

Arizona and Interposition

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Body

An important verb appears on page 14 of the government's brief in Arizona v. the United States, the case about four provisions of that state's immigration law that will be argued on Wednesday in the Supreme Court. The government says Arizona is trying to "interpose" its own judgments on "national security, law enforcement, foreign policy, humanitarian considerations and the rights of law-abiding citizens and aliens." It says the Constitution and Congress, in the Immigration and Nationality Act, give the executive branch authority to handle those issues.

The word "interpose" is a yellow flag in the history of state and federal relations. The southern states claimed a right of "interposition" as a basis for secession before the Civil War, and they resurrected the idea in the 1950s. Just as they claimed the right to interpose their power between the federal government and their populations over slavery and other issues in the 19th century, the southern states claimed the right to ignore the Supreme Court's desegregation order in Brown v. Board of Education.

In 1958, in Cooper v. Aaron, the court scorched this idea and reaffirmed that Arkansas had a duty to follow federal law. The governor had contended he was not bound by the court decision and ordered the National Guard to bar nine African-American students from Little Rock's Central High School, causing violence and disorder. In a unanimous opinion that they all signed, the nine justices said that the "chaos, bedlam and turmoil" caused by the governor's disobedience was "intolerable."

Arizona's argument is somewhat different. Arizona contends that it has the power to make its own immigration policy even though the federal government has authority over immigration as part of foreign policy. It says its statute merely empowers law enforcement to cooperate with federal officers.

That is extremely disingenuous, to put it politely. The law transforms a federal policy that allows discretion in seeking serious criminals among illegal immigrants into a state mandate to single out everyone in Arizona illegally. The four provisions of the statute at issue essentially turn all Hispanics, including American citizens and legal residents, into criminal suspects. They require racial profiling, and, because their purpose is "attrition through enforcement," their goal effectively is separation by race.

Just as racial equality was the law of the land during the desegregation era, it is the law of the land today. It is imperative that there be "a single, national approach" to immigration, as the government's brief explains, and that any state law fulfills America's hard-won commitment to racial equality. Arizona's anti-immigrant statute emphatically does not.

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