Laws Affecting Local Regulations and Public Resources for Non-Legal Immigrants

— by Diane Wetherbee and Paige Mims —



Immigration laws (or their shortcomings) are an integral part of the political platforms of many elected officials, both local and national, and the topic is likely a hotbed of discussion for citizens in your community. Although immigration regulations have traditionally been the purview of the federal government, the lack of comprehensive reform in Washington has resulted in state and local governments taking a more significant role in addressing the legal issues related to undocumented workers. In 2007, state legislatures across the United States had introduced more than 1,000 immigration measures, and passed 150 of them – three times more than in 2006.[1] In addition, more than 100 municipalities across the country are regulating unauthorized immigration at a local level.[2] Local solutions have resulted in both pro-immigration policies that seek to embrace and integrate immigrants into the community, and in anti-immigration policies that often bring unintended consequences: community opposition, court challenges, the loss of citizenry, and lost business revenues.

Laws on this topic are complex, and local government lawyers must be careful in responding to calls for greater local regulations in this area. This article will reviews the key legal principles that come into play when local entities enact regulations that affect non-legal aliens and those who provide services to them. It also includes examples of contrasting approaches of cities to this sensitive and complex topic. Second, it provides an overview of the law that affects or limits local governments in their distribution of public resources to non-legal aliens. The article is by no means an exhaustive review of the issues, but is intended as a guide for the local practitioner in responding to inquiries about the role the local government may play in this arena, and the limits of its authority.

Constitutional Considerations – Preemption

There is a common theme running through the anti-immigration ordinances. Generally, these regulations crack down on unauthorized immigrants and push for comprehensive reform by addressing a variety of concerns – day laborers, employment status, housing and perceived overcrowding, identification and drivers' licenses, local law enforcement, education, and English as the official language. These measures often penalize not only the undocumented workers, but their families, business owners, landlords, and others who interact with the unauthorized immigrants.[3]

There are several legal obstacles to the regulation of the immigration issue at the local level. Ordinances that target immigrants raise a number of constitutional issues, including federal preemption, due process, and equal protection questions. There are several issues to evaluate in determining if a proposed ordinance is consistent with constitutional principles. In addition, an examination of court decisions regarding municipal regulations targeting undocumented workers provides insight into the legality of anti-immigration initiatives.

The Constitution makes it clear that ordinances or statutes that conflict with, or duplicate, provisions found in the federal law are preempted.[4] Although it is an oversimplification to say that all state and local laws related to immigrants are preempted by federal law, the courts have consistently held that the federal government is vested with the right to regulate immigration.[5] As a result, ordinances that attempt to confer this power on state or local governments often run afoul of the Constitution.[6] Examples of local laws that would most likely be found unconstitutional because they "regulate immigration" are ordinances that try to define who is a "lawful" immigrant.[7] These ordinances may also be overly vague in their attempt to classify undocumented immigrants, and inadvertently exclude certain categories of lawfully protected immigrants from their definitions. The U.S. Supreme Court has held that state laws that burden the residence of lawfully present immigrants are attempts to regulate immigration and preempted by federal law.[8] Thus, an ordinance that had the effect of denying housing to lawful immigrants because it denied housing to their undocumented relatives would likely be found to be unconstitutional.

Express preemption occurs when a federal law contains a provision that directly prohibits states and municipalities from legislating in that area. For example, the Immigration Reform and Control Act of 1986 (IRCA)[9] expressly states that it preempts any state or local law that attempts to impose civil or criminal sanctions upon those who employ or recruit unauthorized immigrants, or refer them for employment for a fee.[10] Any ordinance that sought to penalize persons who employ undocumented immigrants would probably be found unconstitutional; however, if the regulation simply prohibited employers from knowingly hiring undocumented workers, there probably would not be a preemption obstacle because the provisions would merely reinforce IRCA.

Local ordinances can also be challenged by implied preemption, which can occur in two ways. First, field preemption applies if a regulation is so comprehensive that it is clear that the federal gov-

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Paige Mims serves as an Assistant City Attorney III for Plano, Texas. She handles tort claims lawsuits and provides legal support to various city departments, the Planning and Zoning Commission, and the Heritage Commission. Prior to joining the City of Plano, she was the City Attorney for the City of Corsicana, and she also served as an Assistant Attorney General for the State of Texas. Paige is an IMLA Local Government Fellow. She received her undergraduate degree from Texas A&M University (whoop!) and her law degree from St. Mary's University in San Antonio, Texas (home of Her Majesty, Queen Susan Rocha, who presides over the noble kingdom of IMLA).



