

Fall 2021

## Immigration Federalism: What Amount of Agency do State and Local Governments have in Immigration Related Policy Areas?

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### Recommended Citation

Rau, Olivia (2021) "Immigration Federalism: What Amount of Agency do State and Local Governments have in Immigration Related Policy Areas?," *SPNHA Review*. Vol. 17 : Iss. 1 , Article 9.  
Available at: <https://scholarworks.gvsu.edu/spnhareview/vol17/iss1/9>

# **Immigration Federalism: What amount of agency do state and local governments have in immigration related policy areas?**

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## **Abstract**

*This analysis will seek to provide data on the modern topic of immigration federalism and will examine the question; what amount of agency do state and local governments have in immigration related policy areas? To start, a discussion on the evolution of the contemporary U.S. immigration system will set the context of the analysis and will lead into scholarly considerations on the dynamics of federalism and the emerging notion of immigration federalism. Following this, we will outline areas that state and local governments have used to encourage or discourage migration into their communities. Findings and trends will then be drawn from case studies pertaining to four states—Michigan, New York, California, and Arizona—providing a glimpse into the practice of sub-national immigration policy tactics. While these cases provide an example of the breadth of accommodating or restrictionist immigration policy employed by state and local governments, this analysis should not be viewed as an exhaustive report on the state immigration federalism in the country. Further research is needed to fully examine and apply quantitative data and legal rulings pertaining to the topic in order to generalize.*

## **Background**

### **The Contemporary U.S. Immigration System**

Immigration is, and has always been, one of the most continuous and contentious topics in American politics. As a nation made up of sequential waves of immigrants, the desire to migrate towards new opportunity, education, and work is engrained in our cultural identity. However, as each new wave of immigrants emerges, our citizens more frequently respond with backlash than with the welcoming sentiment found on the base of the Statue of Liberty “give me your tired, your poor, your huddled masses longing to be free” (Lazarus, 1883). We are quick to forget the many economic, innovative, and cultural benefits that immigrants bring to our organizations, towns, and country—instead many choose to focus on hypothetical threats posed (Pedraza & Rumbaut, 1996).

The United States is undeniably a nation of immigrants. According to data gathered from the most recent U.S. Census, it was estimated that the immigrant population in the U.S was 42.4 million, comprising 13.3 percent of the total U.S. population (Karreth & Kryzanek, 2018). This number has fluctuated over time with policy changes, public opinion, and shifts in the global landscape.

Data shows that Americans remain generally open to immigrants who follow U.S. immigration laws and process. However, tolerance for those who enter the United States illegally is low, with most Americans wishing for forced deportation or imprisonment of undocumented immigrants (Karreth & Kryzanek, 2018). While the true number of unauthorized arrivals into the U.S. is impossible to know, it is estimated that there are currently around 12 million undocumented individuals living in the country. With this estimation, officials predict that nearly 300,000 babies are born to undocumented immigrants each year (Karreth & Kryzanek, 2018).

In addition to inflow from undocumented immigration, the U.S. experiences high rates of legal immigration with temporary and permanent statuses. In 2018, 1.1 million individuals received Lawful Permanent Resident (LPR) status from U.S. Citizenship and Immigration Services (USCIS) and there were 186.2 million admissions under temporary visas (DHS, 2018). Temporary admissions can range from short business trips and tourism to employment visas, which are typically valid for a few years at a time.

Contemporary presidential administrations have undertaken various efforts to curb unauthorized immigration into the U.S. In 2002, Under President George W. Bush the immigration system saw the implementation of a \$2 billion Strategic Border Initiative, which sought to increase technology-based border security and made use of video surveillance, drones, heat sensors, and more to detect possible unauthorized individuals. Following this, the 2006 Secure Fence Act resulted in \$2 billion spent on 700 miles of fencing along the southern border in California and Arizona, along with a ramp up in raids on businesses suspected of employing workers without documentation (Karreth & Kryzanek, 2018).

In 2007, Bush's immigration reform proposals to address illegal immigration included: further developments to the Secure Border Initiative, increases in detention facility capacity and expedited removal processes of undocumented individuals, harsher fines for business who employ unauthorized workers, the introduction of a new Temporary Worker Program, and a pathway for undocumented immigrants (Karreth & Kryzanek, 2018). Ultimately, the Senate Bill drafted in response to these proposals divided party coalitions and the legislation never made it out of the chamber.

## *Immigration Federalism*

During President Barack Obama's two terms in office, immigration remained a highly divisive topic throughout the country and the legislature, along with emerging issues with an influx of unaccompanied minors and the rise of 'sanctuary cities.' The adopted federal budget in 2010 included \$27 billion dedicated to border security, efforts to boost U.S. Citizenship and Immigration Services (USCIS) bureaucratic efficiency with immigration case processing, and training for state and local law enforcement. In addition, the U.S. issued \$150 million to Mexico to help the country's efforts to limit the flow of youth from Central America by increased monitoring of Mexico's southern border (Karreth & Kryzanek, 2018).

The remainder of President Obama's tenure was characterized by executive action due to increasing gridlock when attempting to pass immigration related issues through Congress. In 2012, Obama announced the Deferred Action for Childhood Arrivals (DACA), a program preventing the deportation of 720,000 individuals who were brought to the country without documentation as youth. DACA was later expanded in 2014 to include Deferred Action for Parents of Americans (DAPA), seeking to delay the deportation of five million undocumented parents of U.S. citizens (Karreth & Kryzanek, 2018). Federal courts later blocked the implementation of this program.

