2021 SURVEY OF ILLINOIS LAW: ENDING IMMIGRATION DETENTION AND EXPANDING IMMIGRANT PROTECTIONS

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For many decades, Illinois has been the sixth most popular state where immigrants settle upon arrival in the United States.[1] Partly for that reason, Illinois tends to have more pro-immigrant policies than many other states.[2] However, Illinois has become a true leader in immigrant-friendly laws and policies in recent years, especially since 2019 when Democrats took control of both the Illinois legislature and the Governor's office with the election of the Pritzker Administration. This article summarizes much of the recent immigrant-related legislation adopted in Illinois and highlights a brewing federal circuit court split over limits on immigration detention by states. Specifically, Part I discusses the constitutionality of the Illinois Way Forward Act while focusing on the case, *McHenry Co. v. Raoul*, and Part II analyzes additional Illinois pro-immigrant legislation and their impact on present-day public policy issues.

I. THE ILLINOIS WAY FORWARD ACT

In 2021, Illinois adopted one of the most important pieces of pro-immigrant legislation, the TRUST Act.[3] This Act prohibits state and local law enforcement officers from assisting the federal government in enforcing civil immigration laws.[4] Specifically, the TRUST Act prohibits state and local law enforcement officers and agencies from detaining or continuing to detain a person solely on the basis of an immigration detainer or civil immigration warrant.[5] Under this Act, Illinois law enforcement "shall not

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1 *Yearbook of Immigration Statistics 2019, Table 4. Persons Obtaining Lawful Permanent Resident Status by State or Territory of Residence: Fiscal Years 2017 to 2019*, U.S. DEP'T. HOMELAND SEC., https://www.dhs.gov/immigration-statistics/yearbook/2019/table4 (last updated Oct. 28, 2020). The term "immigrant" technically refers to persons who become lawful permanent residents of the United States. 8 U.S.C. § 1101(a)(20). For convenience, unless otherwise noted, this article uses the term "immigrant" more broadly to include all non-U.S. citizens who are residents of Illinois, regardless of their immigration status.

2 *See, e.g.*, Arizona v. United States, 567 U.S. 387 (2012).

3 5 ILL. COMP. STAT. 805/1 (2021). Illinois enacted the TRUST Act in 2017. *Id.*

4 *Id.*

5 *Id.* at 805/15. A civil or administrative immigration warrant is issued by the Department of Homeland Security ("DHS"), Immigration and Customs Enforcement ("ICE") for an alleged

stop, arrest, search, detain, or continue to detain a person solely based on [the person's] citizenship or immigration status."[6] Moreover, law enforcement agencies and officers are not permitted to inquire as to the citizenship, or immigration status, or place of birth of an individual in their custody.[7] Unless presented with a federal criminal warrant, state and local law enforcement may not participate, support, or assist in any capacity a federal immigration agent's enforcement operations.[8] Prohibited participation without a judicial warrant includes activities such as: assisting with arrests in courthouses or other public facilities, giving immigration agents access to state facilities or equipment, or transporting or transferring individuals to federal immigration custody.[9]

The purpose of the TRUST Act is to encourage cooperation between law enforcement and immigrant communities.[10] Because noncitizens will not have to fear law enforcement asking about, reporting, or acting on their immigration status, they will be more likely to cooperate with criminal investigations through reporting crimes when victimized and providing witness statements.[11]

In 2021, Illinois amended the TRUST Act with the Way Forward Act[12] which prohibits law enforcement agencies and officials, as well as all units of State and local governments, from entering into or renewing any contracts

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violation of the immigration laws. It directs DHS officers to arrest certain immigrants who are believed to be deportable. By contrast, a judicial warrant is issued by a court for a violation of criminal law. An immigration detainer is also an administrative ICE warrant, but it is directed to other law enforcement agencies and requests that they continue to hold a person in their custody for transfer to immigration detention.

6 *Id*.

7 *See id*. (providing that nothing in the Act should be construed to limit the ability of law enforcement officers to comply with consular notification rights under international treaties providing for the same or to inquire into citizenship or immigration status for purposes of certain firearms laws.*)*

8 *Id*. at 805/15(h).

9 5 ILL. COMP. STAT. 805/15(h) (2021). The Act does not, however, prohibit Illinois law enforcement officers and agencies from sharing certain information regarding immigration and citizenship status with the federal government pursuant to 8 U.S.C. §§ 1373 and 1644.

10 *See TRUST Act*, ACLU ILL., https://www.aclu-il.org/en/cases/trust-act#:~:text=In%202017%2C%20Illinois%20enacted%20the,of%20a%20request%20from%20ICE. (last visited June 8, 2022). ("The goal of the TRUST Act is to foster confidence between law enforcement agencies and the state's immigrant communities by ensuring that interactions between immigrants and law enforcement do not lead to immigration detention or deportation."); The Attorney General's Memorandum in Support of his Motion to Dismiss, McHenry Co. v. Raoul, No. 21 C50341, 2021 WL 5769526, at 4 (7th Cir. Dec. 6, 2021).

11 *See* Brief for the District of Columbia et al., McHenry Cnty. v. Raoul, No. 21-3334 (7th Cir. Mar. 3, 2022) (discussing why states believe limiting state cooperation with federal immigration enforcement has positive benefits).

12 5 ILL. COMP. STAT. 805/15(g) (2021). ("The Illinois TRUST Act is amended by changing Sections 5, 10, and 15 and by adding Sections 25 and 30.") Section 5 addresses the legislative purpose; section 10 amends certain definitions; section 15 discusses the prohibition on enforcing federal civil immigration laws; section 25 adds reporting requirements to the law; and section 30 adds an attorney general enforcement provision in order to "ensure compliance" with the Act.

to house or detain any individuals for federal civil immigration violations.[13] Under the amended law, existing contracts were to be terminated by January 1, 2022.[14]

Prior to the Illinois Way Forward Act, there were three primary facilities operated by local governments in Illinois that housed immigration detainees for federal civil immigration violations.[15] These three facilities were operated by Pulaski County in Southern Illinois, and McHenry and Kankakee Counties in Northern Illinois.[16] Each of these counties had entered into agreements with the federal government to house immigration detainees in their county facilities.[17]

Upon passage of the Way Forward Act, Pulaski County decided to terminate its agreement with the federal government in the fall of 2021 in advance of the January 2022 deadline.[18] The county either released or transferred all of its immigrant detainees to out-of-state detention facilities in August and September 2021.[19] However, fearing a loss of between $8-9 million in annual revenues, McHenry and Kankakee Counties decided to challenge the Way Forward Act instead.[20] These two counties commenced a lawsuit against the State of Illinois in September 2021 alleging the Act is unconstitutional because it is preempted by federal law and because the counties enjoy the federal government's intergovernmental immunity.[21]

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13 *Id*. The Act does not apply to the housing of criminal detainees.