Diane Wetherbee is the City Attorney for Plano, Texas. She is an IMLA Vice President, an IMLA Local Government Fellow, and an adjunct professor for SMU's Dispute Resolution Program. Diane is a co-founder of the "Vesparados," an all-girl scooter club in north Texas.

ernment intended to fully occupy the field.[11] The Constitution gives Congress and the federal government exclusive power over immigration, naturalization, and deportation,[12] thus, "Congress has fully occupied the field of immigration regulation through enactment and implementation of the" Immigration and Nationality Act.[13] Second, conflict preemption operates to preempt a law that conflicts with federal law, making it physically impossible to comply with either regulation. This can also apply if the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.[14] For instance, a local regulation that creates different time lines or penalties than those in federal laws may be preempted through the operation of this doctrine.[15]

Other Constitutional Issues

In reviewing ordinances, courts also analyze individual rights issues – whether a law provides due process and equal protection.

The Fourteenth Amendment forbids deprivation to any person of life, liberty, or property without due process.[16] Generally, a local government cannot deprive people of a property interest without adequate notice and an opportunity to be heard on any charge. Courts have found that both landlords and tenants have protected property interests under constitutional principles, and that both employers and employees have protected constitutional liberty interests.[17] It is important to note that the constitutional protections contained in the Fourteenth Amendment extend to all persons, not just those that are legally in the country.[18] In determining if a specific law complies with due process, several factors need to be examined.

The regulation needs to be clear and straightforward, so that a reasonable person would understand what is expected of them under the law. For example, if a law requires proof of documentation, it should be precise as to what forms of identification are satisfactory.

Second, there should be a fair hearing process, with notice of any alleged violation of the law and an opportunity for the purported violator to present his side of the matter to an impartial decision-maker within a specified, reasonable time frame.

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Equal protection concerns are another area where anti-immigration ordinances falter or fail in legal challenges. The Equal Protection Clause, in brief, directs that all people similarly situated must be treated alike.[19] Ordinances that provide different treatment to different classes of people are suspect under constitutional review if they restrict fundamental rights, such as voting or interstate travel.[20] Laws can also be found to be defective in equal protection analysis if they discriminate based on suspect classifications, such as race or national origin.[21] A regulation may appear to be neutral on its face, but may be challenged because it reflects an intent to discriminate.

Case Studies

Many immigrant-related ordinances are currently under court review and have not been enforced; in other cases, the laws have already been successfully challenged.[22]

In Hazleton, Pennsylvania, Mayor Louis Barletta crusaded against undocumented immigrants in his city, claiming that crime and the burden on social services increased after an influx of Hispanic immigrants in the area.[23] In 2006, city officials passed the Illegal Immigration Relief Act Ordinance (IIRA), which was amended several times, and a Tenant Registration Ordinance.[24] The IIRA proposed to deny business permits to any company hiring illegal immigrants, and impose fines against landlords who rented to them.[25] A suit was filed to block enactment of the ordinances, with the plaintiffs including lawful permanent residents, undocumented aliens, and a number of organizations, including Latino business and immigrant rights groups. They claimed that the ordinances deprived residents of their equal protection and due process rights and violated state and federal housing laws.[26] The plaintiffs also argued that the law usurped the federal government's exclusive power to regulate immigration, and that allowing every city to set its own local regulations would create a dysfunctional set of dueling rules and regulations. In 2007, a federal judge ruled against the City, finding that the IIRA was preempted by federal law[27] and violated due process.[28] That ruling was appealed to the U.S. Court of Appeals for the Third Circuit, with oral argument in late October of 2008.[29] A ruling is still pending. The Hazelton case is the only lawsuit challenging a local anti-immigrant law to have been decided after a full trial, and the outcome will be important to cities seeking to regulate in this area.[30]

Farmers Branch, Texas also embarked upon immigration reform several years ago. In 2006, its city council unanimously passed an ordinance that required tenants to provide proof, to landlords, of U.S. citizenship or eligible immigration status as a prerequisite to entering into a lease.[31] In response to legal challenges, the rule was later revised to include exemptions for minors, seniors and some mixed-immigration-status families.[32] Citizens endorsed the law in 2007, the Nation's first public vote on a local government ordinance aimed at challenging unauthorized immigration.[33] Subsequently, however, a federal judge enjoined the City from enforcing its law, finding that the ordinance regulated immigration and was, therefore, preempted by federal law.[34]

