LOCAL REGULATION OF IMMIGRATION ISSUES

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REGULATION

- FEDERAL GOVERNMENT
  - Comprehensive reform slow
  - Perceived inadequate response
- STATE/LOCAL REGULATION
  - Employment
  - Harboring
  - Identification
  - Enforcement
  - Omnibus

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LEGISLATION

- STATES
  - 2007 = 1,059 proposed bills
    167 passed/enacted
- CITIES
  - More than 100 ordinances passed

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LEGAL ISSUES

- SUPREMACY CLAUSE
  - Express Pre-Emption
  - Implied Pre-Emption
    - Field
    - Conflict
- DUE PROCESS
  - Notice
  - Hearing process
- EQUAL PROTECTION
  - Facial neutrality
  - As applied/discriminatory intent or effect

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LEGAL ISSUES (CONT'D)

- PRIVACY
  - Disclosure of private information
- STANDING
  - Constitutional
  - Prudential

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CASE STUDIES - CITIES

Lozano v. City of Hazleton, Pa.
496 F. Supp. 2d 477 (M.D. Pa. 2007)

- Illegal Immigration Relief Act
  - Employment
  - Harboring
- Tenant Registration Ordinance
  - Identification – occupancy permits
- City Lost – Ordinance unconstitutional
  - Permanently enjoined from enforcement
  - Pre-empted
  - Due process violation

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CASE STUDIES - CITIES (CONT'D)

Hazleton, Pa. (Cont'd)

- Legal Fees – City-Privately Raised Contributions for costs of their litigation but Plaintiff obtained judgment for $2.4 million for attorney fees against City

Gray v. City of Valley Park, Mo.
567 F.3d 976, (8th Cir. (Mo.) 2009)

- District Court – City won
  - Ordinance constitutional
- Appellate Court
  - Constitutional issue not considered
  - Standing challenge court rejected – Plaintiff's claim of lack of jurisdiction
  - District Court ruling remains intact
- Legal fees - $270,000.00

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CASE STUDIES - CITIES (CONT'D)

- *Villas at Parkside Partners v. City of Farmers Branch, Texas*, 577 F. Supp. 2d 851 (N.D. Tex. Aug. 29, 2008)
  - Landlord Requirement to check tenant proof of citizenship
  - City lost
  - Permanent injunction
  - Federal pre-emption
  - Due process violation
- *Reyes v. City of Farmers Branch*
  - City issued Residential Occupancy License
  - Ruling pending
- Legal Fees – over $2 million
- Legal documents link:
  www.maldef.org/immigration/litigation/vasquez_v_farmersbranch

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CASE STUDIES - STATES

- Arizona – *Chicanos for La Causa, Inc. v. Napolitano*, 558 F. 3d 856, 09 Cal. Daily Op. Serv. 2881, 2009 Daily Journal DA.R. 3480 (9th Cir. (Ariz.) March 9, 2009) (No. 07-17272,07-17274,08-15357, 08-15359, 08-15360) Petition for Certiorari filed (July 24, 2009) (No. 09-115)
  - Business license suspension/revocation for employers who hire undocumented workers
  - E-verify requirement
  - Upheld as constitutional
    - Tracks the language in IRCA
    - Does not have stricter standard of conduct
    - Mechanism for due process

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CASE STUDIES - STATES (CONT'D)

- Oklahoma – *Chamber of Commerce of the United States v. Henry,* WL 232 9164 (June 4, 2008) – not reported; *Chamber of Commerce, et al. v. Edmondson, et al. (10th Circuit)* - ruling pending
  - Injunction against enforcement
  - Subjects employers to state tax penalties for failure to use E-Verify
  - Allows discrimination claims against employers who terminate employees while knowingly retaining undocumented workers

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MODEL ORDINANCES PRO-IMMIGRATION

- A CITY TO MODEL – SIX PROPOSALS FOR IMPROVING IMMIGRANT RELATIONS WITH THE CITY OF NEW HAVEN, CONNECTICUT
  - Communication with local banks
  - City ID cards
  - Police policy of non-enforcement of federal immigration laws
  - Police enforcement of criminal wage laws
  - Nationwide best practices
  - City office of immigrant affairs
  - See proposal:
    http://newhavenindependent.org/archives/2005/10/a_city_to_model.pdf