14 *Id*.

15 Carlos Ballesteros, *Illinois legislature passes bill to close state's immigration detention centers*, INJUSTICEWATCH (last updated May 31, 2021, 9:50 PM), https://www.injusticewatch.org/news/immigration/2021/illinois-way-forward-immigration-detention-centers/.

16 *Id*.; *see also* McHenry Co. v. Raoul, No. 21 C50341, 2021 WL 5769526, at *1 (N.D. Ill. Sept. 1, 2021).

17 Carlos Ballesteros, *supra* note 15.

18 *See Illinois Communities Welcome Home Three Men Released as Pulaski County Jail Ends it Contract with ICE, Decry ICE's Decision to Transfer Many Others,* INTERFAITH CMTY. FOR DETAINED IMMIGRANTS (Sep. 4, 2021), https://www.icdichicago.org/9/4/2021.

19 *Id*.

20 Cassie Buchman, *McHenry County Lawsuit Challenging Illinois Way Forward Act, which would close ICE detention center, dismissed by judge*, NORTHWEST HERALD (Dec. 7, 2021, 5:09 PM), https://www.shawlocal.com/northwest-herald/news/local/2021/12/07/mchenry-county-lawsuit-challenging-illinois-way-forward-act-which-would-close-ice-detention-center-dismissed-by-judge/ (providing that McHenry County received $95 per day per detainee); *see also* Sam Borcia, *Judge dismisses McHenry County lawsuit challenging new law that will prohibit Illinois jails from housing ICE detainees*, LAKE & MCHENRY CNTY. SCANNER (Dec. 7, 2021, 5:03 PM), https://www.lakemchenryscanner.com/2021/12/07/judge-dismisses-mchenry-countys-lawsuit-challenging-new-law-that-will-prohibit-illinois-jails-from-housing-ice-detainees/.

21 Complaint for Declaratory Judgment and Injunctive Relief, McHenry Cnty. v. Raoul, No. 3:21 C50341, 2021 WL 3923927 (N.D. Ill. Sept. 1, 2021).

A. Litigation Challenging the Constitutionality of the Illinois Way Forward Act

The original complaint contained three counts.[22] First, McHenry and Kankakee Counties alleged that by requiring the termination of the agreements between the local governments and the federal government for immigration detention, the Illinois Way Forward Act constitutes an unconstitutional impairment of contracts in violation of Article I, sec. 10, cl. 1 of the U.S. Constitution and Article I, sec. 16 of the Illinois Constitution.[23]

Second, the plaintiffs alleged that as contractors for the United States, they "enjoy and are clothed with the Federal Government's intergovernmental immunity."[24] Furthermore, the plaintiffs alleged that, "[b]y prohibiting intergovernmental agreements with local governments, the Illinois Way Forward Act substantially interferes with the Federal government's operations . . . [and its] ability to carry out its detention responsibilities for the Federal government. [25]" The Plaintiffs alleged that because the federal government has not authorized the State of Illinois to regulate the federal government's activities with respect to housing immigration detainees, the Illinois Way Forward Act violates the Supremacy Clause in Article VI of the U.S. Constitution.[26]

Plaintiffs' third and final count alleged that the Illinois Way Forward Act violates the Supremacy Clause and is preempted by federal law because "the United States has occupied the field of contracting for housing Federal immigration detainees, leaving no room for concurrent State regulation."[27] By requiring plaintiffs to terminate their agreements with the federal government for housing immigration detainees, plaintiffs argued that the Act "substantially obstructs the Federal government's housing of Federal immigration detainees and stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[28] By way of relief, McHenry and Kankakee Counties asked the court to declare the relevant portions of the Illinois Way Forward Act unconstitutional and to preliminarily and permanently enjoin the Illinois Attorney General from enforcing those provisions.[29]

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22 *See id. at* ¶¶ 20-28.

23 *Id*. at ¶¶ 21-23 (stating Plaintiffs filed an amended complaint on September 15, 2021, in which they dropped this first count.)

24 *Id.* at ¶ 19.

25 *Id*. at ¶ 21.

26 *Id.* at ¶¶ 20-24.

27 Complaint for Declaratory Judgment and Injunctive Relief, McHenry Cnty. v. Raoul, No. 3:21 C50341, 2021 WL 3923927 at ¶ 26-28 (N.D. Ill. Sept. 1, 2021)

28 *Id.* at ¶¶ 27-28.

29 *Id.* at ¶¶ 24, 29.

The National Immigrant Justice Center ("NIJC") filed an amicus brief in support of Illinois[30] and the Immigration Reform Law Institute ("IRLI") filed an amicus brief in support of McHenry and Kankakee Counties.[31]. The NIJC argued that McHenry and Kankakee Counties are improperly using revenue from their immigration detention agreements intended for the care of immigrants for other county purposes, contrary to both federal law and the terms of the agreements.[32] Furthermore, the NIJC also rebutted the counties' argument that closure of the facilities would be worse for the detainees because they would be transferred to other facilities farther away from family and legal assistance.[33] Instead, the NIJC asserted that closure of the facility could result in the review and release of many detainees under conditions of supervision.[34]

In its amicus brief, the IRLI supported the counties' argument that the Illinois Way Forward Act is preempted by the federal Immigration and Nationality Act ("INA") [35] which authorizes the U.S. Attorney General to work with state and local governments to establish immigration detention centers.[36] The IRLI argued that the INA reflects Congressional policy that the federal and state governments work together on immigration detention, and therefore, the Illinois Way Forward Act stands as an obstacle to the accomplishment of Congressional objectives by prohibiting state-federal cooperation.[37] Thus, the IRLI argues that the Illinois Way Forward Act is preempted by federal law.[38]

B. The U.S. District Court's Decision

On December 6, 2021, U.S. District Court Judge Philip Reinhard issued an Order granting the Illinois Attorney General's motion to dismiss the complaint and upholding the constitutionality of the Illinois Way Forward Act.[39] The court viewed the plaintiffs as advancing two legal theories, both grounded in the Supremacy Clause of the U.S. Constitution. First, as contractors for the U.S. government, the counties enjoy and are clothed with

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30 *Id.* at ¶¶ 3-4.

