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Federal Circuit Courts' Impact on Immigration Reform:
An Analysis of Judicial Ideology and Immigration Policy

A Capstone Project Submitted in Partial Fulfillment of the
Requirements of the Renée Crown University Honors Program at
Syracuse University

Evanna Myrna Ojeda

Candidate for Bachelor of Arts Degree
and Renée Crown University Honors
Spring 2018

Honors Capstone Project in Political Science

Capstone Project Advisor: ______________________
Thomas M. Keck,
Syracuse University
Professor of Political
Science

Capstone Project Reader: ______________________
Elizabeth F. Cohen,
Syracuse University
Associate Professor of
Political Science

Honors Director: ______________________
Chris Johnson, Interim Director

Abstract

Regulation of immigration policy is an expressed power granted to the federal government in the Constitution; however, state and local governments often pass immigration policy legislation to address gaps in federal legislation. This research project seeks to understand the role of federal circuit courts ruling powers in determining the legal standing and substitute holding of merits for immigration policy regulation. By analyzing the political ideology of presiding judges and understanding the relationship between political ideology and judicial decision support for federal or state regulated policy, this project seeks to recognize the role of federal circuit courts in enhancing and shaping America's immigration policy. This research found a ruling pattern in the Second, Fifth and Ninth Circuit Court of Appeals favoring federally regulated immigration policy. While the impact of Republicanism/conservativism of judges yielded inconclusive results, Democratic/liberal judge panels affirmed federal immigration policy more than state/local immigration policy. The results of this thesis open avenues for additional research such as whether the level of liberalness/conversativness of the immigration policy in question affects judicial decisions.

Executive Summary

This research seeks to understand the ruling pattern of federal circuit courts in determining the outcome of cases challenging the legal standing and substitute holding of merits of federal and state regulated immigration policy. By analyzing cases challenging immigration policy in the Second, Fifth and Ninth U.S. Federal Circuit Courts, this project aims to highlight and explain a causal relationship between the political ideology of presiding judges and the ruling pattern for supporting or opposing federally regulated immigration policy. Understanding the pattern of the federal courts in determining cases challenging immigration policy is vital for understanding where immigration policy legislation will prevail and where it will falter in future rulings of the circuit courts. Immigration policy has increasingly become a central platform for debate amongst the legislative and executive branches; therefore, it is significant to the academic community to understand the effect federal courts' ruling play on shaping America's immigration policy.

Significance to the Existing Literature

The separation of powers between federal and state government is outlined by the Constitution. The power of the government to create and enforce immigration policy falls to the federal government under Article I as a power reserved for the legislative branch. However, in practice, state governments have initiated state-based immigration policy as a means of reacting to the demands of their constituents and addressing the areas of concern with federally regulated policy. The judicial branch, with its power to interpret the Constitution and affirm or remand federal and state regulation, has been presented with arguments against both federal and state regulated immigration policy. This means it has become the responsibility of the courts to determine the legal standing of federally and locally regulated immigration policy. It is for this

reason that it is important to understand the effect of presiding judges' political ideology and their ruling pattern on immigration policy regulation.

Theory and Methodology

This thesis poses two questions: (1) does there exist a ruling pattern in federal circuit courts indicating more support for federally regulated immigration policy over state or locally regulated immigration policy? (2) If such a pattern does exist, why? In initiating this research, it is predicted that a ruling pattern will be evident in federal circuit courts judicial decisions and that this ruling pattern will favor federally regulated immigration policy more than state regulated policy. This hypothesis also seeks to evaluate the effect of judicial political ideology in determining the outcome of such cases. It is the prediction of this research that federal courts with a liberal majority panel of judges will favor federally regulated immigration policy more than those with a conservative majority panel of judges.

To test this thesis question and hypothesis, I identified two independent variables, a dependent variable and unit of analysis. The independent variables in this research are (1) the level of government posing and regulating the immigration policy under judicial review (i.e. a federally regulated immigration policy or a state/locally regulated immigration policy) and (2) the majority political ideology of the presiding judges (i.e. a Democratic/liberal majority judge panel or a Republican/conservative majority judge panel). The dependent variable in this research is the final decision of the Second, Fifth and Ninth Circuit Courts. This means that the dependent variable will be support or opposition for the challenged policy. The unit of analysis in this case analysis will be the individual court decisions of the United States Circuit Court of Appeals.

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Chapter 1
Introduction

The United States is a land of opportunity and dreams. It is a land of rights and freedoms, rules and regulations, law and order. America is a land of immigrants who are often caught in between. As a first-generation American citizen, I have witnessed the effects of immigration policy on the lives of migrants, whether they are documented or undocumented. The question this research poses is significant to existing literature because of the increasing relevance of immigration regulation in current political and judicial debates since the 2016 presidential election. Current policy debate attacks the dynamics of comprehensive immigration reform. The standards for immigrant entry and deportation, immigration integration, access to employment and public benefits are all challenged before the federal courts today.

This research project seeks to analyze the pattern that exists in federal court rulings when making decisions on immigration policy. The primary question posed for this research is as follows: Does there exist a ruling pattern in federal circuit courts indicating more support for federally regulated immigration policy over state or locally regulated immigration policy? If such a pattern does exist, why? This research seeks to identify any ruling pattern present in the United States Second, Fifth and Ninth Circuit Court of Appeals judicial decisions. Since these circuit courts possess jurisdiction over the states and districts with the highest immigrant and foreign-born residence population, analyzing these courts will yield the most impactful results to immigration policy reform.

This research predicted that a ruling pattern does exist in circuit courts' judicial decisions favoring federally regulated immigration policy more so than state or locally regulated immigration policy. This research hypothesized that political ideology of presiding judges had an effect on judicial decisions. Democratic judges were predicted to be more in favor of federal regulation because of the Democratic Party's support for centralized governmental power. Conversely, the Republian judges' panels were predicted to be more in favor of state/local regulation because o the Republican Party's support for expanding states' rights. This research looks at the majority political ideology rather than individual political ideology of each presiding judge as a means of identifying patterns across political ideology and immigration policy support. While the hypothesis for Democratic majority judge panels was found to be true—supporting federally regulated immigration policy more than state or locally regulated immigration policy—the result for Republic majority judgee panels was inconclusive.

Circuit courts decisions on immigration policy cases affects the way America's immigration policy is regulated and enforced. Therefore, it is instrumental for the academic community to understand the relationship between political ideology and immigration policy as they affect the judicial decision-making process of judges in the federal circuit courts.

Significance

While immigration policy is primarily regulated at the federal level through the executive and legislative branches of government, states have also sought to enforce immigration standards within their borders as an immigrant population affects a state's employment, health benefits and public education. A state's immigration policy, however, can conflict with federal immigration policy. Organizations and individuals turn to the federal courts for assistance in determining which policy should supersede in times of conflict. The federal court uses its interpretation of the

constitution and relevant case law to justify the constitutionality or lack thereof of immigration policy brought before them.

Identifying and understanding a ruling pattern or trend in the federal courts for cases challenging the constitutionality or enforceability of immigration policy is necessary for understanding how present judicial decisions on similar grounds will be decided. By addressing the question of whether a ruling pattern in the federal circuit courts exists, scholars can predict what the outcome of such a ruling pattern will be and how it will shape America's immigration policy.