Farmers Branch subsequently hired a law firm and consulted with a University of Missouri law professor to redraft the ordinance and address the legal issues raised.[35] The result was a new proposal, adopted by city council in early 2008, that required prospective tenants to get a city license to rent houses and apartments.[36] This version of the ordinance would require the City, as opposed to landlords, to verify tenant residency

requirements. Farmers Branch officials wanted the municipal building inspector to use the Systematic Alien Verification for Entitlements Program (SAVE) program, administered by the federal government, to check the immigration status of renters, although there seems to be disagreement about whether the system can confirm if a person is residing legally in the U.S.[37] The City continued to face court challenges over its legislation: three apartment complexes filed suit against the City, claiming the licensing requirements were unconstitutional.[38]

Fighting such challenges to local regulations of immigration can be expensive. As of the end of 2008, an estimated $2 million dollars had been spent in legal fees by the City of Farmers Branch on this issue.[39]

Given these costs, it's not surprising that some cities – like Riverside, New Jersey – opt to abandon their efforts to regulate migrants.[40] The "Riverside Township Illegal Immigration Relief Act"[41] attempted to ban undocumented immigrants from renting, residing, using property, or being employed in the town. The Township subsequently decided to repeal its ordinance in the face of costly litigation.[42] It is significant to note that the costs associated with anti-immigration measures are not limited to the expense of legal proceedings. The Riverside ordinance had a profound impact on the Township: one-third of its immigrant population moved away, causing some businesses to close, while other businesses saw their sales decline by as much as 50 percent.[43]

The inadvertent consequences of these types of ordinances should be carefully considered because they create public policy concerns for local officials. As shown by Riverside Township, cities that pass anti-immigration legislation may experience large numbers of residents moving away, economic losses, falling tax revenues, and companies avoiding the area because of the difficulties in complying with the laws. Enforcement of local regulations is costly and not as easy as one might assume. While it seems straightforward – either someone is here legally, or not – there are multiple types of immigration status with various forms of proof, which complicate a determination of whether someone is violating the law. Lastly, anti-immigration sentiment and legislation can compromise community relations.[44]

Pro-Immigration Policies

Not all municipalities are passing legislation that discourages immigrants from assimilating locally. Some local governments are finding new and innovative ways to integrate undocumented residents into the community and facilitate relationships with the long-time citizenry. Several municipalities have passed pro-immigrant, or immigration-neutral, legislation. Some of these provisions include prohibiting local law enforcement agencies from enforcing federal immigration laws, and declaring that people will be treated equally regardless of immigration status.[45] Other local resolutions include supporting "English as a second language" programs and laws encouraging the federal government to pass comprehensive immigration reforms.[46]

A Model

Yale Law School's Community Lawyering Clinic, in collaboration with JUNTA (a nonprofit entity serving the Latino and immigrant communities in New Haven) and ULA (a Latina action group that advocates for immigrants), prepared a report, *A City to Model – Six Proposals for Protecting Public Safety and Improving Relationships Between Immigrant Communities and the City of New Haven*, that was presented to the New Haven, Connecticut, city council in March 2005.[47]

Fair Haven is a port community in New Haven, and Latinos account for 50.3% of all of Fair Haven's residents. The report sought to address the unique needs of the Latino immigrant population and improve the conditions of life for New Haven immigrants. The organizations that worked on the report recognized a need to create an atmosphere of respect and civil treatment for all immigrants, including undocumented individuals. The following outlines their suggestions for ordinances to address the security concerns of the immigrant population, improve the effectiveness of local government, and create opportunities for new types of city-community relationships:

Communicate with Local Banks.[48] The proposal recommended that the City open up channels of communication and educate banks (and other financial institutions) so customers could open accounts without providing social security numbers (SSNs). This would include helping banks understand that the law did not require SSNs in order to open accounts, and helping to create reasonable guidelines for acceptable and alternative forms of customer identification (ID).

City ID Cards.[49] The proposal suggested a mechanism to assist residents who could not participate in community affairs because of proper identification barriers. Federal and state laws did not prohibit municipalities from creating and issuing ID cards, and issuing such cards to immigrants would help them to engage in local commerce. Local governments throughout Connecticut and the U.S. have issued IDs for a wide range of reasons – for example, Washington, D.C., issues ID cards to residents who can prove that they are over 15 years of age and reside in the District.