31 *Id.*

32 Complaint for Declaratory Judgment and Injunctive Relief, McHenry Cnty. v. Raoul, No. 3:21 C50341, 2021 WL 3923927 (N.D. Ill. Sept. 1, 2021).

33 *Id.* at ¶ 9.

34 *Id.*

35 *Id.* at ¶ 1.

36 *Id.* at ¶ 2.

37 *Id.* at ¶ 4.

38 Complaint for Declaratory Judgment and Injunctive Relief, McHenry Cnty. v. Raoul, No. 3:21 C50341, 2021 WL 3923927 at ¶ 6 (N.D. Ill. Sept. 1, 2021).

39 *Id.* The court entered a separate Order denying plaintiffs' motion for an injunction against enforcement of the Illinois Way Forward Act on Dec. 27, 2021. *See* McHenry Cnty. v. Raoul, No. 21 C-50341, 2021 WL 8344241, at *1 (N.D. Ill. Dec. 27, 2021).

the federal government's intergovernmental immunity and second, the Illinois Way Forward Act is preempted by federal law.[40]

The court began by affirming the federal government's "broad, undoubted power over the subject of immigration and the status of aliens."[41] It then quoted the INA's provisions instructing the U.S. Attorney General to "arrange for appropriate places of detention for aliens detained pending removal or a decision on removal" and authorizing the Attorney General to expend funds necessary to acquire or operate facilities necessary for detention.[42] Another section of the INA authorizes the U.S. Attorney General:

> [T]o enter into a cooperative agreement with any State, territory, or political subdivision thereof, for necessary construction, physical renovation, acquisition of equipment, supplies or materials required to establish acceptable conditions of confinement and detention services in any State or unit of local government which agrees to provide guaranteed bed space for persons detained by the [Immigration] Service."[43]

Under Illinois law, McHenry and Kankakee Counties derive their existence and powers from the state legislature and only have those powers granted them by Illinois law.[44] Article VII, Section 10 of the Illinois Constitution expressly permits units of local government to contract with the United States, "in any manner not prohibited by law or by ordinance."[45] In *McHenry Co.*, Plaintiffs conceded that this phrase in the Illinois Constitution vests the Illinois legislature with the power to make laws prohibiting intergovernmental cooperation by units of local government.[46] However, the counties argued that the Illinois Way Forward Act is preempted by federal law because the federal government has occupied the field of immigration regulation and because the Act conflicts with the INA's provisions on immigration detention.[47]

The court rejected both of those arguments.[48] First, the court reaffirmed that the federal government cannot commandeer state and local governments into carrying out federal functions such as housing immigration detainees.[49]

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40 Complaint for Declaratory Judgment and Injunctive Relief, McHenry Cnty. v. Raoul, No. 3:21 C50341, 2021 WL 3923927 at ¶ 1 (N.D. Ill. Sept. 1, 2021).

41 *Id.* at ¶ 3.

42 *Id.* (quoting 8 U.S.C. § 1231(g)(1)).

43 *Id.* (quoting 8 U.S.C. § 1103(a)(11)(B)).

44 *Id.* at ¶ 4.

45 Complaint for Declaratory Judgment and Injunctive Relief, McHenry Cnty. v. Raoul, No. 3:21 C50341, 2021 WL 3923927 at ¶ 4 (N.D. Ill. Sept. 1, 2021) (quoting ILL. CONST. art. VII, § 10).

46 *Id.*

47 *Id.* at ¶ 3.

48 *Id.*

49 *Id.* at ¶ 5; *see also* Murphy v. Nat'l Collegiate Athletic Ass'n,138 S. Ct. 1461 (2018).

Like the Ninth Circuit in *Geo Group Inc. v. Newsom*[50] which involved a California law prohibiting private immigration detention facilities, the U.S. District Court for the Northern District of Illinois viewed 8 U.S.C. § 1103 as a federalism-based limitation on the U.S. Attorney General's power to arrange for immigration detention, not a command to the states that they must house immigration detainees.[51] According to the district court, "It is only through a cooperative agreement entered into under the authority of [section 1103(a)(11)(B)] that the Attorney General may house immigration detainees in the facilities of a state or a state's political subdivision."[52]

The court then explained that the preemption doctrine does not apply in this case because the preemption doctrine applies when governments regulate private actors which the Illinois Way Forward Act does not do.[53] In making this statement, the court relied on *Murphy v. NCAA*,[54] where the U.S. Supreme Court stated that the preemption doctrine applies when Congress enacts a law regulating private conduct and a state enacts a law regulating the same private conduct, thereby conflicting with the federal law.[55] In such cases, the federal law takes precedence, preempting the state law.[56] According to the Supreme Court in *Murphy v. NCAA*, "Every form of preemption is based on a federal law that regulates the conduct of private actors, not the States."[57] Because the Illinois Way Forward Act regulates the ability of the State and its political subdivisions to contract for immigration detention services and does not impose any restrictions on private actors, the INA does not preempt the Illinois law.[58]

Next, the district court stated that even if the preemption doctrine did apply here, the Illinois Way Forward Act would not be preempted by the INA.[59] When Congress intends to preempt state law, it must make its intention "clear and manifest."[60] The court held that the use of the phrase "or political subdivision thereof" in 8 U.S.C. § 1103(a)(11)(B) does not make clear and manifest Congress's intent "to prohibit a state from controlling its political subdivisions' authority to enter into intergovernmental cooperation

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50 Geo Group Inc. v. Newsom, 15 F.4th 919 (9th Cir. 2021).

51 *Raoul*, No. 21 C50341 at ¶ 5 (N.D. Ill. Sept. 1, 2021).

52 *Id.*

53 *Id.* at ¶¶ 5-6.

54 *Murphy*,138 S. Ct. at 1461 (2018).

55 *Raoul*, No. 21 C50341 at ¶ 5-6 (N.D. Ill. Sept. 1, 2021).

56 *Murphy*, 138 S. Ct. at 1480 (2018).

57 *Id.* at ¶ 1481.

58 *Raoul*, No. 21 C50341 at ¶ 5 (N.D. Ill. Sept. 1, 2021). Relying on similar reasoning, the Third Circuit Court of Appeals recently upheld a New Jersey law banning state and local law enforcement officers from sharing information with the federal government, holding the law not preempted by 8 U.S.C. §1373 of the INA because the New Jersey law only applied to state actors and not private parties. Ocean Cnty. Bd. Of Comm'rs v. Atty. Gen. of N.J., 8 F.4th 176, 182 (3rd Cir. 2021).

