

Sanctuaries and Legitimacy in an Era of Mass Immigration Enforcement

Jason Cade

University of Georgia Law



Mom living in Denver church sanctuary for 86 days named one of TIME's 100 most influential people

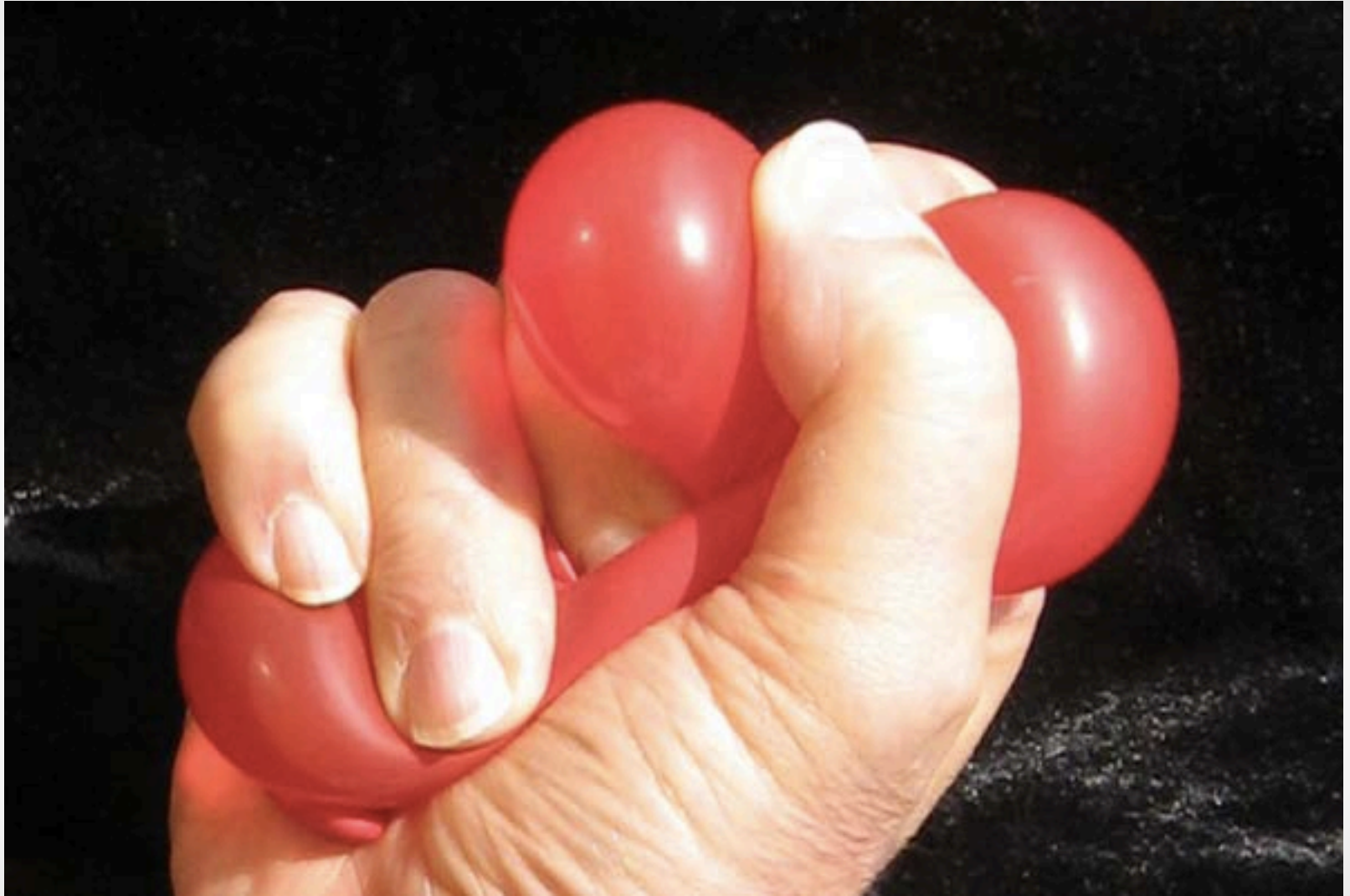
-

Immigration Legislation in 1990s

- Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)
- Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)
- Immigration Act of 1990

Harsh Law

- All unlawful presence a deportable offense
- Barred most paths to lawful presence for EWIs
- Increased breadth of deportable criminal offenses
- Constricted equitable powers of immigration judges and criminal sentencing judges
- Mandatory and discretionary detention
- Fast-track summary procedures for many noncitizen categories



Equitable Delegation

- Expectation of less than full enforcement
 - Rigid, severe rules
 - History of underenforcement
 - Size of pool of potential targets (11+ million)
 - Incommensurate budgetary appropriations
- Justice and Proportionality
 - Legal accuracy and procedural fairness
 - Gravity of offense tempered by mitigation and severity of sanction
 - Not just text, but context

Arizona v. United States (2012)

- ***Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all.***
Discretion in the enforcement of immigration law embraces ***immediate human concerns.***
Unauthorized workers trying to support their families, for example, likely pose less danger than alien smugglers or aliens who commit a serious crime. The equities of an individual case may turn on many factors, including whether the alien has children born in the United States, long ties to the community, or a record of distinguished military service. ***Returning an alien to his own country may be deemed inappropriate even where he has committed a removable offense or fails to meet the criteria for admission.***

Padilla v. Kentucky (2010)

- “Immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation.”
- “The drastic measure of deportation . . . is now virtually inevitable for a vast number of noncitizens convicted of crimes.”
- “*Counsel . . . may be able to plea bargain creatively with the prosecutor in order to craft a conviction and sentence that reduce the likelihood of deportation, as by avoiding a conviction for an offense that automatically triggers the removal consequence.*”

Categorical approach

- Lopez v. Gonzalez (2006); Carachuri-Rosendo (2010); Moncrieffe v. Holder (2013); Mellouli v. Lynch (2015)
- The cat. approach cases allow noncitizens “to enter ‘safe harbor’ guilty pleas” that preserve narrow possibilities for equitable relief in immigration court or sometimes avoid immigration sanctions altogether

Executive approaches to enforcement-equity

- George W. Bush administration – solid beginnings
- Barrack Obama administration – expansion
- Donald Trump administration – retreat
- “Effective immediately, officers will take enforcement action against all removable aliens encountered in the course of their duties.”
--Matthew Albence, ICE
- “The laws on the books are pretty straightforward. If you’re here illegally, you should leave or you should be deported.” --John Kelly, DHS

The Rise of Sanctuaries

- City Sanctuaries (300+ jurisdictions) – Limited info and/or access; legal counsel; identity cards
- Church Sanctuaries (800+ congregations) – Refuge from removal; know-your-rights; legal screenings and/or representation
- Campus Sanctuaries (77+ campuses) – Limited info and/or access
- Each kind of sanctuary has independent legal and policy justifications



Legitimizing dynamics

1. Equitable first-level screen – the normative grand jury
2. Legal accuracy and procedural fairness – the difference counsel makes
3. Last-resort circuit-breaker – shelter and negotiation to jolt equitable discretion
4. Spheres of protected autonomy – for citizens too
5. Narratives and norms – influencing the national dialogue



Sanctuaries and Legitimacy in an Era of Mass Immigration Enforcement

Jason Cade

University of Georgia Law