Chapter 2:
Relevant Background

"Immigration is the oldest and newest story of the American experience."[1] Since the 1970s, the number of immigrants, visa holders, lawful permanent residents and undocumented immigrants has continued to increase. In 2005, a report on America's foreign-born population found that one in eight people living in the United States are foreign-born, of which one in seven are workers in the United States.[2] These statistics were deduced from a foreign-born population of 37 million, 11.5 million of which are naturalized citizens, 11.8 million lawful permanent residents and over 11 million undocumented.[3] As the number of immigrants flowing to the United States, both documented and undocumented, increase, these ratios become smaller and the number of foreign-born residents in the U.S. and in the workforce increase. A *New York Times* article on Dreamers[4] found the top six destination states for Dreamers in the United States to be California, Texas, Illinois, New York, Florida and Arizona.[5]

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[1] (Abraham and Hamilton 1)
[2] (Abraham and Hamilton 10)
[3] (Abraham and Hamilton 19)
[4] Dreamers are defined as undocumented immigrants who arrived in the United States as children. These children are granted an extensive pathway to permanent legal status and citizenship through their successful completion of: graduation from an institution of higher learning, being of a certain age, being present in the U.S. for a certain number of years, having a good moral character and not having violated other immigration laws (LawLogix).
[5] Parlapiano, A. and Yourish, K. (2017). "A Typical 'Dreamer' Lives in Los Angeles, Is From Mexico And Came to the U.S. at 6." *New York Times.*

Because of the continuous growth of the immigration population, the federal government has not been readily able to address the concerns of admissibility, public benefits and education for this population of residents. This has placed the burden of adapting and expanding immigration policy on state and local governments.[6] To understand the immigration policy created between the federal and state government, it is important to highlight the distinction between their powers to regulate immigration policy and the effect of the policies implementeneted. The federal government has the expressed right to regulate immigration. Immigration in this sense refers to the movement of individuals or migrants to and from the United States. This also extends to border security measures, detention regulation and law enforcement treatment as these areas of policy directly relate to migration to the United States. States, on the other hand, tend to create policy over alienage. This refers more to the treatment of immigrants within the country, immigrant access to public benefits and employment opportunities. Legislation on the movement of immigrants and alienage of migrants coexist through immigration policy regulated by both federal and state/local governments.

Federal Immigration Policy Reform

One area of law where the federal government has sought reform is in removal proceedings and appeals processes for detained immigrants. The Department of Justice initiated a series of reforms in the early twenty-first century to make the process of reviewing detainees' cases more "streamlined." They hoped that by doing so, the Department would reduce the backlog of administrative proceedings and bond hearings for immigrants. Instead, this attempt at streamlining led to a "steep rise in the percentage of cases appealed to the federal courts" (Abraham and Hamilton 68). The percentage of immigration cases brought before the U.S.

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[6] This burden on the state and local governments has been noted by experts in political science and other related fields such as those at the Migration Policy Institute and more.

Circuit Courts increased with the most substantial increase witnessed in the Ninth Circuit Court from eight to fourty-eight percent of Board of Immigration Appeals sent up for review from the period of 2001 to 2004 (Abraham and Hamilton 69).

Both federal and state governments sought legislative action to address the increase in immigration and foreign-born residents in the United States. In 2007, as constituencies urged their representatives to establish tangible change to the current system of immigration in place, talk of comprehensive immigration reform for the current system made the platform for discussion. Comprehensive immigration reform refers to immigration policy that encompasses border security, immigrant welfare, public benefit and cost and pathways to citizenship. This led immigration reform to become a campaign platform in 2008 during the presidential election. While immigration reform was a major point of contestation on the campaign trail, the economic recession forced President Obama to place attention on monetary policy rather than comprehensive immigration reform upon taking office.

In 2013, Congress sought to address the comprehensive reform in both houses; however, their approaches were slightly different. The House of Representatives, with a Republican majority, developed H.R. 15: Border Security, Economic Opportunity, and Immigration Modernization Act of 2013. The Senate, with a Democrat majority, produced S. 744: Border Security, Economic Opportunity and Immigration Modernization Act. While the House and the Senate found and passed two versions of comprehensive immigration reform, the reform outlined in each bill was not identical.

The Senate passed a comprehensive immigration reform bill known as S.744[7] in June of 2013. This bill developed an extensive pathway towards citizenship for undocumented persons currently living within the United States, highlighted the need for heightened border security efforts and addressed economic opportunity for migrants in the United States.[8][9] The House introduced reform bill H.R. 15[10] in October of 2013. Many of the factors within S.744 are paralleled in H.R. 15. The most significant difference is the language framing a pathway to citizenship for the current 11 million undocumented immigrants living in the U.S. The House, led by a Republican majority, expressed a ten- to thirteen-year pathways to citizenship for undocumented immigrants. The bill also proposed increasing southern border security efforts through surveillance, increased technology and partnerships with local law enforcement. The bill restated the eligibility requirements for Registered Provisional Immigrant (RPI) status, DREAM provisions, family and employment-based immigration visas and other types of visa specific requirements. The bill briefly discussed immigrant access to public benefits and the effect of the Affordable Care Act for qualified aliens.[11][12]

State Immigration Policy Reform

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[7] Information on S.744 derived from the Library of Congress, "Summary: S.744 – 113th Congress (2013-2014)."

[8] Garcia, A. (2013). "Making Sense of the Senate and House's Visions of Immigration Reform." *Center for American Progress*

[9] Ramakrishnan, S. K. and Colbern, A. (2015). "The California Package: Immigrant Integration and the Evolving Nature of State Citizenship." *Policy Matters.* Vol. 6 Issue 3. University of California, Riverside. School of Public Policy.

[10] Information on H.R. 15 derived from the Library of Congress, "Summary: H.R. 15 – 113th Congress (2013-2014)."

[11] (2013). "Summary of H.R. 15: Border Security, Economic Opportunity, and Immigration Modernization Act of 2013." *National Immigration Law Center.*

[12] (2014). "A Guide to H.R. 15: The Border Security, Economic Opportunity, and Immigration Modernization Act." *American Immigration Council.*

The delay in the federal government addressing constituent concerns regarding immigration policy led to state and local governments taking on the responsibility of immigration policy reform. While Congress has the express power to regulate immigration, naturalization, entry and deportation to/from the United States of America under Article I, Section 8 of the U.S. Constitution, individual states began to pass regulation regarding the treatment of immigrants, employment opportunities available, state public benefits access, education access and law enforcement treatment as a means of filling the gap in federally regulated immigration policy. Some states engaged in more liberal immigration policy reform such as California.[13] Other states engaged in restrictive and partially discriminatory approaches to immigration policy and immigrant access to public benefits. One example of a disputed discriminatory immigration policy reform is the State of Texas Senate Bill 4, a policy allowing "local law enforcement officers to question the immigration status of people they detain or arrest" and punishes all elected state and local officials that fail to cooperate with federal immigration requests to turn over detainees.[14] Senate Bill 1070 in the State of Arizona can be considered another restrictive immigration policy reform in which the state criminalized several actions related to unauthorized work for immigrants and implemented "new immigration-related police powers and responsibilities."[15][16]

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[13] In a *Los Angeles Times Op-Ed*, author Karthick Ramakrishnan describes California's package of immigration reform bills as "encouraging integration rather than deportation" (Ramakrishnan 1). An example of one integrated based policy is the qualification for in-state collegiate tuition. Residents are qualified depending on the number of years the individual spent within the K-12 system of education in California rather than their immigrant status.

[14] Aguilar, J. (2017). "Texas back in federal court over anti- "sanctuary cities" law." *The Texas Tribune*.

[15] Ana, O. S. and Gonzalez de Bustamante, C. (2012). *Arizona Firestorm: Global Immigration Realities, National Media, and Provincial Politics*. Rowman & Littlefield Publishers, Inc.

[16] The authors go on to describe the intention and content of Arizona SB 1070 as a policy designed explicitly to "keep undocumented immigrants out of Arizona" (Ana and Gonzalez 78).

To understand the significance of the history of immigration policy reform and the research question proposed in this thesis, it is important to understand similar research that has been conducted in the political science and immigration sector on this topic.

Chapter 3:
Literature Review

Scholars have sought to answer similar questions regarding the significance of judicial decisions on immigration policy reform. Existing research has been conducted on (1) the effectiveness of federally regulated immigration policy versus that of state or locally regulated immigration policy and (2) disparities evident in judicial decisions across federal circuit courts and federal appellate courts on immigration policy. There has not been research that has connected the level of government regulation to a ruling pattern in the federal circuit courts.

Anna Law, a political scientist, studied the disparities in the U.S. Supreme Court and U.S. Appellate Courts on immigration policy[17] in her book, *The Immigration Battle in American Courts.* Law's research suggests that the use of federal courts in settling immigration policy reform is difficult to decipher because of the courts' responsibility to act as a "policy court and as a court of law."[18] Her juxtaposition of the courts' responsibility is presented below:

> "On the one hand…(courts) calls upon judges, as members of an independent third branch of government, to check the abuses and excesses of the elected branches' expertise of government power over individuals. On the other hand, immigration as a policy area is similar to foreign policy…because immigration decisions also have implications for visions of national identity and sometimes

[17] Assistant Professor at Brooklyn College, Anna Law, conducted research on the "role of the federal judiciary in immigration and institutional evolution of the U.S. Supreme Court and of the U.S. Courts of Appeals" in 2010. This work displays three major arguments: (1) the Supreme Court and Courts of appeals operate unlike other institutions, (2) the role and involvement of these courts in immigration policy has changed overtime and (3) this evolving nature has consequences for the courts, litigants and aliens debated on by litigants. (Law 3).