59 *Raoul*, No. 21 C50341 at ¶ 6 (N.D. Ill. Sept. 1, 2021).

60 *Id.* at ¶ 7 (citing Gregory v. Ashcroft, 501 U.S. 452, 461 (1991)).

agreements thus upending the State's historic authority to do so."[61] States, not political subdivisions, are dual sovereigns with the United States government.[62] Section 1103(a)(11)(B) of the INA protects States' sovereignty, not that of political divisions, when it limits the U.S. Attorney General's authority to enter into cooperative agreements to house immigration detainees.[63]

The court also rejected the plaintiffs' claim that the Illinois Way Forward Act violates the federal government's intergovernmental immunity.[64] Under the intergovernmental immunity doctrine, "a state regulation is invalid only if it regulates the United States directly or discriminates against the Federal Government or those with whom it deals."[65] The court held that the Illinois Way Forward Act does not directly regulate the federal government nor discriminate against the federal government or the plaintiffs as its contractors.[66] Rather, it regulates units of State government.[67] The federal government's authority to enter into agreements to house immigration detainees in state or local government facilities is governed by 8 U.S.C. § 1103(a)(11)(B), which recognizes the State's dual sovereignty to control such cooperative agreements.[68] Accordingly, the court dismissed the complaint and denied plaintiffs' motion for injunctive relief.[69]

C. The Application of the Preemption Doctrine

The district court correctly determined that the preemption doctrine was not applicable here, therefore, it did not analyze whether the Illinois Way Forward Act is preempted either because Congress occupies the field of contracting for housing of federal immigration detainees, or because the Act stands as an obstacle to achieving Congress's objectives with respect to immigration detention in the INA.[70] While it is true that the federal government has broad powers over immigration,[71] the U.S. Supreme Court

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61 *Id.* at ¶ 7; *but see Geo Group*, 15 F.4th at ¶ 927. In *Geo Group*, Ninth Circuit determined that the presumption against preemption and the corresponding requirement of a clear statement "does not apply to areas of exclusive federal regulation, such as detention of immigrants." *Id.* The Ninth Circuit also held that Congress had unambiguously granted the DHS Secretary broad discretion over the detention of immigrants, including the right to contract with private detention facilities. *Id.*

62 Ysursa v. Pocatello Educ. Ass'n, 555 U.S. 353, 362 (2009) (quoting Reynolds v. Sims, 377 U.S. 533, 575 (1964)).

63 *Raoul*, No. 21 C50341, at ¶ 7 (N.D. Ill. Sept. 1, 2021).

64 *Id.* at ¶ 8.

65 North Dakota v. United States, 495 U.S. 423, 435 (1990).

66 *Raoul*, No. 21 C50341, at ¶ 8 (N.D. Ill. Sept. 1, 2021).

67 *Id.* at ¶ 7.

68 *Id.*

69 *Id.*

70 *Id.* at ¶ 26

71 *See, e.g.*, Kansas v. Garcia, 140 S. Ct. 791, 806 (2020) (showing Kansas identify-theft and false-information statutes are not expressly preempted by federal immigration law, are not conflict

has been careful to limit its preemption decisions regarding immigration issues to specific state laws and facts.[72] It has never held that Congress has preempted the entire field of regulation of noncitizens.[73] In fact, states regularly enact many laws pertaining to noncitizens such as their access to state drivers' and occupational licenses, access to state educational facilities, healthcare, and other public benefits.[74]

The only area of immigration regulation that the Supreme Court clearly has held to be subject to field preemption is alien registration.[75] In other areas of state regulation of noncitizens, the Court walks a narrower path looking instead at whether there is implied or express conflict or obstacle preemption.[76] For example, in *Arizona v. United States*, the Court struck down two provisions of Arizona law that made it illegal to seek work in the state without employment authorization, and allowed Arizona law enforcement officers to arrest persons whom they had probable cause to believe had committed an offense rendering the person removable from the United States.[77] The Court found the provision making it a misdemeanor to seek work in Arizona without employment authorization was preempted because it upset the balance Congress struck in the Immigration Reform Control Act ("IRCA") of 1986 by imposing penalties on employers, not employees, and was an obstacle to the federal plan of regulation and control of alien employment.[78] Likewise, allowing Arizona's law enforcement officers to arrest persons believed to have committed removable offenses created an obstacle to the removal system Congress created in the INA.[79] The Supreme Court declined to say that Congress had occupied the field with respect to either alien employment or arrest and removal of aliens.[80]

Similarly, in the Supreme Court's most recent ruling on immigration preemption, *Kansas v. Garcia,* the Court rejected the respondents' claim that Kansas's identify-theft and false-information statutes were field or conflict

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preempted, and do not fall into a field explicitly reserved exclusively for federal regulation); Chamber of Commerce v. Whiting, 563 U.S. 582 (2011) (showing Arizona law allowing suspension and revocation of business licenses for employment of "unauthorized aliens" not expressly or impliedly preempted by federal immigration law).

72 Arizona v. United States, 567 U.S. 387, 416 (2012).

73 *See id.* at ¶ 457 (Alito, J., concurring, in part) ("[T]he mere fact that the Executive has enforcement discretion cannot mean that the exercise of state police powers in support of federal law is automatically pre-empted.")

74 National Conference of State Legislatures, *State Laws Relating to Immigration and Immigrants*, (Feb. 26, 2022, 10:04 AM), https://www.ncsl.org/research/immigration/state-laws-related-to-immigration-and-immigrants.aspx.

75 *See* Hines v. Davidowitz, 312 U.S. 52, 62 (1941); *see also Arizona*, 567 U.S. 387 at ¶ 416.

76 *See supra* note 71.

77 *Arizona*, 567 U.S. at ¶ 416.

78 *Id.* at ¶ 406.

79 *Id.* at ¶¶ 408-09.

