

Hitting a Wall? The Trump Administration Meets Immigration Federalism

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Immigration policy over the last decade has been characterized by sustained congressional inaction, unilateral executive action, and an intensification of policy activity at the state and local level. The combination of immigration federalism and congressional fecklessness means that, in spite of radical differences in policy intent, Donald Trump's nativist agenda faces constraints similar to those that undermined Barack Obama's integrationist agenda. The failure to chart a consistent legislative course for national immigration policy has propelled centrifugal forces at the state and local level, with three consequences. First, state and local governments have grown increasingly assertive in pressing their claims to policy authority via legislation, resolutions, executive actions, and court challenges. Second, wide policy differences have emerged across states, as have policy contradictions and conflicts within some states. Finally, while the federal government retains plenary power over immigration policy, the breadth of state and local laws governing immigrant lives increasingly constitutes a *de facto* encroachment into that authority.

The first year of the Donald Trump administration signaled a new era in U.S. immigration policy, as the president set about dismantling the immigration initiatives of his predecessor and pursuing a program of stepped-up arrests of unauthorized immigrants, cuts in legal immigration and refugee admissions, punitive sanctions for so-called "sanctuary" cities and states, and a request to fund construction of a wall along the United States–Mexico border. Trump's initiatives, if fully implemented, would constitute a radical break with the policies of past administrations, including past Republican administrations.

At the same time, tendencies that have become increasingly prevalent in U.S. immigration policy over the past decade imparted a certain continuity to the first year of the Trump administration. As in past years, a mutually reinforcing process of congressional inaction, executive action, and state and local policy activism have reinforced the decentralization of U.S. immigration policy. In this new policy climate, the executive and legislative branches increasingly assume the role of provocateurs, inciting state and local initiatives via politically charged rhetoric, legislative proposals that languish, and contentious executive actions. However,

neither congress nor the president appears capable of sustaining a consistent course for immigration policy. The Trump administration is finding, much as the Obama administration found, that its efforts to reassert leadership provoke sustained resistance from emboldened state and local stakeholders, who counter with both legal and *de facto* challenges to executive actions, even in domains where the federal government's plenary authority remains intact.

This article reviews the genesis and evolution of the new immigration federalism. As detailed here, forces that reshaped the state–federal relationship in immigration policy during the latter part of the Bill Clinton administration came to the fore by the final years of the George W. Bush administration. Subsequent efforts by the Obama administration to unilaterally reassert control provoked further state and local activism and deepened divisions across and, in the case of the Republican Party, within party lines. While Trump's successful candidacy owed, in great part, to his ability to catalyze anti-immigrant sentiment, his first year in office suggests that even an ambitious president, with legislative majorities in both houses of Congress, is constrained by the centrifugal force of immigration federalism.

The discussion here suggests a deepening of processes that have been noted in recent scholarship on U.S. federalism and immigration policy. The centrifugal forces that have increasingly affected many areas of federal policy (Rose and Bowling 2015) have become especially pronounced with regard to immigration. The Trump administration is finding that its efforts to unilaterally remake U.S. immigration policy will necessitate a course of containing highly energized and assertive state and local actors while also dragging an indecisive congress into action. In this policy environment, state resistance continues a trend toward coordinated action by state attorneys general, occurring almost exclusively along partisan lines (Nolette 2017). Groups of like-minded states now routinely band together, via federal lawsuits and *amicus* briefs, to stymie and sometimes block presidential initiatives. Increasingly, city mayors and city councils are also offering resistance to presidential initiatives.

In addition, a survey of recent state policies in this article suggests that partisanship and ethnicity remain important factors in explaining the growing policy divergence across states. Consistent with existing research, ideologically conservative and Republican-leaning states feature the most restrictive immigrant policies, while liberal, Democratic-leaning states have pushed for the most pro-immigrant policies (Gulasekaram and Ramakrishnan 2015; Rivera 2014; Zingher 2014; Ramakrishnan and Wong 2010; Chavez and Provine 2009). The adoption of more punitive state policies (and fewer accommodating policies) is also consistent with research suggesting that policy choices reflect the stoking of ethnically charged, anti-immigrant anxieties, especially where immigration creates rapid increases in state Latino populations (Avery et al. 2017; Ybarra, Sanchez, and

Sanchez 2015; Marquez and Schraufnagel 2013; Creek and Yoder 2012; Newman 2013; Boushey and Ludtke 2011).