[18] (Law 9)

> national security, it is also a policy area where the nation should ideally speak with one voice through one of the elected branches of government rather than through a cacophony of different voices from multiple government institutions and actors" (Law 8-9).

Regardless of the role the federal circuit court plays in determining the validity and constitutionality of immigration policy, the fact of the matter is that federal judicial decisions on such cases shapes the way in which immigration policy is enforced, monitored and proposed.

In identifying the rationale for judicial decisions upholding the constitutionality of immigration policy, Law points to the Citizenship Clause of the Fourteenth Amendment.[19] According to Law, courts have been able to point to the Citizenship Clause as a means for justifying state or locally regulated immigration policy. Other researchers argue that federal courts will favor federally regulated immigration policy over state or locally regulated immigration policy because of the federal government's expressed right to regulate immigration, naturalization and deportation to/from the United States. Proponents of this argument refer to the Article I, Section 8 of the Constitution as the primary justification for immigration policy regulation as a federal rather than state or local power.

Existing literature has not questioned if the political ideology of the presiding judges affects the judicial decision, whether it be in support or opposition of federal or state regulated immigration policy, nor has existing literature connected the independent variables of level of policy regulation and political ideology affecting judicial outcomes. This provides an avenue for this research project to add to the existing tliterature on the role and impact of federal circuit courts in affecting immigration policy reform.

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[19] Elizabeth Cohen considers the Fourteenth Amendment to be the only direct statement within the U.S. Constitution that addresses citizenship and rights of citizens. This clause is, therefore, referred to as the "Citizenship Clause" and is often "central to debates about the attributes of citizenship" (Cohen 576).

Chapter 4:

Theory

This research poses two questions: Does there exist a ruling pattern in federal circuit courts indicating more support for federally regulated immigration policy over state or locally regulated immigration policy? If such a pattern does exist, why? My hypothesis is as follows: (1) there is a ruling pattern present in federal circuit courts judicial decisions on immigration policy favoring federally regulated policy and (2) political ideology of judges is a factor affecting judicial deicisons supporting or opposing immigration policy. I hypothesize the ruling pattern will favor federally regulated immigration policy more than state or locally regulated immigration policy. I also predict that the political ideology of the judges presiding over the case is a factor affecting the support or opposition for the federal or state regulated policy in question. In analyzing the effect of political ideology, this research predicted that Democratic judges would be more in favor of federal regulation, while Republican judges would be more in favor of state regulation.

It is important to highlight the narrowed scope of this research question and theory before further discussing the theory itself. This research will investigate United States Circuit Courts of Appeals. This research will not be analyzing cases from the federal district court or Supreme Court nor cases from the Board of Immigration Appeals. Circuit courts offer a unique opportunity for analysis; appellate courts decisions are not meant to set a caswlaw or precedent

for immigration policy as decisions in the Supreme Court normally would do. They act as a refinement of legal understanding and interpretation of district court cases that are reconsidered and heard once more for matters of constitutionality or the proper interpretation of the law. Circuit courts act as a check on the district courts interpretation of facts and applicable law without the pressures of setting precedent like that of Supreme Court decisions. Further explanations for narrowing the scope of research on a logistical reference will be explained in the Research Design section of this paper.

Is There a Pattern of Circuit Court Support for Federal Policy?

In hypothesizing an outcome for the first question—does there exist a ruling pattern in federal circuit courts indicating more support for federally regulated immigration policy over state or locally regulated immigration policy—I suspect a ruling pattern will be present. As cases are brought before the federal court, it is the responsibility of the judges to interpret the law or policy being challenged in accordance with the U.S. Constitution and preceding caselaw.

This theory predicts that the ruling pattern evident in the federal circuit courts will favor federally regulated immigration policy over state or locally regulated immigration policy. The U.S. Constitution granted explicit powers to the federal government; the remaining non-explicit powers were delegated to the states and local governments. One such power granted to Congress under Article I, Section 8 was the right to regulate immigration, naturalization, entry and deportation to/of the United States of America. Using this expressed power as a primary basis for the hypothesis, I predict that judges will favor federally regulated immigration policy more than state or locally regulated immigration policy because the federal government is using their expressed power to grant such policy whereas the state or local government legislation have limited constitutional grounds to create such policy.

What is the Effect of Political Ideology?

In understanding the independent and interdependent relationship between federal and local immigration policy—independent referring to the variables' singular effect on judicial decision while interdependent refers to the mutually affecting power of the variable to effect judicial decision—there are three basic ways in which these policies interact with the circuit courts: (1) federal policy is challenged on its own accord, (2) state/local policy is challenged on its own accord or (3) a state/local policy is challenged because it is preempted by a federal policy. To predict the ruling pattern under these separate conditions, I present a second independent variable for consideration: the political ideology of the presiding judge panel. It is my prediction that a presiding panel of majority Democratic or liberal judges will tend to favor the federal policy in the first scenario, disfavor the state policy for its attempt to overreach federal powers and expand state powers, and support the federal policy through reference of the Supremacy Clause or Preemption Clause in the third scenario. The Democratic Party favors centralized government powers; therefore, the prediction that Democratic majority panels will favor federal regulation builds on this principal assuming the Democratic Party views the federal government as the centralized organization with policy regulation powers.

Conversely, it is my prediction that a presiding panel of majority Republican or conservative judges will tend to oppose federal policy in the first scenario, favor state policy in the second scenario as a means of creating policy specifics where the federal government has failed to do so and attempt to favor the state policy over the federal policy where appropriate constitutional grounds allow in the third scenario. The Republican Party favors expansion of states' powers; therefore, the prediction that Republican majority panels will favor state or local immigration policy builds on the principal that Republicans support states' regulation powers, in this case those powers being that of immigration regulation.

Limitations

This research seeks to identify and understand any ruling pattern present in the federal circuit courts on immigration policy. This research, however, is limited in its approach and the factors included in the hypothesis. This research is not analyzing whether the policy challenged is liberal or conservative nor is this research analyzing constitutionality claims at other court levels such as district courts nor is it analyzing administrative immigration claims such as those brought to the Board of Immigration Appeals. This means that this theory cannot draw a conclusive relationship between liberal or conservativeness of policy and liberal or conservativeness of judge panel.

The second limitation is important to preface because many individual immigrant concerns with immigration policy occur at points of detention. When an immigrant is detained and seeking legal assistance, they are initially sheltered to a bond hearing and then heard at an appeal through the Board of Immigration Appeals. The number of cases that are transferred up from the Board of Immigration Appeals to a Circuit Court of Appeals is limited at best because many immigrants do not have the resources to continue their case. While analyzing only judicial decisions on immigration policy at the Circuit Court provides a unique opportunity, it limits the amount of individual complaints that can be analyzed because of the reality that many individual complaints are never brought to the level of the circuit courts.

Chapter 5:
Research Design

To find a ruling pattern in federal circuit court decisions on immigration policy, I analyzed judicial decisions on immigration policy cases and collected information on judicial political ideology for the presiding judges of each case.

Independent Variables, Dependent Variable, Unit of Analysis

The independent variables in this research are (1) the level of the government that proposed law or policy under judicial review and (2) the majority political ideology of the judge panel. The first independent variable identifies whether the immigration policy under question was proposed by the federal government or by state/local government authority. The second independent variable will be found by collecting information on the panel of judges per each case analyzed. All federal court judges are presidential appointees; therefore, the political ideology of the president nominating the judge for their seat in the Circuit Court of Appeals will be used to determine whether the panel of judges are predominantly Republican or predominantly Democratic.

Since the research proposed in this study is limited to cases brought before the federal court, the dependent variable will be the decision made by the federal circuit court in each case.

Expected dependent variables, therefore, are judicial decisions in support of the challenged policy or opposing the challenged policy.