80 *Id.* at ¶ 401.

preempted by IRCA.[81] In that case, three noncitizens not authorized to work in the United States were convicted under Kansas law for falsely using another person's Social Security number on state and federal tax withholding forms they submitted to secure employment.[82] The Supreme Court upheld the Kansas convictions despite IRCA's proviso that the I-9 tax form and "any information contained in or appended to such form[s] may not be used for purposes other than for enforcement of [the INA or other specified provisions of federal law.]"[83] The Court found that IRCA did not prohibit the use of information contained in other state and federal tax-withholding forms, such as W-4s and K-4s, that employees submit when beginning a new job.[84] Further, the Court rejected the noncitizens' argument that "the Kansas statutes, as applied, fall into a field that is implicitly reserved exclusively for federal regulation."[85] The Court held that IRCA does not exclude a state from the entire field of employment verification.[86] In light of the Supreme Court's reluctance to extensively limit states' ability to regulate noncitizens residing in their states through field preemption, it is unlikely that McHenry and Kankakee's claims of field preemption will be upheld.

A more plausible argument is that the Illinois Way Forward Act stands as an obstacle to the federal government's policies regarding immigration detention; however, case law suggests this argument will fail as well. In *Geo Group*, the Ninth Circuit struck down a California law ("AB 32") attempting to outlaw government contracts with private detention facilities, including those that house immigration detainees, under the conflict or obstacle preemption doctrine.[87] The Ninth Circuit found that by prohibiting all private detention facilities in the state, California unconstitutionally infringed on the federal government's ability to implement federal law with respect to immigration detention.[88]

The California law at issue in the *Geo Group* case is different from the Illinois Way Forward Act in several important respects. First, AB 32 created a general rule prohibiting all persons from operating private detention

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81 *Garcia*, 140 S. Ct. 791. Field preemption occurs when a state attempts to regulate conduct in a field that Congress intends the federal government to occupy exclusively. Walkup v. Santander Bank, 147 F.Supp.3d 349, 765 (2015). Conflict preemption exists when compliance with both state and federal law is impossible or "the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Oneok, Inc. v. Learjet, Inc., 575 U.S. 373, 377 (2015).

82 *Garcia*, 140 S. Ct. at 797.

83 *Id.* at 798.

84 *Id.*

85 *Id.* at 806.

86 *Garcia*, 140 S. Ct. at 805. The Court also found no language in the INA expressly or impliedly preempting Kansas' use of the information. *Id*. at 803, 806-07.

87 *Geo Group*, 15 F.4th at 940.

88 *Id.* at 935. California filed a petition for rehearing en banc which is pending as of this writing. Docket Nos. 20-56172 and 20-56304 (9th Cir.).

facilities in the state of California.[89] Thus, AB 32 prohibited contracts between private detention facilities and all levels of government, local, state, and federal, unlike the Illinois Way Forward Act which only applies to state and local entities.[90] Second, AB 32 contained several exemptions that allowed the state to continue to use private detention facilities in some instances but did not provide any exemptions for the federal government, thus discriminating against the federal government in violation of the intergovernmental immunity doctrine.[91] In comparison, the Illinois Way Forward Act does not contain similar exemptions.[92]

The Ninth Circuit in *Geo Group* took a broad view of the federal government's power and discretion to arrange for immigration detention facilities and a narrow view of the state's police power to ensure the health and safety of persons detained within the state.[93] The Ninth Circuit held that AB 32 intrudes into the federal government's "exclusive domain" regarding immigration by controlling where an immigration detainee may be held and has the potential to impact U.S. foreign policy.[94] By contrast, the U.S. District Court for the Northern District of Illinois in *McHenry County* framed the issue in terms of the State's power to control contracting by its political subdivisions, not in terms of a state's police power over detention facilities.[95]

The Ninth Circuit reached its conclusion that AB 32 creates an unconstitutional burden on the federal government despite the fact that the federal government is still free to enter into cooperative agreements with other states and their political subdivisions, as well as private entities in other states, or to operate its own federal facilities to house immigration

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89 AB 32 provides: "Except as otherwise provided in this title, a person shall not operate a private detention facility within the state." CAL. PENAL CODE § 9501.

90 *Geo Group*, 15 F.4th at 927-28; *see also* 5 ILL. COMP. STAT. 805/10 (2021) (defining "law enforcement agency" and "law enforcement officer" for purposes of the Illinois Trust Act).

91 *Geo Group*, 15 F.4th at 928.

92 The Illinois' Private Correctional Facility Moratorium Act prohibits State and local governments from contracting with private entities for the provision of correctional services. 730 ILL. COMP. STAT. 140/1. In 2019, Illinois adopted the companion Private Detention Facility Moratorium Act which prohibits State and local government entities and officials from contracting with private entities for the detention of individuals. 730 ILL. COMP. STAT. 141/1. Illinois law does not, however, expressly prohibit the federal government from contracting directly with private companies.

93 *Geo Group*, 15 F.4th at 927-28.

94 *Id.* at 929. Some commentators have suggested that the connection between state laws affecting immigrants and foreign relations is not as strong today as it may have been historically; *see also* Peter J. Spiro, *Rebuttal, State Action on Immigration (Bad and Good) After Arizona v. United States*, in *Debate: Immigration Preemption After United States v. Arizona*, 161 U. PA. L. REV. 100, 106 Online (2012), https://www.pennlawreview.com/2012/12/28/immigration-preemption-after-united-states-v-arizona/. Additionally, the Ninth Circuit only relied on case law discussing the connection between foreign policy and the removal of noncitizens, not immigration detention. *Geo Group*, 15 F.4th at 929. It did not explain how the decision to detain an immigrant in a particular facility impacts foreign policy.

95 Order, *supra* note 27 at 4, 6.

detainees.[96] There is no language in the INA through which Congress expresses a preference for housing immigration detainees in state or local facilities.[97] In fact, the INA mentions federal facilities first, suggesting a preference that immigration detainees be housed in such facilities in the first instance and providing authority to house immigration detainees in other facilities if federal facilities are not available.[98] Housing immigration detainees in state or local facilities is just one possible method of housing such detainees. Even in the unlikely event that every state adopted a law similar to the Illinois Way Forward Act, under the INA, the federal government could still contract with private detention facilities or operate its own federal facilities. Thus, a state law prohibiting state entities from entering into cooperative agreements with the federal government for housing immigration detainees does not significantly impact the federal government's ability to carry out its immigration detention program. Accordingly, it is unlikely McHenry and Kankakee Counties' conflict and obstacle preemption arguments will be successful.[99]

McHenry and Kankakee Counties appealed the decision of the District Court to the U.S. Court of Appeals for the Seventh Circuit in December 2021 and requested that the Seventh Circuit stay the effectiveness of the Illinois Way Forward Act pending the appeal.[100] The Seventh Circuit denied the stay request due to a lack of likely success on the merits or a showing of irreparable harm.[101] The appeal on the merits remains pending at the time of this writing.

