

## 2010 MOOT COURT HYPOTHETICAL

The year is 2021, and the Supreme Court of the United States is about to hear *Morrison v. Obasanjo*, a highly controversial case that grew out of a desperate health emergency. Here is the story:

The previous summer, a massive global outbreak of an unusually deadly form of “Simian” flu struck the United States, causing panic among the general population. For a healthy adult, Simian flu’s mortality rate is approximately 10%. It is far deadlier in children and pregnant women. A child infected with Simian flu has a 30% chance of death and a 40% chance of brain damage. A pregnant woman has an equal chance of death and an 85% chance of miscarriage.

Expecting a surge in cases later in the year, U.S. pharmaceutical companies rushed to produce vaccines to cope with the sudden need. But even at peak production, these companies could not meet the demand among American citizens for protection. To compound the problem, the population of Mexico had already been hit especially hard, and as the disease spread, the U.S. girded for what it expected would be an onslaught of Mexicans pushing over the border to get vaccines from the U.S. supply.

In October 2020, with the country already in a state of alarm, Congress and the White House felt the pressure to take some sort of action. There was bipartisan support for a measure providing emergency funding for the production and distribution of vaccines to be distributed by state agencies, but the plan faltered when addressing a priority scheme. Who should get the first vaccines and who should wait? Everyone agreed that health workers, pregnant women, and children deserved priority, but anti-immigration activists vigorously lobbied Congress to pass a law that required proof of citizenship for anyone before they could obtain a vaccination. Immigrants’ rights groups, on the other hand, insisted that vaccinations should be distributed without regard to immigration status. Caught in weeks of gridlock, and with the death toll rising, Congress’ public approval plummeted and violence began to break out in some southern cities where the flow of illegal immigrants intensified the issue.

Hoping to quell fears, members of Congress tackled the District of Columbia first, enacting a law that placed U.S. citizens at the top of the statutory hierarchy. But after two weeks of negotiations over the nationwide bill, the lawmakers were at a stalemate. Seized by the need to “do something,” the House and Senate finally agreed to a bill that gave priority to health workers, pregnant women, and children. But Congress conveniently punted on the key issue. Their nationwide bill made no reference to citizenship status whatsoever. All sides claimed victory. Senator majority leader Joseph D. Pace announced: “The states have a better grasp of their public health needs and immigrant population than Congress; the American people can rest assured that their state governments will distribute these vaccines appropriately.” House Minority Whip Charles Nadd sounded a different note: “Congress has

charted a humane course today,” he declared, “giving all human beings that reside in its borders an equal chance at a healthy life.”

Arizona’s legislature chose to see things Senator Pace’s way. Interpreting Congress’ silence as an invitation to impose its own citizenship-based priority scheme, the legislature passed a law that gave non-citizens lowest priority in receiving vaccinations. It further provided that no one with less than a year of lawful residence in the United States could receive a vaccine at all.

On February 5, 2021, Isoke Obasanjo, an immigrant from Nigeria who had lawfully resided in the United States for two years and whose asylum application had been recently granted, went to a local clinic in Tucson to get vaccinated for Simian flu. Despite being two months pregnant, she was turned away. The clinic director told her that it had not yet vaccinated its quota of U.S. citizens and that, by Arizona law, she must wait until the state declared that the next population within the priority scheme could enter the queue. In response, Obasanjo launched a suit in federal court against Arizona’s attorney general, Jennifer Morrison, challenging Arizona’s law on the grounds that it violated the Equal Protection Clause of the United States Constitution and interfered with Congress’ exclusive power over immigration matters.

After careful consideration of the case of *Morrison v. Obasanjo*, the District Court upheld the law, finding that Congress had implicitly authorized the states to adopt their own priority schemes for non-citizens. It also found that, where states are acting under a valid delegation of immigration authority from Congress, the court should only subject the state policies to the same level of review as they would congressional policy – that is, rational basis. Since the court was convinced that there was indeed a rational motive behind the law – prioritizing health of U.S. citizens and deterring aliens from entering the United States to obtain scarce vaccines – it determined that the law should stand.

On appeal, a three-judge panel of the Court of Appeals for the 9th district reversed the decision. There, a two-judge majority found Congress to be constitutionally incapable of delegating its powers over immigration to the states. In a dissenting opinion, the third judge agreed with the lower court that the law was enacted under a valid delegation and that rational basis applied, but that the law failed even this permissive test based on epidemiological studies showing a disproportionate risk of outbreak in immigrant communities.

The state of Arizona successfully petitioned the Supreme Court for a writ of certiorari, and today, in an unusual session, moved from its chambers in Washington to these chambers in Philadelphia so it could be heard before the Fellows of the Peter Jennings Project for Journalists and the Constitution, the Court hears oral arguments in *Morrison v. Obasanjo*.