Police Policy of Non-Enforcement of Federal Immigration Laws.[50] The proposal advocates that the City implement a police department policy recognizing that immigration is a matter best handled by the federal government. Federal and local authorities have traditionally worked cooperatively on criminal issues, but civil matters based in immigration have historically been solely a federal concern. After Sept. 11, 2001, the federal Department of Justice issued a memo advising that local law enforcement officers did have the ability to make civil immigration arrests; however, it was up to each municipality to decide if it wanted to enforce such matters locally. Referring to the chilling effect that police enforcement of immigration laws could have on relations with immigrant populations, the proposal indicates that a non-enforcement policy would allow police resources to be spent on dealing with local crime, and could help to build trust between local authorities and immigrant populations.

Police Department Enforcement of Criminal Wage Laws.[51] Cities can develop policies to protect undocumented workers from being exploited on-the-job and in wage payment through programs

that create a mechanism for police enforcement of criminal laws that protect workers. The Central Texas Immigrant Workers Rights Center (CTIWoRC) in Austin, Texas, has developed a program that is the model for the rest of the country. CTIWoRC worked with the police and the county attorney to enforce a Texas Penal Code provision on theft of services (the law makes it a crime to agree to compensate someone for a service and, after the service is performed, fail to make payment after receiving notice of a demand for payment).[52] Austin advocates were successful in getting the definition of "services" interpreted to include wages, making a failure to pay wages to immigrant workers a crime under the statute. The following elements are required for a successful theft of services program: an applicable state or municipal law; relationships with local police and prosecutors; a police department non-enforcement policy regarding immigration laws; a formal procedure for police and prosecutors to process the cases; and a good system for coordinating the management of the complaint and the follow-up process. The Austin program has all of these elements and has been successful, but these programs take considerable time and resources.

Looking to Best Practices Nationwide.[53] The proposal encouraged the City to look to best practices for improving police-community relations, by reviewing initiatives taken by other cities to improve police department relationships with immigrant communities. This may help to build trust and diminish fear, so that citizens will cooperate with law enforcement in reporting crimes. Police departments that have effectively instituted multi-faceted "best practice" programs include: Charlotte-Mecklenburg, North Carolina; Vegas, Nevada; and Clearwater, Florida. An initiative that has been particularly successful is the establishment of a bilingual and multi-cultural team of officers designated to address Latino-immigrant matters. This initiative results in increased crime reporting, increased accessibility of services, expanded information flow, and a more efficient response and information-gathering. Other programs include citizen programs (e.g., a Spanish-language citizen police academy), administrative solutions (Spanish-language signs and pamphlets), employee cultural-awareness training, program for police station visits for immigrants, and mayor-sponsored outreaches (liaison offices or commissions) that focus on integrating immigrants into the local government and community.

Creating an Office of Immigrant Affairs.[54] The proposal encourages the establishment of a city office aimed at assisting new immigrant residents, to help familiarize them with city services and programs, and which could also create and manage program areas for immigrants. This office could also provide an opportunity for the City to interact with and learn more about its citizens. The office director would act as a liaison between the immigrant community, the mayor, and community-based immigrant organizations. Cities that have already established this type of office include New York, Boston, and Philadelphia.

Public Resources and Non-Legal Aliens

The federal policy for immigrants and their access to public resources contains the following three principles: immigrants should strive for self-sufficiency as their primary goal; immigrants within our borders should not depend on public resources, but on their own capabilities, sponsors, and private organizations; and, public benefits should not be an incentive for immigration.[55]

With that in mind, there are many public programs that are available to immigrants who are legally within our borders, but not citizens. The fact that non-citizens are provided with any public services or benefits may be repugnant to some people; however, there are instances where immigrants,[56] including non-legal aliens (those who have entered this country unlawfully), are entitled to services and benefits. This section will focus primarily on the obligations or restrictions respecting providing public services and benefits to non-qualified aliens, including non-legal aliens.

Federal Restrictions on Public Subsidies for Aliens

Title IV of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996[57] (PRWORA) prohibits a state or local government from providing public subsidies/benefits to non-qualified aliens.[58] Although "non-qualified alien" is undefined, the law defines a "qualified alien" as including an individual admitted into the United States for permanent residence under the Immigration and Nationality Act of 1990 (INA);[59] one granted asylum under Section 208 of INA; a refugee pursuant to Section 207 of INA; those paroled into the United States, detained pending deportation, or granted conditional entry; a Cuban or Haitian refugee; and certain battered aliens and their children.