All cases will, then, be categorized into a two- by two- table according to the independent and dependent variables present such as that depicted in Figure 1. Level of government, as an independent variable, will be charted vertically; while judicial political ideology will be charted horizontality. Case names will be listed inside the two by two table with judicial decisions supporting the challenged immigration policy highlighted in bold text and judicial decisions opposing the challenged immigration policy in regular text.

Figure 1. Expected table indicating relationship between independent variables (Regulator of Challenged Immigration Policy and Majority Political Ideology of Judge Panel) and dependent variable (policy supported or opposed).

		Regulator of Challenged Immigration Policy	
		Federal Immigration Policy	**State Immigration Policy**
Majority Political Ideology of Judge Panel	**Democrat/Liberal**	**Case A (Supported)** … Case W (Opposed)	Case C (Opposed) … **Case Y (Supported)**
	Republican /Conservative	**Case B (Supported)** … Case X (Opposed)	Case D (Opposed) … **Case Z (Supported)**

The unit of analysis in this case analysis will be the individual court decisions of the United States Circuit Court of Appeals. While all cases are tried at the district level, those brought to the Appellate Courts challenge the constitutionality of policy and/or verify the rationale of district courts in their rulings on cases. This research will not analyze Supreme Court decisions. While it is important to acknowledge that the Supreme Court acts as the highest level federal court in the United States judiciary system, their work acts as precedent for lower courts

to follow. Appellate courts produce judicial decisions approving or reversing decisions from lower courts by verifying rationale and constitutionality, making appellate court rulings intermediaries, so to speak, in the judiciary process. Cases brought before the appellate courts have been challenged through a trial and request additional appeal. Cases decided at the appellate court level and brought before the Supreme Court act as those setting precedents and are, therefore, unique cases that do not represent the general trend in federal judicial decisions.

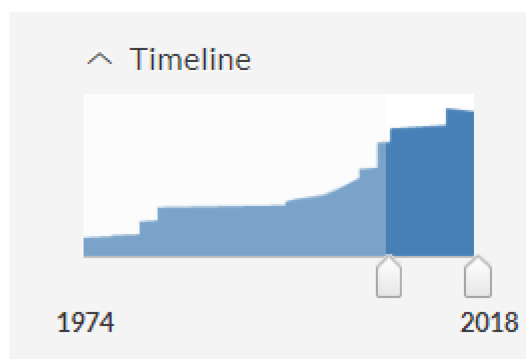
Narrowing the Scope of Research

While immigration policy is a national concern and sits at the forefront of several national and local debates, this research project will investigate the presence of immigration-based policy litigation within the Second, Fifth and Ninth Circuit Courts of Appeal. The Second Circuit Court of Appeals has jurisdiction over the New York state region as well as Connecticut and Vermont. The Fifth Circuit Court of Appeals has jurisdiction over Louisiana, Mississippi and Texas, and the Ninth United States Circuit Court of Appeals has jurisdiction over Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. Because New York, California and Texas have the highest population demographics of immigrants and foreign-born residents in the U.S., narrowing the scope of analysis to these three circuit courts is most representative of the ruling pattern present in communities with a strong immigrant presence. This narrowed approach also creates efficiency in selecting cases pertaining to immigration policy because constituent pressures have triggered more state officials in these predominantly high-immigrant communities to create immigration policy where the federal government's laws have lacked or failed to fully address constituent needs.

This research will focus on the voting trend present in immigration policy cases from January 1st 2008 to January 1st 2018. While *Nexis Uni,* the case database that will be utilized to

gather relevant judicial decisions, has cases recorded from beyond 1974 to present day, this research project will narrow the scope of research to immigration policy cases beginning in 2008. 2008 marks the beginning of the latest steady peak in judicial hearings for immigration policy cases. This is evident in Figure 2 below where 2008 acts as the beginning of a steady trend of increased immigration policy cases leading up to present day. 2018 is experiencing near the highest number of immigration policy cases in the federal court system, also evidenced in the image below. Therefore, it is most logical to narrow the scope of research to the time period between the start of 2008, when the trend for increased immigration policy cases began, to the start of 2018, where the trend prevails.

Figure 2. Peaks for federal immigration policy cases. Image derived from Nexis Uni search on immigration policy cases in federal courts. (The middle bar reflects the time stamp 01/01/2008, the latest period of immigration policy cases heard in federal courts.)



Case Identification and Selection

As previously mentioned, *Nexis Uni* is the primary legal database that will be utilized to research, identify and select a relevant collection of United States Appellate Court decisions for this thesis. To select the most recent and relevant cases for the analysis, I made use of advanced search tools within *Nexis Uni*. By imposing the earlier mentioned timeframe of 2008 to 2018 with a specification for U.S. federal cases dealing with the practice area of immigration policy,

an initial search of 612 federal cases was collected. This search was further narrowed by reducing the courts to the Second, Fifth and Ninth U.S. Circuit Court of Appeals. Advancing the search once more with the key word of "immigration policy" yielded a final search count of 43 relevant cases. The 43 cases were reviewed for relevance to the research question at hand: does there exist a ruling pattern in federal circuit courts indicating more support for federally regulated immigration policy over state or locally regulated immigration policy? If such a pattern does exist, why? Each case summary, overview and final court decision was analyzed under the following criteria to ensure the cases selected were relevant to the research question:

1. Is the primary issue pertaining to an existing immigration policy federally or locally regulated?
2. Does the judicial decision issue a substitute holding on the merits that can fairly be categorized as pro-immigrant or anti-immigrant?

From this final refinement, a total of 22 cases across the Second, Fifth and Ninth U.S. Circuit Court of Appeals were selected for analysis. These cases are presented below in Figure 3 as they pertain to the first independent variable identified: a federally regulated immigration policy challenged, or state/locally regulated immigration policy challenged.

Figure 3. U.S. Second, Fifth and Ninth Circuit Court of Appeals cases filed regarding the constitutionality of federal immigration law and/or state immigration law.

Federal Immigration Law	**State Immigration Law**
Cruz-Miguel v. Holder, 650 F.3d 189	*Pimentel v. Dreyfus*, 670 F.3d 1096
Pimentel v. Mukasey, 530 F.3d 321	*Dandamudi v. Tisch*, 686 F.3d 66
Perez-Gonzalez v. Holder, 667 F.3d 622	*Villas at Parkside Partners v. City of*
Texas v. United States, 809 F.3d 134	*Farmers Branch, Texas*, 726 F.3d 524
United States v. Bayardo-Garcia, 590 Fed. Appx. 660	*Korab v. Fink*, 748 F.3d 875

Martinez-Madera v. Holder, 559 F.3d 937 *Latter-Singh v. Holder*, 668 F.3d 1156 *Garfias-Rodriguez v. Holder*, 702 F.3d 504 *Rodriguez v. Robbins*, 715 F.3d 1127 *Ledezma-Cosino v. Lynch*, 819 F.3d 1070 *Flores v. Lynch*, 828 F.3d 898 *Washington v. Trump,* 853 F.3d 933 *Hawaii v. Trump*, 878 F.3d 662 *C.J.L.G. v. Sessions*, 880 F.3d 1122	*United States v. Arizona*, 641 F.3d 339 *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808 *Valle Del Sol Inc. v. Whiting,* 732 F.3d 1006 *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053

Following the case identification and selection came data collection on the majority political ideology of judges on each panel per case listed in Figure 3.

Identifying Majority Judicial Political Ideology

The Federal Judicial Center[20] website houses a database with information regarding judges' appointment, nomination and confirmation into their various positions across the federal government's district, circuit and appellate courts. This is the primary source utilized to collect information on the presidential appointments of each judge presiding over the 22 cases selected as relevant for the case analysis.

Across the 22 relevant cases, the majority was determined by a panel of three judges. To determine the majority political ideology of the panel, I referred to the Federal Judicial Center services to identify under which president each judge was appointed. The political ideology of the appointing president is representative of the political ideology of the presiding judge. Therefore, the political ideology assigned to two of the three judges is categorized as the majority political ideology of the panel for the purposes of this research. Out of the 22 cases,

[20] Federal Judicial Center, fjc.gov

three cases required *en banc* consideration, meaning all standing judges in the respective circuit court sat and decided on the outcome of the case. For these three cases,[21] the majority political ideology was that of more than half of presiding judges. The majority political ideology is depicted in Figure 4 below.