D. Other Recent State Laws Affecting Immigration Detention

Illinois is not the only state to enact laws to reduce or terminate state immigration detention.[102] During the past two years, California, Maryland,

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96 *See Geo Group*, 15 F.4th 919 at 930-35 (discussing the federal government's authority to contract with private parties to operate private immigration facilities).

97 *See generally* 8 U.S.C. 1231(g).

98 *Id.* ("When United States Government facilities are unavailable, . . . the Attorney General may expend [amounts] necessary for detention.") In *Geo Group*, the Ninth Circuit stated that it was uneconomical for the federal government to operate its own detention facilities due to fluctuating numbers of immigrants in detention. For that reason, the federal government has chosen to rely on state and private detention facilities. Regardless of the accuracy of that statement, it is a policy-based argument rather than a constitutional one. *Geo Group*, 15 F.4th at 924-25.

99 In fact, if the counties were correct that federal law requires states to house immigration detainees, the federal law would likely violate the anticommandeering doctrine. *See* Printz v. United States, 521 U.S. 898, 909-10 (1997).

100 *Raoul*, No. 21 C50341 (7th Cir. Dec. 6, 2021).

101 McHenry Cnty. & Kankakee Cnty. v. Raoul, Case No. 21-3334, Order Denying Stay Pending Appeal (7th Cir. Jan. 12, 2021).

102 Each of these laws is discussed below. Of note, these states and several others filed an amicus brief in support of Illinois in McHenry Cnty. & Kankakee Cnty. v. Raoul, Case No. 21-3334 (7th Cir. Mar. 3, 2022).

New Jersey, Virginia, Washington, and the District of Columbia have all enacted different versions of laws addressing immigration detention.[103] As discussed above, the Ninth Circuit Court of Appeals stuck down California's attempt to prohibit private entities from contracting with the federal government for immigration detention facilities in *Geo Group v. Newsom*.[104] These other state laws are all of more recent vintage and have not yet been adjudicated in court.

Maryland adopted the Dignity Not Detention Act in December 2021.[105] This Act prohibits state and local governments from entering into agreements for the operation of immigration detention facilities owned or operated by a private entity.[106] It also prohibits state and local governments from entering into or renewing any immigration detention agreements.[107] As a result, existing detention agreements must be terminated by October 1, 2022.[108]

New Jersey's law prohibits both state and local governments, as well as private detention facilities, from entering into, renewing, or extending any immigration detention agreements.[109] However, New Jersey's law does not require the early termination of any existing detention contracts.[110]

Washington banned state and local governments and officials from entering into immigration detention agreements in 2019.[111] In 2021, Washington amended the law to prohibit private persons and entities from operating detention facilities or entering into contracts for private detention facilities, subject to certain exceptions primarily relating to facilities that treat persons for mental health or substance abuse.[112] This law does not affect existing contracts which may remain in effect for the duration of that contract.[113]

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103 Each of these laws is discussed below. Of note, these states and several others filed an amicus brief in support of *Raoul*, No. 21-3334 (7th Cir. Mar. 3, 2022).

104 *Geo Group*, 15 F.4th at 928.

105 Detention Not Dignity Act, H.B. 16, 2021 Leg., 443rd Sess. (Md. 2021).

106 *Id.*

107 *Id.* "Immigration detention agreement" is defined as "any contract, agreement, intergovernmental service agreement, or memorandum of understanding that authorizes a state or local government agency to house or detain individuals for federal civil immigration violations." *Id.*

108 *Id*.

109 N.J. STAT. ANN. § 30:4-8.16 (2021).

110 *Id*.

111 WASH. REV. CODE §10.93.160.

112 *Id.; see also* Private, For-Profit Detention Facilities, H.B. 1090, Chap. 30, 2021 Legis. 67th Sess. (Wash. 2021). A "private detention facility" is defined as "a detention facility that is operated by a private, nongovernmental for-profit entity and operating pursuant to a contract or agreement with a federal, state. or local government entity." *Id.*

113 H.B. 1090, 67th Leg., Reg. Sess. (Wash. 2021-22).

Due to the application of the laws of Maryland[114], New Jersey[115], and Washington[116] to both private entities as well as to state and local governments, they may be vulnerable to similar challenges as California's law in *Geo Group*[117]. However, there also may be some important differences, primarily the fact that most of these other state laws do not create exceptions in favor of the state and discriminating against the federal government as California's law did. [118]

The District of Columbia also adopted a new law in 2021 banning cooperation with the federal government with respect to immigration detention.[119] Its law provides that the District of Columbia shall not "provide to any federal immigration agency a space in a District detention facility to house, detain, or hold individuals for civil immigration enforcement purposes."[120]

Virginia has not banned immigration detention in the state; however, it adopted a new law in 2020 that gives the state more control over immigration detention facilities operated by private entities under contract with the federal government.[121] Virginia Senate Bill 5017 amended the definition of a "local correctional facility" to include facilities owned or operated by political subdivisions of the state that are used for the detention of persons pursuant to a third-party contract with the federal government.[122] As a result, the state now has the power to set minimum standards for health and sanitation;[123] to conduct inspections and wrongful death investigations at immigration detention facilities;[124] and to prohibit transfers of detainees to other facilities that are not up to par,[125] as it does with other local correctional facilities in the state.[126] At least one state legislator expressed concerns about the state exercising control over the operations of the Immigration Service and suggested the issue should be handled at the federal level.[127] However, the majority of the state legislators obviously believed that state supervision of the treatment of persons at detention facilities located within the state is

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114 Detention Not Dignity Act, H.D. 16, 2021 Leg., 443rd Sess. (Md. 2021).

115 N.J. STAT. ANN. § 30:4-8.16 (2021).

116 H.B. 1090, 67th Leg., Reg. Sess. (Wash. 2021-22).

117 *Geo Group*, 15 F.4th at 928.

118 *See id.* at 935-36 (finding that AB 32 unconstitutionally restricted contractors from contracting with the federal government).

119 D.C. CODE § 24-211.07(a)(4)(A) (2021).

120 *Id*.

121 Keyris Manzanares, *Virginia's ICE detention centers now subject to inspections by state*, VA. NEWS, Oct. 21, 2020, https://www.wric.com/news/virginia-news/virginias-ice-detention-centers-now-subject-to-inspections-by-state/.

122 S.B. No. 5017 (Va. 2020) (amending § 53.1-1 of the Code of Virginia).

123 *Id.*

124 *Id*.