Contradictorily, President Obama's tenure was also known for high rates of deportation. During his eight years in office, there were over three million removals of unauthorized migrants from the United States, an average of 383,307 people per year. This is higher than any other administration to date. For comparison, as of 2019, President Trump was only averaging 275,725 removals per year (Nowrasteh, 2019).

The Presidency of Donald Trump continues the increasing trend of utilizing executive action to make immigration system reforms that would be unlikely to receive significant Congressional support. President Trump kicked off his administration's unilateral immigration policy actions by signing an executive order temporarily banning foreign nationals from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen from entering the U.S just one week after taking office in 2017. This action and its subsequent adaptations and expansions became known as the "Muslim ban" due to the affected countries being predominantly Muslim (ACLU, n.d.). Several federal courts were quick to act in response, issuing injunctions to block the implementation of the orders while the constitutionality of each were under review, including a class action lawsuit filed by the American Civil Liberties Union of Washington (ALCU, n.d.).

Also, in 2017, Trump announced that the DACA program was not to expand as planned by the Obama administration and set a deadline for Congress to decide on the fate of DACA (Karreth & Kryzaneck, 2018). A myriad of court systems stepped in again to block the order and the potential removal of DACA protections that allowed young DACA recipients to maintain legal status as the case was held up in courts.

Throughout his Presidency, Trump has tried to craft ways to secure funding for his ardently promised border wall—in 2019, going so far as to declare a national emergency to garner funds. Most recently, as of March 2020, over a dozen states are suing the Trump administration in an attempt to block \$3.8 billion that the administration is planning to divert from military funding towards the border wall construction (Larson, 2020). The states involved are arguing that the fund diversion is in violation of the separation of powers outline in the U.S. Constitution.

Despite the actions taken by contemporary Presidential administrations and Congressional efforts, there remains no comprehensive immigration reform on the horizon. With the most recent major reform being the Immigration Reform and Control Act of 1986, there is a significant need to update the policy and parameters of the U.S. immigration system to reflect changes of the past 34 years. Perhaps this is why we are seeing unprecedented levels of action from state and local governments relating to immigration—a phenomena becoming known as immigration federalism.

## Review of the Literature

### Considerations on Federalism

Lower levels of government may choose to get involved in a traditionally federal policy area in order to represent their local values or priorities or to better regulate externalities of federal policy. Externalities can be thought of as side-effects of an action that positively or negatively impact the surrounding population (Weimer & Vining, 2017). Governments may attempt to influence actions, and thus their externalities, by enacting policy to promote or discourage a behavior. Regarding immigration matters, local and state officials may act in a variety of ways to promote the values of legality, representation, efficiency, social equity, human rights, economic vitality, inclusivity, and public safety, among many others.

## *Immigration Federalism*

These values and how they are prioritized inform decision making at every level of government. When considering intervening into federal legal realms, public officials must also evaluate how these values are represented in the national legal framework and how they align with or are in tension with the potential intervention. Ultimately, these values can be used to justify why lower levels of government should become involved in immigration related policy areas if they believe federal legislation to be misrepresenting the values of their constituents.

It is also important to account for the dynamics of federalism in analyzing which level of government is best positioned to act. In an *Essay on Fiscal Federalism*, Wallace Oates describes how ‘fiscal decentralization’ in general has become increasingly popular in the public sector. This means that the federal government is deferring more fiscal responsibility to states, who, in turn, delegate control over some areas to counties, cities, townships, and other subunits of government. While Oates writes in terms of economic decentralization, much of his reasoning can be applied to the overarching decentralization of power from federal to lower jurisdictions in several policy subjects.

Oates suggests, “state and local governments, being closer to the people, will be more responsive to the particular preferences of their constituencies and will be able to find new and better ways to provide [certain] services” (Oates, 1999). In essence, it can be argued that state and local levels of government have a greater capacity to address the unique needs of their populations and may be better situated to address micro level intervention on previously considered federal issues. While in an ideal world the centralized nature of the federal government better positions itself to address macro market issues or social welfare policy, U.S. immigration policy (or lack thereof) in the past thirty years indicates it may be time to rethink the way we approach the topic of decentralized immigration policy.

Regardless, we must consider the legal ability for each level of government to address the aforementioned policy areas and functions based on authority, jurisdiction, and constraints. As each level of government derives its authority from constitution, charters, or through delegation, and with immigration, international relations, and border control being an inherently federal duty, the legality of many lower-level actions are often brought into question. However, as we will review later, contemporary cases are rapidly setting new legal precedent for what state and local governments are able to do concerning immigration and immigrant communities.

## Immigration Federalism

In *Fiscal Federalism and The Politics of Immigration*, Boushey and Leudtke (2006) write on the relationship between federated systems of government and the degree to which immigration policy is concentrated between levels of government. The U.S.'s immigration system is highly centralized, especially when compared to the neighboring Canadian system, but this has not always been the case. In the early twentieth century, state and local governments had much more say in the inflow of populations of immigrants to their communities (Boushey & Luedtke, 2006). However, the variation in policy from state to state, as well as increasing tensions between levels of government, encouraged developments that resulted in the centralized system, namely, The Basic Naturalization Act of 1906 and subsequent developments. The Basic Naturalization Act standardized forms and encouraged the consolidation of immigration jurisdiction towards the Federal government and courts.