Figure 4. Majority Political Ideology of Judge Panel deciding immigration policy cases across the Second, Fifth and Ninth U.S. Circuit Courts of Appeal.

Democratic/Liberal	Republican/Conservative
United States v. Bayardo-Garcia, 590 Fed. Appx. 660 *Pimentel v. Dreyfus*, 670 F.3d 1096 *Latter-Singh v. Holder*, 668 F.3d 1156 *Garfias-Rodriguez v. Holder*, 702 F.3d 504 *Valle Del Sol Inc. v. Whiting*, 709 F.3d 808 *Rodriguez v. Robbins*, 715 F.3d 1127 *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053 *Ledezma-Cosino v. Lynch*, 819 F.3d 1070 *Flores v. Lynch*, 828 F.3d 898 *Hawaii v. Trump*, 878 F.3d 662	*Pimentel v. Mukasey*, 530 F.3d 321 *Martinez-Madera v. Holder*, 559 F.3d 937 *United States v. Arizona*, 641 F.3d 339 *Cruz-Miguel v. Holder*, 650 F.3d 189 *Perez-Gonzalez v. Holder*, 667 F.3d 622 *Dandamudi v. Tisch*, 686 F.3d 66 *Villas at Parkside Partners v. City of Farmers Branch, Texas*, 726 F.3d 524 *Valle Del Sol Inc. v. Whiting*, 732 F.3d 1006 *Korab v. Fink*, 748 F.3d 875 *Texas v. United States*, 809 F.3d 134 *Washington v. Trump*, 853 F.3d 933 *C.J.L.G. v. Sessions,* 880 F.3d 1122

[21] The three cases requiring *en banc* judges to decide are: (1) Villas at Parkside Partners v. City of Farmers Branch, Texas, 726 F.3d 524, (2) Washington v. Trump, 853 F.3d 933 and (3) Garfias-Rodriguez v. Holder, 702 F.3d 504.

Having identified the independent variables—(1) whether the challenged policy is federally or state/locally regulated and (2) whether the majority political ideology of the presiding judges is democratic or Republican—the information can be presented and analyzed.

Chapter 6:
Analysis

The case study of Second, Fifth and Ninth Circuit Court of Appeals ruling patterns on immigration policy have been organized by the existence of the respective independent variables for this research project. The effect of both independent variables is expressed in the figure below where each case has been categorized according to the type of policy being challenged, the political ideology of the panel presiding over the case and the final decision of the courts on the case. Cases in bold indicate judicial decisions in support of the challenged policy whereas cases in regular text indicate judicial decisions opposing the challenged policy. See Figure 5 for independent variables effect on the dependent variable.

Figure 5. Judicial Decisions on Immigration Policy cases regulated federally and locally based on judge panels' majority political ideology.

		Regulator of Challenged Immigration Policy	
		Federal Immigration Policy	**State Immigration Policy**
Majority Political Ideology of Judge Panel	**Democrat/ Liberal**	**United States v. Bayardo-Garcia, 590 Fed. Appx. 660** **Latter-Singh v. Holder, 668 F.3d 1156** **Garfias-Rodriguez v. Holder, 702 F.3d 504** **Rodriguez v. Robbins, 715**	**Pimentel v. Dreyfus, 670 F.3d 1096** Valle Del Sol Inc. v. Whiting, 709 F.3d 808 Ariz. Dream Act Coalition v. Brewer, 757 F.3d 1053

		F.3d 1127 Ledezma-Cosino v. Lynch, 819 F.3d 1070 **Flores v. Lynch, 828 F.3d 898** Hawaii v. Trump, 878 F.3d 662	
	Republican/ Conservative	**Pimentel v. Mukasey, 530 F.3d 321** **Martinez-Madera v. Holder, 559 F.3d 937** **Cruz-Miguel v. Holder, 650 F.3d 189** Perez-Gonzalez v. Holder, 667 F.3d 622 Texas v. United States, 809 F.3d 134 Washington v. Trump, 853 F.3d 933 **C.J.L.G. v. Sessions, 880 F.3d 1122**	United States v. Arizona, 641 F.3d 339 Dandamudi v. Tisch, 686 F.3d 66 Villas at Parkside Partners v. City of Farmers Branch, Texas, 726 F.3d 524 Valle Del Sol Inc. v. Whiting, 732 F.3d 1006 **Korab v. Fink, 748 F.3d 875**

General Trends

To properly analyze any ruling pattern between political ideology and regulator of immigration policy, it is important to identify and understand general trends present in the above figure. The chart indicates that in Democratic majority panels, a federally regulated immigration policy was supported on five occasions and opposed only twice. This implies that a Democratic majority judge panels will be more likely to favor federally regulated policy over state/locally regulated immigration policy. This is consistent with the next cell box (Democratic/Liberal and

State Regulated Immigration Policy) where two out of three cases decided were judges opposed the policy and the locally regulated state immigration policy was ruled unconstitutional.

While the analysis of the Democratic majority judge panel is parallel to that of the original hypothesis, the results for the Republican majority panel do not experience the same trend. In the bottom row of the chart, the Republican majority supported federally regulated policy four times and opposed similar policy on three occasions. This implies that there is a near 50% chance that a Republican majority judge panel will rule in favor of a federally enforced immigration policy. A pattern is clearer in the bottom, right cell (Republican/Conservative and State Regulated Immigration Policy) where four out of five cases ruled against state immigration policy in the final judicial decision. This implies that a Republican majority panel will not necessarily support state or locally regulated immigration policy, as originally hypothesized in the theory section of this thesis.

To better understand why the trends across the Democratic and Republican majority panels exist, two cases were randomly selected within each cell for an individual case analysis. Of the two cases selected per cell, one case was selected that supported the challenged policy—depicted in bold text—and another that opposed—depicted in regular text. The explanations of these eight cases are illustrative of the relationship between the level of government regulating the challenged policy and the support/opposition for said policy based on the political ideology of the presiding judges.

These cases are as follows: Rodriguez v. Robbins, 715 F.3d 1127, Hawaii v. Trump, 878 F.3d 662, Pimentel v. Dreyfus, 670 F.3d 1096, Ariz. Dream Act Coalition v. Brewer, 757 F.3d 1053, Martinez-Madera v. Holder, 559 F.3d 937, Texas v. United States, 809 F.3d 134, Korab v. Fink, 748 F.3d 875 and United States v. Arizona, 641 F.3d 339.

Federal Policy and Democratic Majority

The following cases were selected as the most illustrative of the general pattern found in the top, left cell from Figure 5. The independent variables for the following two cases are constant; both cases challenged a federally regulated immigration policy and were presided by a majority Democratic panel of judges.

Support: Rodriguez v. Robbins

The case presented by Alejandro Rodriguez, Abdirizak Aden Farah, Jose Farias Cornejo, Yussuf Abdikadir and Abel Perez Ruelas was argued in March of 2013 in the United States District Court for the Central District of California against Timothy Robbins, the Field Office Director for the Los Angeles District of Immigration and Customs Enforcement. The plaintiffs acted as representatives for a cohort of non-citizens challenging their prolonged and continued detention without individualized bond hearings to justify the continued detention. The District Court ordered a preliminary injunction requiring the government to identify and grant each detained individual with an individualized bond hearing, pursuant to 8 U.S.C.S. §§ 1226(c), 1225(b). The U.S. Attorney General and others in the defense challenged the order through appeal in April 2013.

The appellate court affirmed the order for a preliminary injunction and reinforced the language of statute 1225(b) and 1226(c) in their decision. It is within the federal government's immigration policy that any person detained in the United States has the right to administrative and judicial proceedings to determine whether they will remain in the country. The cohort of non-citizens being represented in this case were detained in southern California for a period of six months or longer without a bond hearing before an Immigration Judge. The appellate court was asked to determine whether the district court abused its discretion in ordering a preliminary

injunction on four premises: "(1) Appellees' likelihood of success on the merits; (2) whether they have established a likelihood of irreparable harm; (3) the balance of equities; and (4) where the public interest lies."