As documented below, many states now feature combinations of pro- and anti-immigrant policies that work at cross-purposes, suggesting that policy adoptions follow a highly issue-specific political dynamic. And within some states, conflicts are becoming more common as local preferences for immigration restriction or accommodation clash with state preferences. Thus, immigration federalism is further fragmenting policy debates and decisions within states, imparting a more contentious and patchwork quality to U.S. immigration policy.

The Evolving Immigration Policy Landscape, 2005–2017: Federal Retrenchment, State, and Local Ascendance

The Birth of State and Local Policy Activism, 1996–2007

State and local governments who have assumed a more assertive role in immigrant policymaking are in part responding to an invitation offered by the federal government in the late 1990s. In particular, two landmark 1996 laws opened the door to broader state and local involvement in crafting policies affecting immigrants living within their jurisdictions. The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 invited collaboration between federal and state authorities in enforcing federal immigration law. In particular, Section 287(g) of that law allowed for collaborative agreements between Immigration and Customs Enforcement (ICE) and state and local law enforcement entities in which national and subnational officials share in the apprehension and detention of unauthorized immigrants. This was a marked policy change, as state and local officials would be empowered to enforce civil infractions of federal immigration laws, traditionally a federal prerogative (Waslin 2010). The change also created jurisdictional conflict among state, local, and county law enforcement officials who differed on the appropriateness of using local law enforcement agencies in the service of federal enforcement (Varsanyi et al. 2012).

Meanwhile, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), approved the same year, established more restrictive eligibility criteria for federal welfare benefits. The new standards made authorized immigrants ineligible for federal welfare programs during their first five years of in-country residency but also gave states latitude to broaden policy coverage. As a result, immigrant eligibility for federal programs began to vary widely from state to state. The most restrictive states limit immigrant welfare programs to persons that they are mandated by federal law to cover, which includes refugees, asylees, and legal permanent residents with more than forty-qualifying quarters of work. By contrast, more accommodating states have taken the option of covering select

groups of immigrants during the five-year period of ineligibility under programs such as Medicaid and CHIP and/or state programs; the most accommodating use state funds to provide services to select groups of unauthorized immigrants, who remain ineligible for federal programs. Evidence suggests that the variations in state coverage were a function both of racial politics and ideology (Filindra 2012).

The incentive for states and localities to take the initiative in formulating policy intensified in the late 1990s and early 2000s as immigrant communities dispersed throughout the country. The most intense growth occurred primarily in Midwestern and Southern states in which unauthorized immigrant labor became essential to the construction, meat processing, and agricultural sectors—but also triggered a political backlash against the very same immigrants. New immigrant communities became “politicized places” in which anti-immigrant rhetoric found a receptive audience (Hopkins 2010). Anti-immigration grassroots movements often forged alliances with established lobbying and research groups such as the Federation for American Immigration Reform (FAIR), the Center for Immigration Studies (CIS), the Immigration Reform Law Institute, and Numbers USA; meanwhile, Republican candidates for state office increasingly found that anti-immigration stances helped mobilize enthusiasm and donations (Reich and Barth 2012; Wroe 2008; Tichenor 2002). Nativist rhetoric and policy proposals were fueled by a sense of threat among Anglo voters and elected officials, triggered by the rapid influx of immigrants from Latin America (Avery et al. 2017; Ybarra, Sanchez, and Sanchez 2015; Marquez and Schraufnagel 2013; Creek and Yoder 2012; Newman 2013).

The politicization of immigration at the state level intensified in 2007, as Congress debated, but failed to approve, comprehensive proposals to address both border security and the status of some 10–12 million unauthorized immigrants residing in the country. The plight of unauthorized immigrants became especially pertinent, given that they were increasingly long-term state residents and members of families that included U.S. citizens. The high-profile congressional debates over immigration reform further politicized the issue, while the failure to legislate served to invite state and local actors to chart their own course. Indeed, immigrant-related at the state level exploded in 2007. The number of state laws enacted that year tripled over the previous year, with forty-six states approving at least one-immigrant-related law (NCSL 2008).