In recent years, state and local governments have sought to reclaim some authority in the realm of immigration and have become increasingly vocal regarding immigration policy preferences. Boushey and Leudtke theorize that while the transactional costs of processing immigrant admissions and visa applications is best addressed by the central government, there are areas where sub-national levels are best situated to act. Due to their closer proximity to communities, lower levels of government can more efficiently determine local values and needs. As such, policies pertaining to integration, cultural preservation, and language are often addressed at the sub-national level. Similarly, while issues of security and legal enforcement are largely characterized as functions of the federal government, recent times have seen state and local governments ranging from supplemental enforcers to blatantly defiant of federal policy (Boushey & Leudtke, 2006).

Goelzhauser and Konisky follow this trend in their article *The State of American Federalism 2018-2019* and write how the increasing political polarization in the United States has changed the way that power is located within the federation. The inability of Congress to pass comprehensive immigration reform has led to reliance on unilateral action from the executive branch and the growing trend of state and local action regarding immigration policy.

The authors cite the 2018 midterm election as further influencing the growing partisan divisions in Congress and introducing a divided legislature to the Trump administration (Goelzhauser & Konisky, 2019). Further, controversial

unilateral actions by Trump, along with federal prosecution for unauthorized entrances into the country (which led to the family separation crisis) have emboldened sub-national levels of government to act.

Perhaps the most debated action that sub-national levels of government have taken is that of declaring ‘sanctuary’ jurisdictions to offer a haven for immigrant populations. In the U.S., there are now over 550 ‘sanctuary’ jurisdictions, including, cities, counties, and entire states. As of 2018, eleven states had enacted overarching measures to restrict law enforcement resources from being used for immigration enforcement or cooperation with immigration agencies (Henderson, 2018). Trump has goaded the development of ‘sanctuary’ policies with incendiary language and threats to send floods of migrants and withhold grant funds to sanctuary jurisdictions. In response, nine states passed ‘anti-sanctuary laws’ requiring all their subordinate municipalities to fully cooperate with federal immigration authorities (Goelzhauser & Konisky, 2019). Several other states and cities have tried and failed to change their pro or anti sanctuary laws in recent years.

In *Immigration restriction in the states: Contesting the Boundaries of Federalism*, Barth and Reich (2012) attribute the variances in success or failure of states’ ability to implement immigration related policies to the political constraints associated with the attempt to rework the power dynamics of immigration authority. Political constraints may include partisan control of governing entities, legal authority, and constituent perspectives, among others.

Barth and Reich explain “state and local governments influence immigration patterns through policy choices that affect the ability, and willingness, of immigrants to live and work within their jurisdictions” (2012, p. 424). They classify such policy into two categories, restrictionist or accommodating, and note that the “strength of [each] impulse reflects the degree to which a coalition of local and national groups have placed immigration restriction [or support] at the top of the policy agenda” (p. 423).

Further, the tenor of immigration policy within a region or state varies by community. As states increase their activity in immigration related policy areas, they not only change dynamics of the state-federal relationship, but also inter-state power distribution. Obviously, not all communities within a state share identical perspectives, labor shortages or surpluses, or even cultural patterns. When state-wide legislation is passed, it forces all subordinate entities to comply, negating community-level preferences towards restrictionist or accommodating policy.

While the literature on the decentralization of immigration policy within the United States is relatively underdeveloped given the newness of the trend, new evidence is being generated everyday as the country remains bound to its outdated system. The Trump Presidency's attitude towards immigration enforcement has inspired more action by state and local governments than any other period in modern history (Henderson, 2018). However, it remains to be seen whether or not the U.S. is truly headed for a new form of immigration federalism as actions taken by state and local governments work through court challenges. Forthcoming literature must incorporate updated legal rulings to determine the accurate predictions regarding the future extent of immigration decentralization.

### **Immigration and State-level Implications**

As noted above, scholars tend to classify sub-national actions regarding immigration policy into two camps, restrictionist and accommodating. Barth and Reich (2012) categorize restrictionist laws under three overarching goals: “(i) deny immigrants’ access to employment, housing, and state public services; (ii) create penalties for business transactions involving unauthorized immigrants; or (iii) broaden state authority to identify and apprehend unauthorized immigrants” (p. 424). Accommodating laws seek to do the opposite—they attempt to make communities more welcoming and accessible for immigrant populations. Language laws, voting rights, housing ordinances, and employment policy are a few popular battlegrounds for supporters of each preference.

Balfour and Gray (2018) frame the dilemma in terms of an ethical obligation, “The ethical challenge for nations like the U.S. that benefit from a globalized economy is whether or not to accept responsibility to provide safe haven for people disadvantaged and displaced by economic and political forces beyond their control” (p. 7). While border security and public safety are important, the ability to respect the inherent human right to the freedom of movement and the way that we treat immigrant populations within the country says a lot about a governing system’s values.