On the first point, the court viewed the success of Statute 1226(c) and 1225(b) separately. It concluded that 1226(c) had successful merits in granting the preliminary injunction because it required individualized decision-making through bond hearings in accordance with the procedural requirements of the statute. The court concluded that the injunction was successful on the merits of 1225(b) so much as it reinforced the fact that once authorization was received, a limit of only six months of mandatory detention was legally allowed. In the case of irreparable harm, the court found that any absence or "deprivation of constitutional rights" causes a clear and unquestionable irreparable injury; therefore, the plaintiffs are at risk of irreparable harm without the injunction. Since the government, as the Immigration and Customs Enforcement office, did not provide any evidence as to how the injunction would bring itself harm, the balance of equities favored the plaintiffs. Lastly, the court found that the public interest aligned with the injunction because it assures the federal statutes are "construed and implemented" according to the constitutional premises they are based on. The public was not at harm if the injunction were ordered nor would it be an extenuating cost since bond hearings are a public right afforded to all detainees.[22]

The judicial decision of this case supported the federal immigration policy outlining proper access to bond hearings for detained migrants. This decision could be viewed as pro-immigrant since, in the opinion, the courts sought to promote the constitutional rights of

[22] *Rodriguez v. Robbins*, 715 F.3d 1127, 2013 U.S. App. LEXIS 7565, 2013 WL 1607706 (9th Cir. Cal. April 16, 2013)

detainees. This case supports the hypothesis for Democratic majority panels favoring federally regulated immigration policy.

<u>Oppose: Hawaii v. Trump</u>

The State of Hawaii, paired with the Muslim Association of Hawaii, Inc., presented its case against Donald J. Trump, U.S. Department of Homeland Security and U.S. Department of State on December 2017 to the United States District Court of the District of Hawaii. The District Court ordered a nationwide injunction of the Presidents issuance of Proclamation 9645, indefinitely suspending immigration by natives of seven countries and imposed restrictions on issuing certain nonimmigrant visas for natives of eight countries. In addition to filing the complaint against the Proclamation, the plaintiffs included statutory claims for violations of the Immigration and Nationality Act, the Religious Freedom Restoration Act, the Administrative Procedure Act, the Establishment and Free Exercise Clauses of the First Amendment and the Due Process Clause of the Fifth Amendment.

The Court of Appeals reviewed the District Court's preliminary injunction of the Executive Proclamation. The court found that the proclamation exceeded the nature of presidential authority and worked counteractively from Congress and the immigration system enacted through the INA. Therefore, the Appellate Court did not find an abuse of discretion in the District Court ordering a preliminary injunction. The Court did, however, find an abuse in the broadness of the injunction. The Appellate Court narrowed the scope of the injunction as it pertained to the countries the Executive Proclamation sought to block entry from. The revised injunction required the President to have "a legally sufficient finding that the entry of the specified individuals would be detrimental to the interests of the United States." The court also

found the suspension of natives from seven countries to conflict with 8 U.S.C.S. § 1152(a)(1)(A) and the prohibition of "nationality-based discrimination in the issuance of immigrant visas." [23]

This judicial decision can be considered pro-immigrant in its ruling as it reaffirmed the injunction against an executive order limiting migration to the U.S. This decision supports the claim the hypothesis in so much as it affirms Congress's role in creating immigration policy.

State Policy and Democratic Majority

The following cases were selected as the most illustrative of the general pattern found in the top, right cell from Figure 5. The independent variables for the following two cases are constant; both cases challenged a state or locally regulated immigration policy and were presided by a majority Democratic panel of judges.

Support: Pimentel v. Dreyfus

This case was presented by Monica Navarro Pimentel, a legal immigrant of the United States, against Secretary of the Washington State Department of Social and Health Services, Susan Dreyfus, on August 2011 to the United States District Court for the Western District of Washington. This case challenged Washington State's food assistance program requirements as they pertained to citizens and alien-status individuals. The District Court granted a preliminary injunctive relief to the plaintiff on the bases of the Fourteenth Amendment's Equal Protection and Due Process Clauses. The State of Washington, through Susan Dreyfus, appealed the injunctive relief.

Washington State had administered its own state, food assistance program, as mandated through the Food Stamp Act of 1964. Since the beginning of the program, the State of

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[23] *Hawaii v. Trump*, 878 F.3d 662, 2017 U.S. App. LEXIS 26513, 101 Empl. Prac. Dec. (CCH) P45,943, 2017 WL 6554184 (9th Cir. Haw. December 22, 2017)

Washington had distributed its benefits to citizens and non-citizens through the Basic Food Program. This program had two parts, (1) the Supplemental Nutrition Assistance Program (SNAP) and (2) the Food Assistance Program (FAP), both separately funded by the state. According to the statute WAC 388-424-0001, Pimentel and her eldest child were considered “qualified aliens” and eligible for the Supplemental Nutrition Assistance Program; however, they were denied their petition request for the Food Assistance Program. The State later reduced its funding of the Food Assistance Program due to budget concerns, leaving only SNAP in its place. The State sent three consecutive letters to recipients and denied recipients of the food assistance packages explaining the change and detailing whether each resident would be terminated or reduced in their assistance packages.

The District Court granted the preliminary injunctive relief for Pimentel and her child on the grounds of the Fourteenth Amendment’s Equal Protection Clauses that they too should be eligible for food security through the state. The District Court had deemed Pimentel and her child as “qualified aliens” to be recipients of the food assistance program which therefore qualified the Equal Protection Clause. The court approved the injunction on due process grounds because of concerns with the way the state sent letters to residents whose aid packages were being reduced or terminated.

The Appellate Court reviewed the District Court’s legal grounds for granting or denying a preliminary injunction. To do so, the court reviewed whether Pimentel, as the plaintiff, would be successful on the merits of the Equal Protection and Due Process Clauses to justify the preliminary injunction. The Appellate Court found that the District Court had abused its discretion in assessing the likelihood of Pimentel’s success; the State’s action of ending the Food Assistance Program due to budgeting concerns did not trigger equal protection nor due process

violations. In addressing equal protection concerns, the District Court focused on whether the State had a compelling interest for eliminating the state assistance program for other legal immigrants. Since Pimentel had not cited any difference in treatment for individuals in similar situations, there was no test for lack of equal treatment or discrimination and, therefore, no violation of equal protection. Pimentel failed to establish a "property interest with respect to either FAP or SNAP" which is necessary for the success of the merits of a due process case. The State views FAP and SNAP as a single-style program; however, since Pimentel was ineligible for SNAP benefits, there is no clear property interest she possesses over the assistance program to have duly been given proper notice before the termination of FAP.

The Appellate Court found that Pimentel would not have succeeded on the merits of Equal Protection and Due Process for the injunction to proceed. The court reversed the injunction and upheld the State's action in their food assistance program endeavors.[24]

This judicial decision does not directly fit the hypothesis as this was a Democratic panel of judges ruling in favor of a state policy that denied access to public benefits to immigrations and "qualified aliens," a decision that can be characterized as as anti-immigrant in its final ruling.

<u>Oppose: Ariz. Dream Act Coalition v. Brewer</u>

Arizona Dream Act Coalition filed suit against Janice K. Brewer as Governor of the State of Arizona, John S. Halikowski as Director of the Arizona Department of Transportation and Stacey K. Stanton as Assistant Director of the Motor Vehicle Division of the Arizona Department of transportation on December 2013 to the United States District Court of the District of Arizona. The District Court did not properly assess the merits of the plaintiff's

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[24] *Pimentel v. Dreyfus*, 670 F.3d 1096, 2012 U.S. App. LEXIS 4097, 89 A.L.R. Fed. 2d 603, 2012 WL 639302 (9th Cir. Wash. February 29, 2012)

Fourteenth Amendment Equal Protection Clause and should have granted an injunctive relief against the State's Department of Transportation for their separate and discriminating treatment for assessing the employment authorization for Deferred Action for Childhood Arrival recipients in their driver's licenses applications.