Non-qualified aliens include some classes of aliens who have entered the country lawfully, as well as illegal aliens. The following public benefits may not be provided to non-qualified aliens: grants, contracts, loans, professional or commercial licenses provided by local government; and retirement, welfare, health, disability, public or assisted housing, post-secondary education, food assistance, unemployment benefits or other similar benefits for which payments are provided to an individual or family by a state or local government agency or by appropriated funds of the same.[60]

PRWORA has several exceptions to the restriction on public assistance, including assistance for health-care items and services for emergency medical conditions (except organ transplant procedures); public health assistance for immunization; and testing and treatment of communicable diseases.[61] Another exception that allows programs for non-legal aliens are those that are authorized by the U.S. Attorney General, as long as those programs are:

> In-kind services provided at the community level, including those offered by public or private nonprofit agencies that do not condition the assistance or amount on the individual's income or resources; and are necessary to protect life or safety.[62]

In 2001, then Attorney General Janet Reno implemented that authority and issued AG Order No. 2353-2001, outlining the types of programs that were authorized for non-qualified aliens. Programs covered by this Order are:

- General government service widely available to the public, such as police, fire, ambulance, transportation, sanitation, and other widely-available services;
- Programs for crisis counseling and intervention; services related to child and adult protection, victims of domestic violence, or victims of other criminal activity; violence and abuse prevention, or the treatment of mental illness or substance abuse;
- Short-term shelter or housing assistance for the homeless, for victims of domestic violence, or for runaway, abused, or abandoned children;
- Programs, services, or assistance to help individuals during adverse weather conditions;
- Soup kitchens, community food banks, senior nutrition programs, and other nutritional programs for persons requiring special assistance;
- Activities designed to protect the life or safety of workers, children, or community residents; and
- Any other program, service, or assistance necessary for the protection of life or safety.[63]

These exceptions are not permissive and providers may not rely on the PRWORA in denying services covered by this Order.

Violations of PRWORA

PRWORA does not provide any specific criminal or civil penalty for violations, and there are no reported cases of any enforcement efforts; thus, it would seem that violations may be limited to obtaining injunctive relief. A word of caution, however: entities should review whether there are any references to PRWORA-compliance in a federal grant program in which they are a recipient. Federal subsidy programs often contain commitments that require recipients to comply with an array of federal laws unrelated to the grant's purpose, and violations of those requirements may result in the forfeiture of, or a requirement to repay, the grant funds. Lastly, even though PRWORA has restrictions, Congress has authorized states to allow non-legal aliens to be eligible for their state or local benefits if the state law was enacted after 1996.[64] This explains why some states have provided financial or other assistance broader than what is described above.

Are You PRWORA-Compliant?

Does your city ask for proof of legal status before providing a license, service or benefit? (A community can require verification of alien status in the distribution of its public benefits.[65]) Is the information sought uniformly for all, or only certain, applicants? If only some applicants are asked, a city may be faced with a race or national origin discrimination claim over that practice. Even for the well-intentioned and proactively-minded, there are a number of hurdles in showing compliance with PRWORA, particularly for those trying to distinguish between qualified and non-qualified aliens.

From a practical perspective, discerning who is eligible, under PRWORA, to receive a benefit/service/license is not a minor undertaking. Many people in this country may be here on immigrant visas that cover: foreign government officials and their families and personal employees; visitors; those under a visa waiver program; aliens in transit; students and their spouses and children; temporary workers (nurses, fashion models, agricultural workers, and spouses and children); persons engaged to marry a U.S. citizen; employees who are part of an intra-company transfer, and others.

Given this range of classes of legal aliens, will most city employees who administer programs know the visas that are associated with these classes to determine eligibility?

Other Exceptions

Aliens are eligible for post-secondary education benefits if the same benefit is offered to citizens and nationals without regard to residency in the state.[66] Many states offer in-state tuition to non-qualified aliens, provided the student files an affidavit stating that he has applied to legalize his immigration status or will do so upon becoming eligible to do so, and for those who have attended high school in their state for three or more years.[67] Those states may rely on the fact that in-state tuition is not a "monetary payment" that would otherwise violate PRWORA; instead, in-state tuition is a status benefit.

Children may attend public schools without proof of immigration documentation, and participate in all programs.[68] Further, a student who is eligible for free public education benefits is also eligible for free school breakfasts and lunches, without regard to citizenship, or alien or immigration status, pursuant to the Russell National School Lunch Act and Child Nutrition Acts.[69]

A hospital with emergency care facilities is required to comply with the federal Emergency Medical Treatment and Active Labor Act, and assess and stabilize any individual needing such assistance.[70] The obligation to provide emergency treatment extends to anyone, regardless of their status or ability to pay, and a violation can incur a penalty up to $50,000 per offense.