### **Language Laws**

One policy area that states can use to promote or discourage migration is through bilingual education. Historic conflicts between the state and federal government on this subject begin with the 1923 *Meyer v. Nebraska* court case

regarding a Nebraska state law that sought to prohibit teaching in any language other than English (Brown & Rodriguez, 2014). The U.S. Supreme Court eventually ruled that the law was unconstitutional as the Fourteenth Amendment protects the right to teach in any language. Subsequent legal actions include the 1968 Bilingual Education Act, which attempted to level the playing field for non-English speaking students, as well as the 2002 No Child Left behind Act, which was arguably the first to set accountability measures to “hold state educational agencies, local educational agencies, and schools accountable for increases in English proficiency and core academic content knowledge of limited English proficient children” (Brown & Rodriguez, 2014).

The United States has also attempted to create an official national language at both the federal and state levels. Despite the constitution having no verbiage to indicate that the country is a ‘monolingual’ nation, the topic has occupied considerable space in the political arena. Quotes by Theodore Roosevelt in 1907 evidence some of the historic arguments to support declaring English as the national language in an effort to create a more homogenous society. Fast-forwarding to the present, the debate continues with Congressional leaders echoing Roosevelt’s push for unity and assimilation during the 2006 immigration reform movement (Brown & Rodriguez, 2014).

Regardless of the tides of support, no movement has succeeded in achieving a national language declaration at the federal level; however, 30 states have enacted laws stating English as their official languages (Brown & Rodriguez, 2014). New anti-immigrant legislation is often a catalyst for or shortly follows efforts by states to mandate English. Political pushes for assimilation requirements come in response new flows of immigration and the fear of ‘otherness’ that accompanies increased diversity.

## **Voting Rights**

Immigrant voting rights is another policy area that is impacted by state action. Increasingly common state-led voter identification laws conflict with equal access to participation in voting. Politicians attempt to frame voter identification requirement laws as critical to keeping unauthorized people from voting, despite little evidence to suggest the severity of the problem. Due to the drastic increase in the implementation of state voter identification laws, it is estimated that up to 11 percent of eligible immigrant voters lack ‘eligible’ forms of identification (Brown & Rodriguez, 2014).

## Immigration and Local-level Implications

Immigration policies are becoming more frequently addressed by local levels of government. Communities around the country vary in the way they approach policies and ordinances relating to immigrant communities, with values of inclusivity, legality, security, and representation often at odds.

### Housing Ordinances

One way that local municipal efforts seek to control populations is through housing ordinances, which arguably target immigrant populations at a disproportional rate. Associated housing ordinances include requiring all tenants provide proof of authorized residence in the U.S., changing the definition of ‘family’ to limit the number of tenants in a unit, and strict penalties for landlords housing ‘illegal aliens.’ Brown and Rodriguez (2014) argue that these policies are particularly discriminatory to certain immigrant communities because of their typically larger and more extended family structures.

### Employment

Reich and Barth outline two major frameworks, one that views immigrants as “a morally neutral reflection of a free market that matches employers with a labor force, to the benefit of producers and consumers,” and one that “assesses immigrants primarily through the lens of law and order, often reinforced by underlying racial/ethnic cues” (2012, p. 495). U.S. immigration policy at all levels incorporates aspects of both. Many recognize the benefits of labor mobility to benefit shortages in certain communities and redistribute in areas of surplus, while others see immigrant labor as a threat to the U.S. workforce.

Globalization has made it possible for our nation, and all others, to look internationally in recruiting top talent to fill highly skilled and specialized positions, as well as to fill positions in industries that experience seasonal labor shortages. The Society for Human Resource Management (SHRM) reports that in December 2018 there were 7 million jobs available in the U.S. with only 6.3 million unemployed people seeking work. These numbers make it clear that “foreign-born talent is a necessary component to the U.S. workforce, particularly as the workforce continues to age and the skills gap widens” (SHRM, 2019).

SHRM conducted a study in 2018 surveying its membership on the topic of employment-based immigration. Of the nearly 800 respondents to the survey, 52

percent reported that their organizations had petitioned for at least one employment-based visa within the past five years and 10 percent reported their organizations sponsoring over 100 visa petitions over the same time period. The most frequently utilized employment visa type was H-1B, distantly followed by J-1, F-1/OPT, and L-1. Over 85 percent of those surveyed responded that they believe that it is important to recruit talent to fill unmet needs of the business and that foreign workers are crucial to supplementing the talent in the domestic workforce (SHRM, 2019).

The reality of using immigration to fill professional or specialized positions is perceived differently than the utilization of migrant workers for lower-level labor, which could be viewed as a proxy for legal status. Because unauthorized immigrants seek to remain undetected from authorities, they tend to gravitate towards industries that have significant need for cheap, unskilled labor and are less likely to follow hiring regulations (e.g. construction, landscaping, restaurant/lodging services, farming) (Kryzanek & Karreth, 2018).

Aside from the clear economic contributions and costs associated with the 42.4 million immigrants in the country, the economic implications of the approximately 12 million undocumented immigrants are popular in anti-immigrant debates. Kryzanek and Karreth report it cost approximately \$113 billion in 2014 to provide social services, health care, and education to the undocumented population in the U.S. Alternatively, the authors share that predictions of the positive economic impact of these immigrants through labor, taxes, and costs of living far surpasses the cost, especially when including the billions of dollars it would take to process the removal of each person (Kryzanek & Karreth, 2018). Still, it seems everyone in the country has strongly held beliefs on the subject and request their local, state, and federal officials to act accordingly.