125 *Id*.

126 Keyris Manzanares, *supra* note 121.

127 *Id*.

within the state's powers through their passage of this bill.[128] This assertion is contrary, of course, to the views expressed by the Ninth Circuit in *Geo Group* regarding state versus federal power when it comes to immigration detention.[129]

In light of the different views of the preemption doctrine by the federal courts in *Geo Group*[130] and *McHenry County*,[131] as well as the proliferation of laws similar to Illinois' Way Forward Act around the country, it is likely that this issue will continue to work its way through the federal court system up to the U.S. Supreme Court for final resolution.

II. OTHER PRO-IMMIGRANT LEGISLATION IN ILLINOIS FROM 2021

At the time Governor Pritzker signed the Illinois Way Forward Act, he also signed into law several other pro-immigrant pieces of legislation.[132] These other statutes are described below.

A. Prohibition on Discrimination Based on Work Authorization Status

First is House Bill 121 which amends the Illinois Human Rights Act to prohibit discrimination on the basis of lawful work authorization status.[133] "Work authorization status" is defined as "the status of a person born outside the United States and who is not a U.S. citizen but who is authorized to work in the United States by the federal government."[134] This Act makes is a civil violation for:

> (1) any employer to refuse to hire, to segregate, to engage in harassment, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline,

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128 The fifteen states and the District of Columbia who filed the amicus brief in the *McHenry County* case also express the view that states have this traditional police power. *See* Brief for the District of Columbia, et al. McHenry Cnty. v. Raoul, No. 21-3334 at 8-9 (7th Cir. Mar. 3, 2022).

129 *Geo Group*, 15 F.4th at 927-28.

130 *Id.* at 919.

131 *Raoul*, No. 3:21 C50341 ((N.D. Ill. Sept. 1, 2021).

132 *Gov. Pritzker Signs Legislation Further Establishing Illinois as the Most Welcoming State in the Nation*, ILLINOIS.GOV (Aug. 2, 2021), https://www.illinois.gov/news/press-release.23653.html#:~:text=AURORA%20%2D%20Governor%20JB%20Pritzker%20today,welcoming%20state%20in%20the%20nation.

133 Illinois Human Rights Act, Pub. Act 102-0233, Ill. Laws § 5 (amending 755 ILL. COMP. STAT. 5/1-102, 5/2-101, 5/2-102, and 5/6-101 (2021)).

134 775 ILL. COMP. STAT. 5/2-101(L) (2021).

> tenure or terms, privileges or conditions of employment on the basis of work authorization status;[135]
>
> (2) any employment agency to fail or refuse to classify properly, accept applications and register for employment referral or apprenticeship referral, refer for employment, or refer for apprenticeship on the basis of work authorization status;[136]
>
> (3) any labor organization to limit, segregate, or classify its membership, or to limit employment opportunities, selection and training for apprenticeship in any trade or craft, or otherwise to take or fail to take, any action which affects adversely any person's status as an employee or as an applicant for employment or as an apprentice, or as an applicant for apprenticeships, or wages, tenure, hours of employment, or apprenticeship conditions on the basis of work authorization status;[137] and
>
> (4) any employer to refuse to honor work authorization based upon the specific status or term of status that accompanies the authorization to work.[138]

The Act also provides that it is a civil rights violation to retaliate against any persons because they have opposed actions which they reasonably and in good faith believe to be discrimination based on work authorization status.[139]

B. Addition of Immigration Status as a Protected Category under the Hate Crimes Act

Second is Senate Bill 1596 which amends the Illinois Criminal Code to add "citizenship" and "immigration status" as additional motivating factors for hate crimes effective January 1, 2022.[140] To commit a hate crime in Illinois, the perpetrator must be motivated to act by one of the personal characteristics listed in the Illinois hate crimes statute and must commit one of the specific crimes enumerated in the statute.[141] Illinois law defines a "hate crime" in relevant part as follows:

A person commits hate crime when, by reason of the actual or perceived race, color, creed, religion, ancestry, gender, sexual orientation, physical or

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135 *Id.* at 5/2-102(A).
136 *Id.* at 5/2-102(B).
137 *Id.* at 5/2-102(C).
138 *Id.* at 5/2-102(G).
139 *Id.* at 5/6-101.
140 Criminal Code of 2012, Pub. Act 102-0235, 2022 Ill. Laws § 5; 720 ILL. COMP. STAT. 5/12-7.1 (2021).
141 *Id.* at 5/12-7.1.

mental disability, citizenship, immigration status, or national origin of another individual or group of individuals, regardless of the existence of any other motivating factor or factors, he or she commits assault, battery, aggravated assault, intimidation, stalking, cyberstalking, misdemeanor theft, criminal trespass to residence, misdemeanor criminal damage to property, criminal trespass to vehicle, criminal trespass to real property, mob action, disorderly conduct, transmission of obscene messages, harassment by telephone, or harassment through electronic communications as these crimes are defined in . . . this Code.[142]

The Illinois Hate Crimes statute does not create new crimes but instead acts to enhance the possible sentences for persons who commit particular crimes and who are motivated by bias against a protected person or group.[143] The Illinois Hate Crimes statute also permits the filing of civil suits independent of any hate crime prosecution if a person suffers harm due to certain criminal activity as defined in the statute.[144] Accordingly, a non-U.S. citizen who is harmed by the type of criminal activity listed in the statute as a result of anti-immigrant bias may now pursue both criminal and civil remedies.[145]

C. Creation of Illinois Immigrant Task Impact Force

Third is Senate Bill 2665, which creates an Illinois Immigrant Impact Task Force consisting of twenty-seven members appointed by various government officers and agencies to examine and report on several issues relating to immigrants in Illinois.[146] Among those issues are what the State of Illinois is doing or can be doing to ensure persons in immigrant communities receive various types of help including assistance to become citizens, business and property owners, and access to education.[147] The Task Force also is to examine the status of immigrant communities, whether they are being discriminated against, and whether laws intended to benefit immigrants are having a beneficial effect.[148] In addition, the Task Force is to consider the practices and procedures of the U.S. Immigration and Customs Enforcement (ICE) in Illinois.[149] The Task Force is to present its findings on or before May 31, 2022.[150]

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142 *Id.* at 5/12-7.1(a) (emphasis added).
143 *Id.* at 5/12-7.1(b).
144 *Id.* at 5/12-7.1(c).
145 *Id.* at 5/12-7.1(c).
146 Illinois Immigrant Impact Task Force Act, Pub. Act 102-236, 2021 Ill. Laws § 5.
147 *Id.*
148 *Id.*
149 *Id.*
150 *Id.*

