram clerked for the U.S. Circuit Court of Appeals for the Fifth Circuit in New Orleans. He earned his BA at Brown University and his JD at Stanford Law School.

S. Karthick Ramakrishnan is Professor of Political Science and Associate Dean of the School of Public Policy at the University of California, Riverside. He directs the National Asian American Survey and AAPI Data and has written numerous books and articles on civic participation and immigration policy. Ramakrishnan is founding editor of the *Journal of Race, Ethnicity, and Politics*, a Global Fellow at the Woodrow Wilson Center, and an appointee to the California Commission on Asian and Pacific Islander American Affairs. He earned his BA at Brown University and his PhD at Princeton University.

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PRATHEEPAN GULASEKARAM

Santa Clara University School of Law

S. KARTHICK RAMAKRISHNAN

University of California, Riverside



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*To Gina and Mila; Brinda, Omji, and Millan ...
And of course, our Ammas and Appas*

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Acknowledgments

This book began, funnily enough, over a breakfast of dosas. One of us (Karthick) was traveling to Stanford for a conference and called the other (Pratheepan), a law professor at Santa Clara University, to see if we might be able to meet. We were longtime friends – we met each other on our first day at Brown University – but had only been in touch occasionally since college. We went to Komala Vilas, a South Indian restaurant in the area, to share a traditional breakfast of dosas, idlis, and sambar and to catch up on each other's lives. Although the visit was meant to be entirely social, we started talking about work and quickly realized that we were working on a very similar issue: the growth of restrictive state laws on immigration, which was then a relatively new line of inquiry. Even though we had both been researching the same topic, we were evaluating it from very different approaches – one largely empirical and the other largely based on readings of constitutional law and federalism. After a spirited discussion, we resolved to keep the conversation going. And we have done so, for more than five years. This sustained dialogue has so far been a very thoughtful and fruitful one, yielding three law review articles, two issue briefs, several newspaper Op-Eds, and now this book.

Since 2004, immigration policy, and the state and local role in defining that policy, has been a hot topic. It has dominated headlines, consumed hours of media commentary, and generated two Supreme Court opinions and several others in various federal courts. Immigration federalism has made national celebrities out of governors and local sheriffs and has provided plenty of academic fodder for scholars across many disciplines. It has also been a fast-moving phenomenon. In little more than ten years, trends have waxed and waned, and the political valence of state and local participation has shifted and continues to evolve.

While the initial interpretations of the surge in immigration law was that it was due to sudden demographic change – after all, undocumented

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immigrants were increasingly settling in new destination states like Iowa and Georgia – there is now a growing recognition that partisan politics and political actors play an important role. We count ourselves as among those who have helped shift this understanding, although in several academic and policy quarters the “demographic pressures” argument still holds sway. As we and others have shown, immigration policy has now become a highly partisan subject at the national and local levels, generating ideological battles waged in towns, counties, states, Congress, and presidential campaigns, and with major national organizations and political networks stoking those contests.

As we show in this book, the Republican intraparty rebellion on immigration occurred well before the start of the Tea Party movement in 2009. Since then, the issue of immigration policy in the states has taken many twists and turns, some wending their way through state legislatures and city halls, others working their way through the Supreme Court and actions by the White House. One net effect of all of these developments is that immigration federalism has become an indelible feature of the federal and subfederal policy landscape and will remain so for the foreseeable future. We hope that this book’s multidisciplinary approach, mixing empirical investigation, doctrinal analysis, and legal and political theory, will help shed light on the origins of this recent period of immigration federalism, producing new insight on its political underpinnings and legal consequences.

There are several friends and colleagues without whom this book would not have been possible. We owe special thanks to Professors Hiroshi Motomura, Cristina Rodriguez, Michael Olivas, Jennifer Chacon, and David Rubenstein, whose detailed and insightful comments on our earlier publications on the topic indelibly helped shape our ideas. We also owe significant gratitude to the institutions that gave us the time, space, and resources to work on these projects: Santa Clara University Law School and the University of California, Riverside, in addition to the Russell Sage Foundation and the Woodrow Wilson International Center for Scholars.

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developed in our forthcoming article in the Florida Law Review, *The President and Immigration Federalism*, 68 Fla. L. Rev.

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