US Immigration: The Power Struggle Between the States and Federal Government
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Research Question: Who has the authority over immigration legislation in the United States according to the Constitution and Supreme Court decisions?

Growing rate of unauthorized immigrants in the United States

The problem: Who controls immigration?

• The US Constitution does not mention the word “immigration” in its text
• Historically, Congress and the Supreme Court have delegated the authority over immigration to the Federal government.
• Recent wave of States pushing local anti-immigrant legislation (modeled after Arizona’s SB 1070 passed in 2010) puts this issue in the forefront of the immigration debate.

Provisions of the US Constitution related to immigration

• Article 1, Section 8: Gives Congress authority over the naturalization, or citizenship process. By default, this gives Congress the power to define who is a citizen and who remains as an immigrant.
• Fourteenth Amendment, Section 1: Deprives States from establishing laws that would violate basic rights of persons despite their immigrant status. These rights include life, liberty, or property, and equal protection of the laws.
• Fourteenth Amendment, Section 5: Reiterates Congress’ the power to regulate the meaning of citizenship.

US Supreme Court Decisions

• US Supreme Court is the official interpreter of the Constitution
• Yick Wo v. Hopkins – 1886 SC Case: The Supreme Court found that the administration of the statute was discriminatory and violated the provisions of the 14th Amendment
• LULAC et al. v. Wilson et al. – 1995 Federal Circuit Court: The federal circuit court ruled that Prop. 187 was a violation of the equal protection clause of the 14th Amendment, and that many of the actions it legalized were preempted by federal law.

Case Study: Arizona’s SB 1070

• Main provisions: Allows the investigation of the immigration status of “suspicious” persons after being lawfully detained for something else and criminalizes the act of harboring, shielding, or transporting illegal aliens
• Identified violations of the bill:
  - 14th Amendment and Equal Protection Clause- subjects minorities to stops, detentions, and arrests based on their physical appearance and ethnic origin.
  - 14th Amendment – permits unreasonable searches without a warrant or probable cause.

Conclusion

Immigration is a task assigned to the Federal government according to the official interpretation US Constitution.

Many states that are designing laws to control immigration locally are preempting federal powers, and also tend to implement measures that could infringe immigrants’ basic human rights.