D. Public Defender Representation of Noncitizens in Immigration Proceedings

Finally, public defenders in Cook County may now represent non-U.S. citizens in removal hearings.[151] While defendants in criminal proceedings have a constitutional right to legal representation at no cost if they cannot afford an attorney,[152] the same is not true of noncitizens in immigration proceedings.[153] Immigration law is incredibly complex and having an attorney in a removal proceeding significantly increases a noncitizens' chance of lawfully remaining in the United States.[154] Several state and local jurisdictions have adopted laws that provide for some form of representation for noncitizens in immigration proceedings when they are unable to afford an attorney.[155] However, due to the potential cost of legal representation, the new Illinois law limits the provision of legal services by public defenders to immigrants in immigration proceedings to Illinois counties of more than 3,000,000 residents.[156] Cook County is the only Illinois County that meets this threshold.[157]

E. Other Recent Pro-Immigrant Illinois Laws relating to Education

Other immigrant-friendly laws recently enacted by Illinois include a law that requires every state university in Illinois to designate an employee to be an Undocumented Student Resource Liaison on campus to provide assistance to undocumented students and mixed status students, in streamlining access to financial aid and academic support.[158] This act will be

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151 55 ILL. COMP. STAT. 5/3-4006 (2022). More specifically, the new law permits public defenders in counties with a population of more than three million to act as attorneys to noncitizens in immigration cases with the approval of the county board and without fee or appointment. Cook County is the only county in Illinois with a population of more than one million. *See* Illinois Demographics, https://www.illinois-demographics.com/counties_by_population.

152 U.S. CONST. art. VI; Gideon v. Wainwright, 372 U.S. 335 (1963).

153 8 U.S.C. § 1229a(b)(4).

154 Emma Winger, *New Illinois Law Allows Public Defenders to Represent Immigrants Facing Deportation*, IMMIGR. IMPACT (Sept. 2, 2021), https://immigrationimpact.com/2021/09/02/ illinois-public-defenders-to-represent-immigrants-facing-deportation/#.YdMW62jMLIW.

155 *Access to Counsel*, NAT'L IMMIGR. JUST. CTR., https://immigrantjustice.org/ issues/access-counsel (last visited Feb. 20, 2022); *see also* Teresa Wiltz, *Amid Immigration Crackdown, Cities Step In With Free Legal Aid*, PEW (Nov. 9, 2017), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/11/09/amid-immigration-crackdown-cities-step-in-with-free-legalid#:~:text=Over%20the%20past%20year%2C%20Austin,in%20danger%20of%20being%20deported.

156 55 ILL. COMP. STAT. 5/3-4006 (2022).

157 QuickFacts, Cook County, Illinois, UNITED STATES CENSUS BUREAU, https://www.census.gov/quickfacts/cookcountyillinois (July 1, 2021).

158 Act of Aug. 20, 2021, Pub. Act 102-0475, 2021 Ill. Laws §§ 5, 10, 15, 20, 25, 30, 35, 40, 45, 50 (adding 110 ILL. COMP. STAT. 305/120; 520/100; 660/5-210; 665/10-210; 670/15-210; 675/20-215; 680/25-210; 685/30-220; 690/35-215; 805/3-29.14 (2021)).

effective beginning with the 2022-23 academic year.[159] State universities are also encouraged to establish Undocumented Statement Resources Centers on each of their campuses.[160]

Additionally, in 2020, Illinois adopted the Retention of Illinois Students and Equity Act, also known as the RISE Act.[161] The purpose of the RISE Act is to ensure that all students who are residents of the State have meaningful and equitable access to higher educational opportunities notwithstanding various personal characteristics, including immigration status.[162] The RISE Act makes Illinois residents who are not eligible for federal financial aid due to one of these protected categories eligible to apply and receive consideration for student aid and benefits funded or administered by the State, its agencies, and public institutions of higher learning.[163]

Furthermore in 2021, Illinois adopted a law requiring the Department of Human Services, in consultation with other state agencies, to conduct a public information campaign to educate immigrants, refugees, asylum seekers, and other noncitizens residing in Illinois of their rights under the U.S. Constitution and Illinois law regardless of immigration status.[164] The public information campaign must include information about resources and contact information for organizations that may be able to assist noncitizens.[165] The information is to be posted in public high-traffic locales such as train stations and airports.[166]

III. CONCLUSION

States like Illinois are deeply impacted by non-U.S. citizens living within their borders in both positive and negative ways. Immigrants enrich U.S. society culturally and provide a needed workforce.[167] However, undocumented noncitizen residents also may be perceived as a burden on public resources such as schools and hospitals if they are not paying taxes. It

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159 *Id.*

160 110 ILL. COMP. STAT. 305/120(b).

161 Retention of Illinois Students and Equity Act, Pub. Act 101-0021, 2020 Ill. Laws §§ 5, 10, 15.

162 *Id.*

163 *Id.*

164 Act of Jan. 1, 2021, Pub. Act 102-0408, 2021 Ill. Laws § 5 (amending 20 ILL. COMP. STAT. 1305/10-67).

165 *Id.*

166 *Id.*

167 *See* Arloc Sherman et al., *Immigrants Contribute Greatly to U.S. Economy, Despite Administration's "Public Charge" Rule Rationale*, CTR. ON BUDGET & POL'Y PRIORITIES (Aug. 15, 2019), https://www.cbpp.org/research/ poverty-and-inequality/immigrants-contribute-greatly-to-us-economy-despite-administrations; *see also The Effects of Immigration on the United States' Economy*, UNIV. PA.: PENN WHARTON BUDGET MODEL (June 27, 2016), https://static1.squarespace.com/static/55693d60e4b06d83cf793431/t/5bdb6a6540ec9acdd252b311/1541106277851/The+Effects+of+Immigration+on+the+United+States%E2%80%99+Economy.pdf.

is therefore not surprising that States continue to enact hundreds of laws addressing immigrants and immigration, testing the boundaries of their authority in this area. While acknowledging the federal government's broad power over immigration regulation, the courts have thus far created few bright lines between federal and state government regulation of non-U.S. citizens living in the United States. Accordingly, issues of federalism, dual sovereignty, preemption, and anticommandeering doctrines are likely to remain prominent in immigration-related cases for the foreseeable future.