### **Research Design - Case Studies**

As previously discussed, state and local governments have varied widely throughout the country with their response to immigration policy. To provide a sample which should demonstrate this variation, I have selected four states to analyze—Michigan, California, New York, and Arizona. These states were chosen based on their geographic and ideological distances represented. For each, we will examine characteristics of the local immigrant population, state law regarding immigration policy, examples of local governments acting in immigration related areas, and other relevant contextual information. It is my

assumption that these data will demonstrate the variance in state-level legislation across the accommodating/restrictionist spectrum and provide a glance into the scope of actions sub-national governments have taken in the past five years, shining a light on the current state of immigration federalism in the country.

Much of the information cited for each of the below states is based on reports compiled by the American Immigration Council (AIC), which crafts state-by-state analyses with data from the most recent U.S. Census (2010) and the U.S. Census Bureau's American Community Survey (2015). Legislative developments and contextual legal information were gleaned from annual reports by the National Conference of State Legislatures, scholarly articles, and news sources, as cited. Please note, this is not meant to be an exhaustive list of all legislative developments within each state, but rather the highlights that demonstrate the tenor of the immigration landscape and the resulting sub-national actions within each of the four states.

## Findings and Analysis

### Michigan, Neutral

Michigan is not well known as a state of immigrants—in fact, only a small portion of its population are foreign-born (6.6 percent). However, this number is growing, and the immigrants who do live in Michigan play an important role in highly technical industries, as well as in agriculture. Nearly 40 percent of immigrants in Michigan have at least a college degree, whereas only 28 percent of native Michiganders do. Notably, the immigrant population in key urban areas make up a significant portion of total business owners, accounting for 20.3 percent in the Detroit/Warren/Livonia metropolitan area and 17.3 percent in the Grand Rapids/Wyoming metropolitan area (American Immigration Council, 2017c).

State and local legislation in Michigan on immigration and immigrant rights is standard in keeping with national trends. All things considered, state-level actions are relatively neutral in securing rights for legally documented immigrants and refugees, while not stepping into the territory of federal enforcement of undocumented individuals. Local government action has veered towards more pro-immigrant and anti-federal enforcement in urban areas, with five cities and counties now considered sanctuary jurisdictions. The balance in values demonstrated by Michigan's policies may be attributed to its split political composition.

Table 1.

*Immigration in Michigan*

<b>Immigrant Population</b>	652,090 (6.6% of state population)
<b>Undocumented Population</b>	130,000 (19.9% of immigrant population, 1.3% of state)
<b>Naturalized Immigrant Population</b>	342,465 (52.5% of immigrant population)
<b>Immigrant Education Level</b>	College degree (39.9%) Some college (18.9%) High school diploma (19.7%) Less than high school diploma (21.4%)
<b>Top Countries of Origin</b>	Mexico (11.5%) India (10.1%) Iraq (8.1%), China (5.9%) Canada (5.4%)
<b>Industry Category (% of all workers in sector)</b>	Agriculture/Forestry/etc. (16.1%), Professional/Science/Tech. (10.5%), Manufacturing (9.9%)
<b>State and Local Tax Contributions (2014)</b>	\$1.5 billion (immigrant households) \$86.7 million (undocumented immigrants)
<b>Notable State Action</b>	<ul style="list-style-type: none"> <li>• MI H 5686 allows residents to apply for a personal identification card, noncitizens must show documentation to prove legal status</li> <li>• MI H 5579 affords equal protections under the Education Omnibus Budget for economically disadvantaged migrants</li> <li>• MI S 848 appropriates funds for programs relating to refugee assistance</li> </ul>

<p><b>Notable State Action, Continued</b></p>	<ul style="list-style-type: none"> <li>• In 2019, MI passed legislation to create a task force to provide services and resources to new immigrants, specifically on state resources available to new arrivals and to report on state of federal enforcement in MI.</li> <li>• MI HR 155 resolution declares Sept. 13-22, 2019 as Welcoming Week, for new immigrant and nonimmigrant Michiganders</li> </ul> <p>PENDING</p> <ul style="list-style-type: none"> <li>• HB 4090/4083 Local Government Sanctuary Policy Prohibition Act</li> <li>• HB 4220 Equal Language Access to State Services</li> <li>• HB 4679 Home Loan Eligibility (limits access to certain loans to citizens and Legal Permanent Residents only)</li> </ul>
<p><b>Notable Local Actions</b></p>	<ul style="list-style-type: none"> <li>• While the state of Michigan has not passed any laws regarding undocumented immigrants and ability to enroll pay in-state tuition rates, the University of Michigan and others have created internal policy to remedy affordability.</li> <li>• The following counties and cities have enacted some level of policy to deter certain collaborations with federal immigration agencies and are thus classified as sanctuary jurisdictions: Ingham County, Kalamazoo County, Kent County, Lansing, and Wayne County.</li> </ul>

(American Immigration Council, 2017c), (National Conference of State Legislatures, m.d.), (MIRC, 2020), (Center for Immigration Studies, 2020)

## **New York, Accommodating**

The state of New York has played an important role in the United States' immigrant history and was traditionally the first stop for immigrants arriving in the country, being home to the infamous Ellis Island. Today, immigrants continue to comprise a huge portion (22.9 percent) of the state's population and contribute to its reputation as a cultural center of the country. The state's more than 4.5 million immigrant residents make up a significant portion of its workforce and business owners. Unlike other regions in the U.S., which see clear trends in immigrant education or occupation levels, New York's foreign-born population is evenly distributed across the spectrums (American Immigration Council, 2017d).