In the ensuing years, new state laws proliferated, touching on policy areas as varied as law enforcement, employment verification, education, public benefits, state licensing, and human trafficking. The surge of legislation especially sparked a wave of innovations in restrictive policy. States began passing laws that made English the official language, made verification of legal immigrant status a requirement for receiving public benefits or a professional license, and required employers in the public and private sectors to verify the immigration status of new

hires. Dozens of state, county, and local prisons and law enforcement agencies began partnering with Immigration and Customs Enforcement (ICE) in identifying and arresting unauthorized immigrants via 287-g agreements. Some states went even further, passing aggressive law enforcement measures that challenged the boundary between federal and state prerogatives: between 2006 and 2011, ten states introduced forceful crackdowns on unauthorized immigrants, via so-called “Show Me Your Papers” laws that required immigration checks of any individual that law enforcement detained or arrested (National Immigration Law Center 2014). Arizona even created new state crimes for unlawful presence in the United States, and threatened employers who hired unauthorized immigrants with the possible suspension or revocation of business licenses. At the local level, dozens of cities passed restrictive local ordinances that, among other things, made English the official city language, or compelled businesses and landlords to verify the immigration status of employees and tenants (Walker and Leitner 2011).

Not all state and local innovations were restrictive. Other states and localities adopted innovations aimed at attracting and integrating immigrant populations, including unauthorized immigrants. Following the failure of Congress to pass the DREAM Act (Development, Relief, and Education for Alien Minors Act) and provide a path to citizenship for certain unauthorized immigrants who were brought to the U.S. as minors, some states began recognizing unauthorized high school graduates and military veterans as state residents, eligible for in-state tuition, with Texas becoming the first state to enact such a law in 2001. By 2007, ten states had adopted the policy. At the local level, cities with long-established immigrant communities (New York, Miami, Chicago, Los Angeles) and several that were home to major research universities (e.g., Ann Arbor, Michigan; Durham, North Carolina; Austin, Texas) adopted so-called “sanctuary city” policies that stated their intention to not comply with requests from Immigrations and Custom Enforcement (ICE) to detain immigrants unless they were suspected of criminal violation of the law. Research suggested that state and local policy responses largely followed partisan and ideological patterns: Republican electoral majorities and ideological conservatism were associated with increased adoption of punitive policies, while pro-immigrant policies were associated with liberal and Democratic-leaning locales (Gulasekaram and Ramakrishan 2015; Zingher 2014; Walker and Leitner 2011; Ramakrishnan and Wong 2010; Chavez and Provine 2009).

The period between 1996 and 2007 established a pattern of federal and state/local interactions that would solidify in subsequent years. This pattern was characterized by three related processes: first, the sustained inability of the Congress to work with either Democratic or Republican presidents in charting a legislative direction for national immigration policy; second, increasing policy activism and innovations at the state and local level; and third, a diverging set of

state policies that affected multiple facets of immigrants' day-to-day lives. Notwithstanding the federal government's plenary authority over immigration policy, state and local policies increasingly became a back channel to make immigration policy by targeting the ability of immigrants to work, study, and avoid arrest and deportation.

The Obama Years (2009–2016): Executive Reassertion Meets Growing State Autonomy

The important contribution of the Hispanic vote to Barack Obama's election in 2008 created high expectations that the new president would push through a comprehensive immigration reform. Obama's 67 percent of the Latino vote in 2008 was especially important in swing states such as Florida and Nevada, where he improved considerably over John Kerry's vote share four years earlier (Lopez 2008). However, the eight years of the Obama presidency, like the Bush presidency, featured no major immigration legislation. Executive actions by the president, meant to fill the legislative void, instead catalyzed a backlash among anti-immigrant state and local actors.

The Obama presidency was certainly not irrelevant to U.S. immigration policy or to state immigrant policies. However, Obama's sole legislative accomplishment with regard to immigration occurred two months into his presidency, when Congress passed the Children's Health Insurance Program Reauthorization Act (CHIPRA). CHIPRA made \$33 billion in federal matching funds available to states that extended healthcare coverage to immigrant children and pregnant women who were ineligible due to the five-year waiting period. States could choose to expand coverage to children only, pregnant women only, or to both groups using Medicaid and/or CHIP funding. The law had a significant effect in extending healthcare coverage for both groups: whereas only seventeen states provided coverage to immigrant children in 2009, by 2017 thirty states provided CHIP coverage. State health coverage for legally present, pregnant women under Medicaid increased from ten states to twenty-three states (Brooks et al. 2017).