The State of Arizona had implemented a policy inherently preventing Deferred Action for Childhood Arrival (DACA) recipients from obtaining an Arizona driver's license. Ariz. Rev. Stat. Ann. § 28-3153(D) prohibits the Arizona Department of Transportation from issuing driver's licenses to anyone that does not submit satisfactory proof of authorized presence in the United States. Until August 2012, federally issued employment authorization documents were sufficient in establishing authorized presence in the United States. In August 2012, Governor Brewer issued Executive Order 2012-06, "Re-Affirming Intent of Arizona Law in Response to the Federal Government's Deferred Action Program," in which she directed state agencies not to grant DACA recipients state identification such as a state driver's license. The collection of defendants represented by the Arizona Dream Act Coalition possessed Employment Authorization Documents under DACA and were prevented from obtaining their driver's licenses in Arizona State. The District Court denied the plaintiff's request for a preliminary injunction because they had not shown a likelihood of irreparable harm nor that the public interest of balance of equities favored either side of the argument. The Plaintiffs appealed to the Ninth Circuit Court of Appeals.

The Appellate Court, in reviewing the decision from the District Court, found that the injunction requested was prohibitory, not mandatory. A mandatory injunction "orders a responsible party to take action" and, therefore, heightens the burden of proof for such an injunction. A prohibitory injunction "prohibits a party from taking action and preserves the status

quo." The status quo brought before the court for consideration was the revised policy preventing Employment Authorized Documents for DACA recipients from being used as viable documentation of proof for authorized presence in the United States post August 2012.

The plaintiffs had brought preemption claims against the state's policy claiming that the executive branch and Congress possessed the discretion to determine when noncitizens are authorized to work. In reviewing the demographics of workers in Arizona, 87% of Arizona's workforce commutes to work by car. All except one of the plaintiffs represented in this case relied on cars to commute to work; therefore, the Arizona statute prohibited DACA recipients specifically from obtaining driver's licenses and innately prohibited DACA recipients from successfully seeking and commuting to employment. The court reviewed the plaintiffs claims of Equal Protection under the Fourteenth Amendment. The State of Arizona prevented Employment Authorization Documents for DACA recipients but not for all other noncitizens applying for driver's licenses. Because the state did not have a legitimate state interest for treating DACA recipients differently from noncitizens holding similar documentation, the state policy preventing DACA recipients from using their Employment Authorization Documents as formal, federally authorized forms expressing authorized presence in the United States is a violation of DACA recipients and plaintiffs Equal Protection and treatment.

Ultimately, the court found that the plaintiffs were likely to succeed on the merits of their equal protection claims and they were likely to suffer irreparable harm from being denied access to obtaining a driver's license.[25]

This case can be viewed as pro-immigrant in its final decision as the judges opposed a discriminatory state statute that placed an additional burden on DACA recipients in proving their

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[25] *Ariz. Dream Act Coalition v. Brewer*, 757 F.3d 1053, 2014 U.S. App. LEXIS 12746, 2014 WL 3029759 (9th Cir. Ariz. July 7, 2014)

authorized presence in the U.S. This judicial decision fits the hypothesis that Democratic majority judge panels will rule in opposition of state regulation.

Federal Policy and Republican Majority

The following cases were selected as the most illustrative of the general pattern found in the bottom, left cell from Figure 5. The independent variables for the following two cases are constant; both cases challenged a federally regulated immigration policy and were presided by a majority Republican or conservative panel of judges.

<u>Support: Martinez-Madera v. Holder</u>

Juan Jose Martinez-Madera filed a petition against Attorney General Eric Holder, Jr. on April 2008 to the U.S. Supreme Court. The petition was brought before the Ninth Circuit Court of Appeals for an order to review the actions of the Board of Immigration Appeals in denying Martinez-Madera's reviewal request. The petition for review was denied and the federal policy challenged upheld.

Juan Jose Martinez-Madera was born in Mexico to unwed Mexican citizens. Within six months, mother Thomasa Madera began a relationship with and later married a United States citizen, Jesus Gonzalez. Martinez-Madera moved to California with his mother and half-siblings at the age of six and has lived in California with family ever seen. Thomasa Madera became a naturalized citizen in 1995 at which time Martinez-Madera had made no efforts to similarly become naturalized. In 1996, Martinez-Madera was charged and convicted of an aggravated felony and served an eight-year criminal sentence. Upon his release, Martinez-Madera was deemed deportable as an aggravated felon and authorized for deportation by an Immigration Judge at an official bond hearing. In an appeal to the Board of Immigration Appeals, Jesus Gonzalez claimed Martinez-Madera a legitimate son in accordance with California's legitimation

statue; the courts dismissed the appeal on the basis that the California statute did not qualify for Martinez's consideration of citizenship.

The Appellate Court reviewed the Board of Immigration Appeals decision. The court found that Martinez-Madera did not fulfill either of the two requirements for citizenship—birth or naturalization—because Martinez-Madera was not born to a U.S. citizen nor had he sought naturalization previously. In addressing Jesus Gonzalez's claim of legitimacy, the court found that the Cal. Civ. Code § 230 did not apply in this case. Under the California statute, fathers could claim their "illegitimate biological children" and, therefore, grant them with U.S. citizenship status. The courts determined that this statute did not apply to stepfathers informally adopting stepchildren nor did it grant their stepchildren with U.S. citizenship. The court ultimately found that Martinez-Madera was not a citizen nor was he granted citizenship through his stepfather's citizenship and the petition for review of his case was denied.[26]

The judicial decision does not directly fit the hypothesis of this research. The Republican panel of judges favored the federal regulation of citizenship and deportation rather than applying the state's exemption policy of extended citizenship status. Rather than support the state policy claim to citizenship, the courts favored a restrictive federal policy.

<u>Oppose: Texas v. United States</u>

The State of Texas paired with state officials, filed suit against the United States of America though Jeh Charles Johnson, Secretary of Department of Homeland Security, Ronald D. Vitiello, Deputy Chief of U.S. Border Patrol and U.S. Customs and Border Protection, Sarah R. Saldana, Director of U.S. Immigration and Customs Enforcement and Leon Rodriguez, Director of U.S. Citizenship and Immigration Services on November 2015 in the United States District

[26] *Martinez-Madera v. Holder*, 559 F.3d 937, 2009 U.S. App. LEXIS 5379 (9th Cir. March 16, 2009)

Court for the Southern District of Texas. The State of Texas highlighted injuries and undue burden from implementation of the Deferred Action for Parents of Americans and Lawful Permanent Residents program under Article III of the U.S. Constitution. The District Court ordered a preliminary injunction for DAPA as it forced implementation across all states. The U.S. appealed the district court's decision issuing an injunction.

In June 2012, the Department of Homeland Security announced the implementation of the DACA program and issued a memo for the proper exercise and implementation of said program. In November 2014, a similar procedure occurred in which the Department of Homeland Security announced DAPA and its eligibility requirements for participants. Under the DAPA Memo, those eligible to apply are authorized for work, renewable across a three-year period, and therefore, eligible for a Social Security Number. Access to state benefits are deemed for eligibility by the state or local public benefit for which the noncitizen is interested in applying. The State of Texas challenged the implementation of DAPA on three grounds: (1) DAPA violated procedural requirements of the APA and did not allow for "notice-and-comment rulemaking," (2) the DHS lacked the authority to implement the program and (3) DAPA worked counteractively against the President's constitutional duty to "take care that the laws are faithfully executed."

The District Court upheld the State of Texas's claim that the state would suffer financial injury by having to issue drivers licenses to DAPA recipients. In assessing the district court's ground for the preliminary injunction, the appellate court found that Texas had satisfactorily demonstrated the significant costs it would incur by issuing drivers licenses to DAPA recipients, had satisfactorily connected the injury to the implementation of DAPA and had satisfied the "redressability" requirement by asserting the APA claim on the Department of Homeland

Security and its request for DAPA's implementation. The Appellate Court found no error or abuse of discretion in the District Court's issuing for a preliminary injunction and agreed with the district court's that the federal regulation would place an undue burden on states to afford DAPA recipients with public benefits such as drivers licenses. The Appellate Court affirmed the decision for an injunction.[27]

This judicial decisison can be viewed as anti-immigrant as the judges supported an injunction against providing DAPA recipents with access to state public benefits. This judicial decision fits the hypothesis that Republican majority judge panels will rule in opposition of federal regulation and favor an anti-immigrant regulation.

State Policy and Republican Majority

The following cases were selected as the most illustrative of the general pattern found in the bottom, right cell from Figure 5. The independent variables for the following two cases are constant; both cases challenged a state or locally regulated immigration policy and were presided by a majority Republican or conservative panel of judges.