Legislative action in New York surrounding immigration and immigrant rights is already well established, but the state is now taking more action to provide protections for refugee populations and family separation cases. New York's state legislature also takes into consideration funding burdens for immigrant and nonimmigrant programs at the local levels and appropriates funds to support local government initiatives. The state of New York is considered a sanctuary jurisdiction, and eight additional cities and counties within the state have proclaimed themselves as sanctuary jurisdictions to supplement the state's pro-immigrant sentiment.

Table 2.

*Immigration in New York*

<b>Immigrant Population</b>	4.5 million (22.9% of state population)
<b>Undocumented Population</b>	775,000 (17% of immigrant population, 3.9% of state)
<b>Naturalized Immigrant Pop.</b>	2.5 million (55.2% of immigrant population)
<b>Immigrant Education Level</b>	College degree (30.2%) Some college (18.3%) High school diploma (25.4%) Less than high school diploma (26.2%)
<b>Country of Origin</b>	Dominican Republic (11.2%) China (8.7%) Jamaica (5.2%) Mexico (5.2%) Ecuador (4.2%)

<b>Industry Category</b> (% of all workers in sector)	Transportation/Warehousing (37.1%) Lodging/Food Service (35.8%) Construction (35.5%) Health Care/Social (31.7%)
<b>Tax Contributions</b>	\$26.5 billion (immigrant households) \$1.1 billion (undocumented immigrants)
<b>Notable State Legislation</b>	<p>Note, the entire state of New York is considered a sanctuary jurisdiction.</p> <ul style="list-style-type: none"> <li>• NY S 2003/2006 provides aid to state and locality budgets for programs related to English learning and education of migrant children</li> <li>• NY S 5349 economic development law that, in part, creates an advisory panel with provision to evaluate the role of immigrants in employee-owned enterprises</li> <li>• NY A 7899 ‘Appointment of a Standby Guardian’ provisions for prompt communication regarding childcare if a parent or guardian is detained for a federal immigration matter</li> <li>• NY S 7500/7503 appropriates funds and to refugee resettlement programs and secures funding support for localities</li> <li>• NY S 1250 DREAM Act allows for in state tuition and financial aid for legal and undocumented immigrants</li> </ul>
<b>Notable Local Legislation</b>	The following counties and cities have enacted some level of policy to deter certain collaboration with federal immigration agencies, and are thus classified as sanctuary jurisdictions: Albany, Franklin County, Ithaca, Nassau County, New York City , Onondaga County, St. Lawrence County, Westchester County

(American Immigration Council, 2017d), (National Conference of State Legislatures), (Center for Immigration Studies, 2020)

## California, Strong Accommodating

California boasts the largest immigrant population in the U.S. As such, immigrants play important roles in the state's workforce and community functions. More than one quarter (10.7 million) of the population of the state are immigrants and another 9.3 million Californians have at least one immigrant parent (American Immigration Council, 2017b). This means at least 50 percent of the population either are immigrants or have an immediate family member who is an immigrant.

On the policy front, Californian representatives and public officials are widely pro-immigrant and are seen by the nation as the innovators in legislating to protect immigrant rights, documented or not. California exists on its own playing field when it comes to immigrant rights legislation. In fact, the California's legislature frequently passes resolutions to urge changes in federal policy or to condemn federal actions, bucking traditional immigration roles within the U.S. federation. Naturally, the state of California is considered a sanctuary jurisdiction, and 20 of its cities and counties have followed suit in their commitments to sanctuary policy.

Table 3.

*Immigration in California*

<b>Immigrant Population</b>	10.7 million (27.3% of state population)
<b>Undocumented Population</b>	2.4 million (22% of immigrant population, 6% of state)
<b>Naturalized Immigrant Population</b>	5.3 million (49.7% of immigrant population)
<b>Immigrant Education Level</b>	College degree (27.4%) Some college (18.6%) High school diploma (19.6%) Less than high school diploma (34.4%)
<b>Country of Origin</b>	Mexico (40%) Philippines (8%) China (5.9%) Vietnam (4.8%) India (4.5%)

<b>Industry Category</b> <b>(% of all workers in sector)</b>	Agriculture/Forestry (77.1%) Grounds/Maintenance (61.7%) Production (53.3%) Construction (43%) Computer science (41.3%)
<b>Tax Contributions</b>	\$26.4 billion (immigrant households) \$3.2 billion (undocumented immigrants)
<b>Notable State Legislation</b>	<p>Note, the entire state of California is considered a sanctuary jurisdiction. Legislation within the past five years includes:</p> <ul style="list-style-type: none"> <li>• CA A 72/74 includes budget funding for services relating to unaccompanied minors and human trafficking victims</li> <li>• CA A 1645 provides for ‘Student Support/Dreamer Resource Liaison’ at all community colleges and certain universities</li> <li>• CA S 160 law requires cities and counties to incorporate cultural competency into their next emergency plan</li> <li>• CA S 225 Citizens of The State, law which permits anyone who is of age to be eligible to hold an appointed civil office, regardless of immigration status</li> <li>• CA AJR 9 &amp; 11 resolutions which condemn actions of federal government regarding unnecessary Immigration and Customs Enforcement (ICE) detentions and tactics and urges protection for undocumented minors</li> <li>• CA S 785 law which prohibits the inclusion of immigration status in evidence for public court records</li> </ul>