Language for Information or Services

There are occasions where translation needs for non-English speakers must be met. For example, jurisdictions covered by the Voting Rights Act must print their election materials in the language applicable to the minority group;[71] another example is a state law that may obligate a court to provide translation services for a defendant or a witness.[72]

Cities that receive federal assistance must also comply with Executive Order 13166,[73] intended to ensure that those with limited English proficiency (LEP) have meaningful access to programs, employment, and benefits and activities that are funded, in whole or part, by the federal government (including loans). This extends to federal programs that are passed through local governments to administer. The following factors are considered in determining whether meaningful access has been provided, as required by the Order: the number or proportion of LEP persons in the eligible service population, the frequency with which LEP individuals come into contact with the program, the importance of the service provided by the program, and the resources available to the recipient.[74]

In sum, municipalities need to evaluate their services, eligible population, and resources to determine the extent to which they must offer translation services to comply with this Order.

Conclusion

Immigration reform generates much discussion and debate in the United States. Despite the cost and unfavorable court rulings for local governments engaged in anti-immigration reform, many cities and states continue to pass legislation that is hostile towards unauthorized immigrants. Communities across the Nation are experiencing hardship in the form of economic loss, bad publicity, and loss of population as a result of ordinances targeting immigrants, their families, and their employers. Municipalities need to find new ways to address immigration reform, and some cities are already putting into practice pro-immigration policies with favorable results. These programs are strengthening relationships in the community and improving the effectiveness of local government. Cities need to consider the goals of the community and weigh the potential legal restrictions when deciding what, if any, immigration reforms they want to implement.

Notes

1. C. Rodriguez, M. Chishti, and K. Nortman, *Testing the Limits: A Framework for Assessing the Legality of State and Local Immigration Measures*, Migration Policy Institute, Washington D.C. (2007), at www.migrationpolicy.org.
2. *Id.* at i.
3. For example, the preamble to an "Illegal Immigration Relief Act Ordinance" adopted by Hazleton, Pa. in 2006 states: "[i]llegal immigration leads to higher crime rates, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, contributes to other burdens on public services, increasing their cost and diminishing their availability to legal residents, and diminishes our overall quality of life." The ordinance sought to regulate business entities that hired or employed illegal workers, and made it unlawful for any person or business entity that owned a dwelling unit in the City to harbor an illegal alien in the dwelling unit. Hazleton, Pa., Ordinance 2006-18 (Sept. 08, 2006).
4. U.S. CONST. art. VI, cl. 2.
5. *See* DeCanas v. Bica, 424 U.S. 351, 354-55 (1976); *see also*, Kleindienst v. Mandel, 408 U.S. 753 (1972), Fiallo v. Bell, 430 U.S. 787 (1977).
6. *See* Lozano v. City of Hazleton, No. 07-3531 (3d Cir. Filed Aug. 30, 2007); Villas at Parkside Partners v. City of Farmers Branch, Nos. 3:06-CV-2371-L, 3:06-CV-2376-L, 3:07-CV-0061-L, 2007 WL 1498763 (N.D. Tex. May 21, 2007); *see also*, *DeCanas*, 424 U.S. at 355-56; Graham v. Richardson, 403 U.S. 365 (1971) (statute restricting benefits to certain legal permanent residents held unconstitutional); Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142 (1963); Takahashi v. Fish & Game Comm'n, 334 U.S. 410, 419 (1948).
7. *See* League of United Latin Am. Citizens v. Wilson, 908 F. Supp. 755 (C.D. Cal. 1995) (a voter-approved initiative measure requiring state personnel to verify the immigration status of persons with whom they came into contact, to report persons who were in the country unlawfully and to deny those persons social services, health care, and education benefits, and that required state officials to notify individuals that they were present in the country unlawfully and had to "either obtain legal status or leave the United States," were preempted by federal immigration law because they had a direct and substantial effect on immigration).
8. *Takahashi*, 334 U.S. 410, 420 (1948).
9. 8 U.S.C. § 1101 *et seq.* (West 2009). IRCA prohibits the employment of aliens who are not lawfully present in the country and not lawfully authorized to work in the U.S.; 8 U.S.C. § 1324a(h)(3). It requires employers to verify the identity and eligibility for work of new employees by reviewing specified documents. 8 U.S.C. § 1324(a)(b). It prohibits the hiring of aliens who do not have proper documentation. 8 U.S.C. § 1324(a)(1).
10. IRCA's express preemption clause states: "The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing or similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens." 8 U.S.C. § 1324a(h)(2).
11. DeCanas v. Bica, 424 U.S. 351, 356-57 (1976).
12. Hines v. Davidowitz, 312 U.S. 52, 62 (1941); *see also DeCanas*, 424 U.S. at 354, 356.
13. League of United Latin Am. Citizens v. Wilson, 908 F. Supp. 755, 775-76 (C.D. Cal. 1995), citing *Gonzales v. City of Peoria*, 722 F.2d 468 (9th Cir. 1983).
14. *Id.* at 768, citing *Michigan Canners & Freezers v. Agric. Mktg & Bargaining Bd.*, 467 U.S. 461, 469 (1984); Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142-43 (1963).
15. For more about preemption, see Amanda G. Lewis, *Federal Preemption of State and Local Laws: State and Local Efforts to Impose Sanctions on Employers of Unauthorized Aliens*, Advanced Seminar on State Attorneys General (May 5, 2008) at http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=15237&rtcontentdisposition=file.
16. U.S. CONST., amend. XIV.
17. Lindsey v. Normet, 405 U.S. 56 (1972); Lozano v. City of Hazelton, 496 F. Supp.2d 477 (M.D. Pa. 2007).
18. Zadvydas v. Davis, 533 U.S. 678, 693 (2001).
19. U.S. CONST. amend XIV. *See also*, Plyler v. Doe, 457 U.S. 202 (1982).
20. Kramer v. Union Free Sch. Dist. No. 15, 395 U.S. 621 (1964); Shapiro v. Thompson, 394 U.S. 618 (1969); Skinner v. Oklahoma, ex. rel. Williamson, 316 U.S. 535 (1942).
21. McLaughlin v. Florida, 379 U.S. 184 (1864); Graham v. Richardson, 403 U.S. 365 (1971).
22. The ACLU's website lists local anti-immigrant ordinance cases at http://www.aclu.org/immigrants/discrim/27848res20070105.html.
23. Milan Simonich, *Hazleton ordinance aimed at illegal immigrants puts mayor at center stage*, PITTSBURGH POST-GAZETTE, Aug. 27, 2006.