<u>Support: Korab v. Fink</u>

Tony Korab, Tojio Clanton and Keben Enoch presented their case against Kenneth Fink as the State of Hawaii, Department of Human Services Med-WUEST Division Administrator and Patricia McManaman as the Director of the State of Hawaii Department of Human Services in September 2012 to the United States District Court for the District of Hawaii. The plaintiffs sued the State of Hawaii for their discriminatory actions against non-immigrant aliens residing in Hawaii in the establishment of the new health plan providing them with less health coverage than

[27] *Texas v. United States*, 809 F.3d 134, 2015 U.S. App. LEXIS 19725 (5th Cir. Tex. November 9, 2015)

is provided by the state to U.S. citizens and qualified aliens residing in Hawaii. The District Court ordered a preliminary injunction on the class action suit. This injunction was appealed by the State of Hawaii, Kenneth Fink and Patricia McManaman.

When enacting comprehensive welfare reform in 1996, Congress created conditions for federal and state eligibility for aliens to receive benefits. There were three primary categories that states could create welfare programs for regarding aliens. These categories are as follows: (1) full benefits requiring the state to provide the same benefits to citizens, legal permanent residents, asylees and refugees, (2) no benefits prohibiting states from providing any benefits to aliens without proper U.S. authorization or (3) discretionary benefits authorizing the state to determine eligibility for qualified aliens, non-immigrants or parolees. Non-immigrant aliens residing in Hawaii under the Compact of Free Association (COFA) Residents fall under the third category. Hawaii had initially included them in their state health insurance plans as a means of providing coverage since these individuals were ineligible for federal health insurance through Medicaid. In 2010, Hawaii removed COFA Residents from its general health insurance plans and created a more limited coverage plan, known as Basic Health Hawaii, exclusively for COFA residents and legal permanent residents. The plaintiffs, as recipients under COFA, claim that the Basic Health Hawaii plan for non-citizens is a violation of the Equal Protection Clause of the Fourteenth Amendment because of its limited coverage and, therefore, unequal access to healthcare coverage under the state’s public benefits.

Upon review of the District Court’s decision, the Appellate Court found that the State of Hawaii was not required to create a health insurance plan for residents not federally funded through Medicaid or other state services. Because the state is not required to create such a plan, they were not found to be in violation of the Equal Protection Clause and the preliminary

injunction granted by the District Court was reversed. The Basic Health Hawaii Plan remained constitutional in the eyes of the appellate decision.[28]

The judicial decision for this case can be considered anti-immigrant as the judges supported a state public health coverage plan that disproptionately insured immigrants and "qualified aliens" with less health coverage than U.S. citizens. This case fits the hypothesis as it represents a Republican majority judge panel supporting a restrictive state immigration policy.

Oppose: United States v. Arizona

The United States of America sued the State of Arizona and Governor Janice K. Brewer in November 2010 in the United States District Court for the District of Arizona. The United States challenged Arizona's immigration reform bills, Ariz. Rev. Stat. Ann. § 11-1051(B), Rev. Stat. Ann. § 13-1509(A), Ariz. Rev. Stat. Ann. § 13-2928(C) and Ariz. Rev. Stat. Ann. § 13-3883(A)(5), on the grounds of violations of the Supremacy Clause according to Article VI, Clause 2 of the U.S. Constitution. The District Court ordered a preliminary injunction on the State of Arizona and the implementation of the respective reform bills to which the State filed an appeal.

Ariz. Rev. Stat. Ann. § 11-1051(B), passed in 2010, was a State of Arizona statute requiring immigration status verification for all arrestees, regardless of whether the officer had reasonable suspicion regarding the legal status of the individual. This section of the statute was argued as conflicting with the discretion of the U.S. Attorney General and their right to direct and supervise state enforcement of immigration laws under 8 U.S.C. § 1357(g)(5). This federal statute grants the Attorney General with the close supervision of immigration laws and their enforcement by individual state officers. Rev. Stat. Ann. § 13-1509(A), also passed in 2010,

[28] *Korab v. Fink,* 748 F.3d 875, 2014 U.S. App. LEXIS 5997, 2014 WL 1302614 (9th Cir. Haw. April 1, 2014)

made it a state crime for unauthorized immigrants to violate federal registration laws. This law conflicted with the comprehensive federal registration system in place for application and registration of noncitizen immigrants. Ariz. Rev. Stat. Ann. § 13-2928(C), preempted by congressional statutes prohibiting the criminalization of immigrant work, sought to criminalize unauthorized work within the State of Arizona. Ariz. Rev. Stat. Ann. § 13-3883(A)(5) made it legal for state police departments and officials to conduct arrests based on "probable cause of removability" from the country rather than with proper authorization through a warrant. This was found to be in direct conflict with federal policy requiring a warrant for arrest or probable cause for inquiring about the legal immigration status of the arrested individual, as directed by the U.S. Attorney General.

The Appellate Court did not find an abuse of discretion in the District Court's decision to order the preliminary injunction. The Appellate Court affirmed the order of the lower court and reaffirmed the Supremacy Clause and supported preemption principals for existing federal policy on the counts for each Arizona immigration reform bill brought before the court for injunction.[29]

This case supports the hypothesis in part as the decision favored federal regulation due to the court's support for the supremacy clause and right of the federal government to regulate law enforcement behavior towards immigrants; however, this decision does not fit the hypothesis as it is a Republican majority judge panel ruling in opposition to a state regulation.

With an understanding of the general trends reflected in Figure 5 and a basic understanding of illustrative case decisions from each respective cell in the figure, the next section will refer to the hypothesized theories as they relate to the results found in this research.

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[29] *United States v. Arizona*, 641 F.3d 339, 2011 U.S. App. LEXIS 7413 (9th Cir. Ariz. April 11, 2011)

Chapter 7:
Conclusion

In posing the research question—does there exist a ruling pattern in federal circuit courts indicating more support for federally regulated immigration policy over state or locally regulated immigration policy; and if such a pattern does exist, why—I presented two statements as my hypothesis. (1) There is a ruling pattern present in federal circuit courts judicial decisions on immigration policy favoring federally regulated policy and (2) political ideology of judges is a factor affecting judicial deicisons support or opposition of immigration policy. In discussing the effects of political ideology for the presiding judges, it was theorized that majority Democratic panels would favor federally regulated immigration policy more than state or locally regulated policy while majority Republican panels would favor the opposite because of the party's support for centralized power versus the expansion of states' power.

The hypothesis presented in this research was supported in part. The overarching hypothesis that a trend would be found favoring federally regulated immigration policy was supported. Referring to the General Trends section of this paper, the majority of judicial decisions favored federal regulation compared to state regulation. In fact, when reading Figure 5 for the factor of federally regulated immigration policy, nine out of 13 cases affirmed the challenged policy and supported the federal regulation. This data assumes majority political ideology as constant and not affecting the outcome. Interestingly, however, the hypothesis for a

Republican majority judicial panel was not supported. There was no evidence in the Figure nor in the individual case analysis that called attention to the state's right to create immigration-related policy. Highlighting this fact, the results found that the Republican majority panel opposed state regulated immigration policy in four out of five possible cases, directly disproving the hypothesis for a Republican majority panel. In analyzing the decisions for Republican majority panels, it appeared that another factor could be influencing judges' decisions more so than their political ideology: the liberalness or restrictiveness of the policy challenged. A separate trend that was not tested for in this hypothesis but that works alongside the political ideology of judges' panels is the judges' decision to favor more liberal policy in Democratic panels or favor restrictive policy in Republican panels, regardless of the level of government regulating the policy. Republican judges were not found to consistently support state policy; in fact, these panels did not support states' rights in cases where the policy challenged was immigrant friendly. This could be because Republican judges' approval is more tied to the restrictiveness of the policy rather than the level of government regulation.

In summary, this research found that a ruling pattern across federal circuit court judicial decisions did exist and has been found to favor federally regulated immigration policy. While there is a correlation between Democratic majority judge panels and support for federal immigration policy, the same correlation is not present between Republican majority judge panels and support for state immigration policy, as was expected. Additional research identifying a relationship between political ideology of judges and liberalness versus restrictiveness of the policy in question can expand on this research and yield a more conclusive result as to why the pattern in judicial decisions for immigration policy exists.

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