<b>Notable State Legislation, Continued</b>	<ul style="list-style-type: none"><li>• CA SJR 16 resolution to express the need for the federal government to extend Temporary Protected Status (TPS) for certain migrant populations</li><li>• CA SR 16 resolution which condemns President Trump’s executive orders seeking “travel bans”</li></ul>
<b>Notable Local Legislation</b>	Twenty (20) cities and counties in California have enacted sanctuary policy to supplement state-wide sanctuary practices

(American Immigration Council, 2017b), (National Conference of State Legislatures), (Center for Immigration Studies, 2020)

### **Arizona, Strong Restrictionist**

Although the immigrant population in Arizona is growing, the state has a reputation as one of the most fervent in restrictionist immigration policy. Despite the state’s actions at the state and local levels to restrict migrant flows, Arizona is home to 914,400 foreign born individuals. Likely, the state’s geographic position along the U.S.-Mexico border and ports of entry impact both the flow and resulting backlash towards migrants. Immigrants in Arizona make up significant portions of the agricultural and forestry workforce (52.5 percent), as well as the building and grounds cleaning and maintenance occupation workforce (42.1 percent) (American Immigration Council, 2017a).

Arizonian policy must balance the state’s values to restrict the flow of migrants from Mexico, while acknowledging immigrant (both legal and unauthorized) contributions to the workforce. Like California, state-level resolutions are used often utilized to pressure the federal government into action, but for opposite values--Arizona’s resolutions urge more assistance with border security and immigration enforcement. Despite the variances in intent, the implications remain that there exists shifting power dynamics pertaining towards immigration federalism in the country.

Table 4.

*Immigration in Arizona*

<b>Immigrant Population</b>	914,400 (13.4% of state population)
<b>Undocumented Population</b>	325,000 (35% of immigrant population, 4.9% of state)
<b>Naturalized Immigrant Population</b>	380,187 (41.5% of immigrant population)
<b>Immigrant Education Level</b>	College degree (21.2%) Some college (19.4%) High school diploma (22.5%) Less than high school diploma (36.9%)
<b>Country of Origin</b>	Mexico (56.1%) Canada (4.2%) India (4.1%) Philippines (2.9%) Vietnam (2.7%)
<b>Industry Category (% of all workers in sector)</b>	Agriculture/Forestry (52.5%) Building Grounds Cleaning/Maintenance (42.1%) Construction (31.6%)
<b>Tax Contributions</b>	\$1.7 billion (immigrant households) \$213.6 million (undocumented immigrants)
<b>Notable State Legislation</b>	The Arizona State Legislature passed 72 restrictionist immigration bills between 2005 and 2011, recent developments include: <ul style="list-style-type: none"> <li>• AZ SB 1070 law which makes it a misdemeanor to travel at anytime without proof of immigration status, prohibits state/local entities from enacting sanctuary policies, and requires state law enforcement to determine immigration status during routine stops or interactions, among other efforts to curb illegal immigration</li> <li>• AZ SCM 1006 /1012 resolutions urging the federal government to send more border security personnel and resources for border security</li> </ul>

<b>Notable State Legislation, Continued</b>	<ul style="list-style-type: none"><li>• AZ H 2540 law to appropriate funds towards the Gang and Immigration Intelligence Team Enforcement Mission</li><li>• AZ H 2747 General Appropriations Act to the border security strike force and funds positions for 200 immigration and border security workers</li><li>• AZ HCM 2001 requests that U.S. Congress to include deported veterans in legislation regarding medical care</li></ul>
<b>Notable Local Legislation</b>	<ul style="list-style-type: none"><li>• It is prohibited by state law for local jurisdictions to enact sanctuary policy.</li><li>• Local governments echo the sentiment of the state to increase border patrol and enforcement of federal policy.</li></ul>

(American Immigration Council, 2017a), (National Conference of State Legislatures) (Center for Immigration Studies, 2020)

### **Conclusion**

The United States is seeing unprecedented levels of state and local action when it comes to immigration policy. The new immigration federalism dynamics in the country have emerged after years of gridlock at the federal level. With the past eight years characterized by national immigration policy via executive order, sub-national levels of government have sought to reclaim some power in the realms of immigration enforcement, immigrant rights, employment regulations, and undocumented populations.

As several scholars have noted, states and communities vary in their legislative responses—from strongly accommodating to strongly restrictionist, and everything in between. Also discussed is the notion that sub-national entities entering this traditionally federal territory is inherently complex and presents many legal challenges. In the coming years, courts must dictate the boundaries of immigration policy powers within the U.S. federation and reexamine the question of who is best positioned to act on each facet of policy impacting immigrants.

While this analysis seeks to add to the body of literature on immigration federalism, further research is needed to uncover the true scope of the situation. A thorough quantitative analysis on all 50 states examining correlations in population percentages and public opinion would be valuable, as well as studies addressing legal decisions surrounding immigration federalism. As Congress is nowhere near to passing comprehensive immigration reform, discussions and literature surrounding unconventional immigration policy creation will assuredly continue to develop.

