



Follow Me

## Search

Search for:  Go

- [Home](#)
- [Stations](#)
- [Subscribe](#)
- [The Team](#)
- [Archives](#)
- [Contact](#)



- [Home](#)
- [Listen to the Show](#)  
[Oct 22](#) [Oct 21](#) [Oct 20](#) [Oct 19](#) [Oct 18](#) [Oct 15](#) [Oct 14](#) [Oct 13](#) [Oct 12](#) [Oct 11](#) [Oct 8](#) [archive](#)
- [Podcasts](#)  
[Latest Edition](#) [Geo Quiz](#) [Global Hit](#) [Global Economy](#) [How We Got Here](#) [Science](#) [Technology](#) [Talking](#)  
[Travel](#) [The World in Words](#) [World Books](#)
- [Geo Quiz](#)
- [Global Hit](#)
- [Photos and Videos](#)  
[Audio slideshows](#) [Photo galleries](#) [Videos](#)
- [Discussions](#)
- [Music Heard on Air](#)

[Background](#) · [BBC](#) · [Books](#) · [Cartoons](#) · [Economy](#) · [Environment](#) · [Health](#) · [History](#) · [Language](#) · [Religion](#) · [Science](#) · [Special Reports](#) · [Technology](#) · [Travel](#)

## Homepage Feature

### States, Feds battle over border control

By [The World](#) · July 9, 2010 · [Post a comment](#) ·  [Yahoo! Buzz](#)

503

1  
tweet



retweet

[Download MP3](#)



Millions of Mexicans have crossed the US Mexico border illegally. That prompted the Arizona legislature to pass a tough immigration enforcement law, which is scheduled to take effect July 29th. The Obama administration has sued Arizona. The President argues that immigration is the responsibility of the federal government, not individual states. Host Marco Werman speaks with UCLA professor Kelly Lytle Hernandez, who researched the history of federal vs. state control of US borders and immigration. (Photo: Gordon Hyde, courtesy of the US Army)

### Read the Transcript

*This text below is a phonetic transcript of a radio story broadcast by PRI's THE WORLD. It has been created on deadline by a contractor for PRI. The transcript is included here to facilitate internet searches for audio content. Please report any transcribing errors to [theworld@pri.org](mailto:theworld@pri.org). This transcript may not be in its final form, and it may be updated. Please be aware that the authoritative record of material distributed by PRI's THE WORLD is the program audio.*

**MARCO WERMAN:** Then again, there's a problem with people crossing the US-Mexican border and that is, when they do it illegally. Millions have done so. And that's why the Arizona legislature passed a tough immigration enforcement law, which is scheduled to take effect July 29th. The Obama administration has sued Arizona. The President argues that immigration is the responsibility of the federal government, not each state. UCLA professor Kelly Lytle Hernandez has researched the history of federal vs. state control of US borders and immigration. Professor Lytle Hernandez, let's first summarize the Arizona-Justice Department stand off. What is it about the new Arizona law that the Justice Department is challenging specifically?

**KELLY LYTLE HERNANDEZ:** Well, it's actually a pretty bold move. What the Justice Department is challenging is that since the late 19<sup>th</sup> century, immigration control has really been the responsibility of the national government. So for a state government to come in and assume responsibility is a very bold, new maneuver.

**WERMAN:** So, give us a little historical perspective, then. It was in the late 19<sup>th</sup> century that immigration first became a federal issue. What was going on at the time that made it a federal issue?

**HERNANDEZ:** Before the Civil War, immigration control was really up to the states and localities. It had mostly to do with controlling poor folks coming into areas and African Americans and trying to restrict the movement of poor people and African Americans. And it's only after the Civil War that you have the rise of concerns about Asian immigration that the federal government begins to step in and take control over immigration law enforcement. And so you really have the passage of the Anti-Coolie Act in 1862 and the Chinese Exclusion Act in 1882 that begin the federal authority of immigration control.

**WERMAN:** So, since the Arizona law was announced, there's been kind of a sense that in the old days of the United States, the borders were open. Anybody could come in here. Is that kind of a canard? It that just not right?

**HERNANDEZ:** The borders were certainly not open if you were a black slave in American South who was trying to flee to Canada or to Mexico. There was border enforcement in the sense of slave patrols and military who are looking for these folks. But the border was open in terms of immigration from other countries into the United States, so it was an open border in that sense. You don't have border control until

really the early 20<sup>th</sup> century where you have immigration law enforcement on the border and that's particularly the US Border Patrol which is established in 1924.

**WERMAN:** Prior to this new Arizona law, had there been other notable challenges by states to federal control over immigration?

**HERNANDEZ:** I'm not aware of many states wanting to take responsibility over immigration control. Immigration control has always been a very dynamic area of politics, but no one has wanted to have authority over it, because it's impossible to seal a national border. To stop human beings from crossing that border. We had actions in the Great Depression of the early 1930s where localities and different non-profit organizations, citizenship groups, were encouraging the federal government to round up and deport folks, but it was the federal government who came in and did the work. And that's what I find so interesting about this move in Arizona, is that they are now assuming responsibility for closing the US-Mexico border along – in the Arizona region.

**WERMAN:** The Arizona law is unprecedented, by how do the numbers of illegal immigrants stack up say now with the early 20<sup>th</sup> century? Is the flow the same?

**HERNANDEZ:** No, the flow is certainly not the same. We definitely have more people entering the United States outside of the framework of US immigration law. This bears itself out in, let's say, border control statistics between the 1920s and today. So, the United States deported maybe 7,000 people a year in the 1920s and now we're up to near a million people – persons a year. But this has a lot to do with, not necessarily the flow of people, because there are large numbers of Mexicans entering the United States in the early 20<sup>th</sup> century to work in agriculture. But the politics of controlling that migration was very different and the legal possibilities of excluding them were much thinner in the early 20<sup>th</sup> century. I want to make sure that when we're talking about illegal immigration, we're not talking only about the people who cross the border. But we're also talking about the laws that structure what is illegal and what is legal. We have a lot of people who are arguing for a guest-worker program saying that folks want to come here to work and really want to go home, and so if we can facilitate the movement of people in and out of the United States, that that would improve the situation. Other people have looked at questions of putting a statute of limitations on illegality in the United States. So, if we're concerned with having so many undocumented persons here, perhaps we put a statute of limitations on how long someone can be undocumented in the United States, say two years, three years, five years, ten. I don't know what the number of years would be, but that we don't have such large numbers of people living in the shadows in the United States in perpetuity.

**WERMAN:** Now recent polls show almost a 50-50 split between those who support the new Arizona law and those who oppose it. Other state legislatures are proposing similar laws and I'm wondering if there's going to be a race between the federal and state governments over who best controls the border at this point.

**HERNANDEZ:** Well, they may very well be. This is, I think, precedent setting with the move that Arizona has made and other states may try to follow. But my guess is that the Department of Justice will prevail in its case and that the national government which for over a century has had unambiguous authority over immigration control will retain that authority.

**WERMAN:** UCLA Professor Kelly Lytle Hernandez. Thanks very much for speaking with us.

**HERNANDEZ:** Thank you.