24. Hazleton, Pa., Ordinance 2006-10 (July 13, 2006); as amended by Ordinance 2006-18 (Sept. 08, 2006), Ordinance 2006-35 (Dec. 13, 2006), and Ordinance 2007-6 (Mar. 15, 2007). Another measure, Ordinance 2006-13 (Aug. 15, 2006) (the Tenant Registration Ordinance) required occupants of all rental units, as defined, to obtain an "occupancy permit" by showing proof of legal citizenship or residence; and Ordinance 2006-19 (Sept. 21, 2006) (the Official English Ordinance) made English the City's official language.
25. *Id.*
26. Lozano v. City of Hazelton, 496 F. Supp. 2d 477 (M.D. Pa. 2007).
27. *Id.* at 519-22.
28. *Id.* at 536 (employer and employee provisions); 538 (landlord and tenant provisions).
29. Lozano v. City of Hazleton, No. 07-3531 (3d Cir. Filed Aug. 30, 2007).
30.Earlier this year, the Ninth Circuit ruled on the validity of the Legal Arizona Workers Act, which allowed Arizona courts to suspend or revoke the business licenses of employers who knowingly or intentionally hired unauthorized aliens. The court affirmed the district court's finding that the Act was not preempted by IRCA and did not, on its face, violate employers' right to procedural due process. Chicanos Por La Causa, Inc. v. Napolitano, 558 F.3d 856 (9th Cir. 2009).
31. Farmers Branch, Tex., Ordinance 2892 (Nov. 13, 2006).
32. Farmers Branch, Tex., Ordinance 2903 (Jan. 22, 2007).
33.The May 12, 2007, referendum passed by a margin of 68% to 32%. Stephanie Sandoval, *FB immigration law wins easily*, The Dallas Morning News, May 13, 2007.
34. Villas at Parkside Partners v. City of Farmers Branch, Nos. 3:06-CV-2371-L, 3:06-CV-2376-L, 3:07-CV-0061-L, 2007 WL 1498763 (N.D. Tex. May 21, 2007).
35. *Judge Strikes Down Farmers Branch Immigration Rule*, cbs11tv.com at http://cbs11tv.com/local/farmers.branch.immigration.2.734923.html.
36. Farmers Branch, Tex., Ordinance 2952 (Jan. 22, 2008).
37. *Database Doesn't Say Who is Illegally in the Country*, The Associated Press, Nov. 06, 2008.
38. Villas at Parkside Partners v. City of Farmers Branch, 577 F. Supp.2d 858 (N.D. Tex. 2008) (grant of partial summary judgement in relation to Ordinance 2892, finding that the ordinance was a regulation of immigration, and, thus, was preempted by the Immigration and Nationality Act).
39. *For Whom the Bill Tolls, Farmers Branch has Some Explaining to Do*, Dallas Morning News, Dec. 26, 2008.
40. Ken Belson and Jill P. Capuzzo, Towns Rethink Laws Against Illegal Immigrants, New York Times, Sept. 26, 2007 at http://www.nytimes.com/2007/09/26/nyregion/26riverside.html; The Associated Press, *ACLU Makes Town Drop Anti-Illegals Law*, Sept. 17, 2007, at http://sweetness-light.com/archive/nj-town-quietly-drops-anti-illegals-ordinance.