## References

- American Civil Liberties Union. (n.d.). *Timeline of the Muslim ban*. <https://www.aclu-wa.org/pages/timeline-muslim-ban>
- American Immigration Council. (2017a). *State by state: Immigrants in Arizona*. <https://www.americanimmigrationcouncil.org/research/immigrants-in-arizona>
- American Immigration Council. (2017b). *State by state: Immigrants in California*. <https://www.americanimmigrationcouncil.org/research/immigrants-in-california>
- American Immigration Council. (2017c). *State by state: Immigrants in Michigan*. <https://www.americanimmigrationcouncil.org/research/immigrants-in-michigan>
- American Immigration Council. (2017d). *State by state: Immigrants in New York*. <https://www.americanimmigrationcouncil.org/research/immigrants-in-new-york>
- Balfour, D. & Gray, B. (2018). Voices from the borders of governance: connecting the local narratives of surplus populations. *Public Voices*, 14(2), 12-27.
- Barth, J. & Reich, G. (2012). Immigration restriction in the states: Contesting the boundaries of federalism? *The Journal of Federalism*, 42(3), 422-228.
- Boushey, G. & Luedtke, A. (2006). Fiscal federalism and the politics of immigration: Centralized and decentralized immigration policies in Canada and the United States. *Journal of Comparative Policy Analysis*, 8(3), 207-224.
- Brown, D., & Rodriguez, A. (2014). *When race and policy collide: Contemporary immigration debates*. Santa Barbara, CA: Praeger.
- Center for Immigration Studies. (2020). *Map: Sanctuary cities, counties, and states*. <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>
- Department of Homeland Security. (2018) *Yearbook of immigration statistics 2018*. <https://www.dhs.gov/immigration-statistics/yearbook/2018>
- Elias, S. (2013). The new immigration federalism. *Ohio State Law Journal*, 74(5), 703-752.

- Henderson, T. (2018). *Cities, states resist—and assist—immigration crackdown in new ways*. Pew Charitable Trusts. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/08/03/cities-states-resist-and-assist-immigration-crackdown-in-new-ways>
- Goelzhauser, G. & Konisky, D. M. (2019). The state of American federalism 2018-2019: Litigation, partisan polarization, and the administrative presidency. *The Journal of Federalism*, 49(3), 379-406.
- Gulasekaram, P. & Ramakrishnan, S. K. (2015). *The new immigration federalism*. Cambridge University Press. Cambridge, MA.
- Kryzaneck, M. & Karreth, A. K. (2018). *The 25 issues that shape American politics*. New York, NY. Routledge
- Larson, E. (2020). *States sue over Trump's border wall money from the military*. Bloomberg. <https://www.bloomberg.com/news/articles/2020-03-03/trump-s-border-wall-money-grab-from-military-hit-with-new-suit>
- Lazarus, Emma. (1883). *The new colossus*. New York, New York.
- Michigan Immigrant Rights Center (MIRC). (2020). *Michigan legislation affecting immigrants and farmworkers*. <https://michiganimmigrant.org/michigan-legislation-affecting-immigrants-and-farmworkers>
- National Conference of State Legislatures. (2016) *State laws related to immigration and immigrants: 2016 report*. <https://www.ncsl.org/research/immigration/state-laws-related-to-immigration-and-immigrants.aspx>
- National Conference of State Legislatures. (2018) *State laws related to immigration and immigrants: 2017 report*. <https://www.ncsl.org/research/immigration/state-laws-related-to-immigration-and-immigrants.aspx>
- National Conference of State Legislatures. (2019) *State laws related to immigration and immigrants: 2018 report*. <https://www.ncsl.org/research/immigration/state-laws-related-to-immigration-and-immigrants.aspx>
- National Conference of State Legislatures. (2020) *State laws related to immigration and immigrants: 2019 report*. <https://www.ncsl.org/research/immigration/state-laws-related-to-immigration-and-immigrants.aspx>

- Nowrasteh, A. (2019, September 16). *Deportation rates in historical perspective*. Cato Institute. <https://www.cato.org/blog/deportation-rates-historical-perspective>
- Oates, W.E. (1999). An essay on fiscal federalism. *Journal of Economic Literature*, 37(3), 1120-1149.
- Pedraza, S. & Rumbaut, R. (1996) *Origins and destinies: Immigration, race, and ethnicity in America*. Wadsworth Publishing Company. Belmont, California. (pp. 21-42)
- Reich, G. (2018). Hitting a wall? The Trump administration meets immigration federalism. *The Journal of Federalism*, 48(3), 372-395.
- Rissler, G. (2016). Varied responsiveness to immigrant community growth among local governments: Evidence from the Richmond, Virginia, metropolitan area. *State and Local Government Review*, 48(1), 30-41.
- Society for Human Resource Management. (2019) *Employment-based immigration: Reducing barriers and recognizing global talent*. Alexandria, VA. <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/SHRM%20Employment-based%20Immigration%202019.pdf>
- Weimer, D. L., & Vining, A. R. (2017). *Policy analysis: Concepts and practice (6th ed.)*. New York, NY: Routledge Taylor & Francis Group. (Ch. 5, pp. 74-113)

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