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MODEL ORDINANCES PRO-IMMIGRATION (CONT'D)

- Resource for cities:
  - Migration policy institute
  - National Center on Immigrant Integration Policy

http://www.migrationinformation.org/integration/

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MODEL ORDINANCES ANTI-IMMIGRATION

- Immigration Reform Law Institute

http://www.irli.org/links.htm/

  - Model ordinance – local licensing and harboring
  - Model ordinance – local enforcement and anti-sanctuary ordinance

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PUBLIC RESOURCES AND THE NON-LEGAL ALIEN

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FEDERAL POLICY

- Immigrants shall strive for self sufficiency
- Immigrants within our borders should not depend on public resources but on their own capabilities, sponsors and private organizations
- Public benefits should not be an incentive for immigration

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PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 "PRWORA"

- Limits a state or local government from providing public assistance to non-legal aliens
  - Grants, loans, professional or commercial licenses
  - Retirement, welfare, health disability, public or assisted housing, post secondary education, food assistance, unemployment benefits for which **payments** are provided.

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EXCEPTIONS

- In kind services that are necessary to protect life or safety
  - AG has included the following:
    - Services widely available-police, fire, ambulance, transportation, sanitation
    - Crisis counseling, intervention programs
    - Community food banks, nutritional programs
    - Short term sheltering and housing assistance for victims of domestic violence, abused or runaway children
    - Programs, services and assistance for adverse weather conditions

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PRWORA VIOLATIONS

- Injunctive relief
- May impact grant program compliance rules

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STATE LAW AND OTHER EXCEPTIONS

- State benefits can be more generous for non-legal aliens if those laws were enacted after 1996.
- Attendance at public schools; eligibility for free breakfast and lunches at school.
- In-state tuition if certain criteria are met.
- Bilingual services for students with language deficiency.
- Hospitals with emergency care facilities must assess and stabilize.

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TRANSLATION

- Election materials for those jurisdictions covered by Section 5 of the Voting Rights Act.
- Court proceedings
- Persons with limited English proficiency must be provided **meaningful** access to federally funded programs. (Executive Order 13166)

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ARE YOU IN COMPLIANCE?

- What benefits, licenses or permits do you offer other than those covered by PRWORA?
- Proactive or Reactive approach to determine eligibility
- Selective Screening of applicants for PRWORA compliance
- Staff knowledge on various visa classifications

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E-VERIFY

Process:

- Available for employers to verify eligibility for employment using a federal on-line service:
  - Substitute for using the I-9 paperwork/process for new hires
  - Memorandum of Understanding
  - Cannot be used as a screening tool prior to hiring
- Name, birth date, social security number to confirm eligibility within three days of hire date
- Social Security, NUMIDENT and DHS records reviewed
- Tentative non-confirmations must be contested by employee within eight business days
- Based upon employee's response, DHS/SSA has ten working days to determine eligibility
- Cannot delay an employee's working while awaiting confirmation
- If not confirmed, a final non-confirmation is issued. Employer terminates employee.

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E-VERIFY CONCERNS

- Inaccurate databases
- Backlog and potential for overwhelming system-particularly once it is mandatory for federal contractors
- No protection against fraud

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STATE LAWS

(NOT AN EXCLUSIVE LIST)

Some states and cities require E-Verify or other verification process:

Arizona
California-Mission Viejo
Colorado
Georgia
Hawaii
Illinois
Minnesota
Mississippi
North Carolina
Oklahoma
Rhode Island

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E-VERIFY

Concerns:

- Does not detect fraud
- Overwhelm system – 6.6 million inquires in 2008
- Reports of current delays with SSA on disability benefits

Federal Contractors:

- Required to comply beginning September 8, 2009

Exceptions include contracts that are:

- Entered into before September 8, 2009;
- Under $100,000;
- Performed within 120 days;
- Performed wholly outside the United States;
- For commercially available off the shelf items and is not real property "COTS;"
- Subcontractors providing supplies only; or
- Under the micro-purchase threshold.

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PUBLIC SCRUTINY OF YOUR CONTRACTORS

- Right of inspection of hiring records
- Right to remove workers
- Constructive knowledge theory
- Invitation to liability as a pseudo employer

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