41. Town of Riverside, N.J., Ordinance 2006-16 (July 26, 2006), as amended by Ordinance 2006-26 (Nov. 22, 2006).
42. On Sept. 17, 2007, the Township Council repealed the revised Ordinance by a 3 to 1 vote.
43. The Associated Press, *ACLU Makes Town Drop Anti-Illegals Law*, Sept. 17, 2007, at http://sweetness-light.com/archive/nj-town-quietly-drops-anti-illegals-ordinance.
44. For a more detailed analysis of issues associated with immigration regulation, see http://www.migrationinformation.org/DataHub, and reference the National Center on Immigrant Integration Policy, a crossroads for elected officials, researchers, state and local agency managers, grassroots leaders and activists, local service providers, and others who seek to understand and respond to the challenges and opportunities that immigration creates in communities.
45. Anthony Faiola, *Looking the Other Way on Immigrants*, Washington Post, April 10, 2007, at http://www.washingtonpost.com/wp-dyn/content/article/2007/04/09/AR2007040901471_pf.html.
46. *A City to Model–Six Proposals for Protecting Public Safety and Improving Relationships Between Immigrant Communities and the City of New Haven* (Oct. 2005), New Haven, Co. Junta for Progressive Action, Inc. and Unidad Latina en Acción, at http://newhavenindependent.org/archives/2005/10/A_City_to_Model.pdf (hereinafter, "the proposal").
47. *Id.*
48. *Id.* at 3-4.
49. *Id.* at 5-8.
50. *Id.* at 9-11.
51. *Id.* at 12-14.
52. David Hafetz, *Unpaid Workers Speak Up and Police Listen, Act*, May 27, 2003, at http://equaljusticecenter.org/2003-05-27_Austin_A-S.htm.
53. The proposal, *supra* note 46, at 15-19.
54. *Id.* at 20-22.
55. 8 U.S.C.A. §1601 (West 2009) (statements of national policy concerning welfare and immigration).
56. "Immigrant" and "alien" will be used interchangeably.
57. 8 U.S.C.A. §1621 (West 2009).
58. 8 U.S.C.A. §1641 (West 2009).
59. 8 U.S.C. § 1460 *et seq.* (West 2009).
60.8 U.S.C.A. § 1621(c)(1) (West 2009).
61. 8 U.S.C.A. § 1621(b) (West 2009).
62. 8 U.S.C.A. §1621(b) (West 2009) (emphasis added).
63. 66 Fed. Reg. 3613 (Jan. 16, 2001).
64. 8 U.S.C.A. §1621(d) (West 2009).
65. 8 U.S.C.A. §1625 (West 2009).
66. 8 U.S.C. A. §1623 (West 2009).
67. *See, e.g.*, Kan. Stat. Ann. §76-731a (West 2009); Tex. Educ. Code Ann. §54.052 (Vernon 2005).
68. Plyler v. Doe, 457 U.S. 202 (1982).
69. 8 U.S.C.A. §1615(a) (West 2009).
70. 42 U.S.C.A. §1395dd (West 2009 .
71. 42 U.S.C.A. §1973aa-1a(c) (West 2009).
72. Tex. Gov't Code Ann. §57.002 (Vernon 2007); Cal. Const. Art. I, §14 (West 2009); Wash. Rev. Code Ann. § 2.43.010 (West 2009).
73. Exec. Order No. 13166, 67 Fed. Reg. 41455 (June 18, 2002).
74. *Id.* at § 41459. ML

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