In all other realms of immigration policy, however, President Obama and congress failed to provide legislative direction. Initially, 2013 seemed it would be the opportune moment to finally address immigration. The president had just been re-elected. Unauthorized immigration flows into the United States had also fallen well off from their 2007 peak. Additionally, the Republican National Committee's (RNC) post-mortem analysis of the 2012 election emphasized the need to pursue Latino voter outreach and pass comprehensive immigration reform. However, the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, which passed the Senate with bipartisan support, never made it to a floor vote in the House of Representatives. As with the failed reform proposals in 2006 and 2007, the public debate surrounding comprehensive immigration reform in

2013 deepened the partisan fault lines characterizing immigration policy and further propelled state and local legislation. It particularly inflamed anti-immigrant passions within the Republican Party. House Majority Whip Eric Cantor (R-VA) lost his bid for re-election to an anti-immigration, Tea Party primary opponent, prompting House Speaker John Boehner (R-OH) to pull the immigration reform bill before a floor vote.

In the absence of legislative solutions, President Obama still wielded substantial policy authority. While CHIPRA offered states a carrot in the hope of inducing accommodation, the Obama administration also wielded the stick of federal lawsuits in its effort to rein in the most far-reaching state laws. In July 2010, the U.S. Justice Department sued Arizona in federal court over Senate Bill 1070, the state's "Show Me Your Papers" law. In explaining the lawsuit, U.S. Attorney General Eric Holder contended that the federal government had a legitimate interest in asserting responsibility for immigration enforcement, adding that "[s]eeking to address the issue through a patchwork of state laws will only create more problems than it solves" (quoted in Pelofsky and Vincini 2010). In June 2012, the Supreme Court partially sided with the U.S. government's preemption claim regarding SB 1070. The Court's majority overturned Arizona's effort to turn a federal civil offense—unauthorized presence in the United States—into a state criminal offense, and threw out the provision allowing warrantless arrests of suspected unauthorized immigrants. The Court let stand the provision requiring state and local law enforcement to ascertain the immigration status of detained individuals, but only on grounds of reasonable suspicion. The ruling thus left open the possibility that state law enforcement officials could be held liable if "Show Me Your Papers" laws resulted in racially biased policing practices (Preston 2012). In the aftermath of the ruling, most states with similar laws settled lawsuits charging exactly such practices, ceasing active enforcement of most "Show Me Your Papers" laws.¹ Concerns about racial bias in policing also prompted a December 2012 decision by the Obama Administration to end the 287-g joint "task forces" that empowered local law enforcement to work in conjunction with ICE to apprehend and detain unauthorized immigrants (although 287-g agreements with state, county, and local prisons remained in effect).

Executive action provided another method available to Obama in asserting leadership. In June 2012, in the face of the continued languishing of the DREAM Act in Congress (first introduced by Senators Richard Durbin [D-IL] and Orrin Hatch [R-UT] in 2001), the administration announced the Deferred Action for Childhood Arrivals (DACA) program.² DACA began allowing unauthorized immigrants who were brought to the country before the age of sixteen, had lived in the country since 2007, and were less than thirty-one years of age to apply for a renewable, two-year permit to legally work or study in the U.S. DACA gave a dramatic boost to the personal and professional aspirations of some 1.7 million

childhood arrivals who faced the constant threat of arrest and deportation and proved popular. Between 2012 and 2017, over 886,000 individuals were granted DACA protection (US Citizenship and Immigration Services 2017). In November 2014, Obama extended DACA-like protections via the Deferred Action for Parents of Americans and Legal Permanent Residents program (DAPA), which similarly provided a reprieve from deportation and temporary work permits for parents of legally present immigrants.

However, Obama's forceful executive actions were a testament to his failure to recruit Congress into providing a more enduring legislative fix. Furthermore, they motivated more partisan-driven legal and legislative maneuvers at the state and local level. State immigrant policies continued to diverge more sharply over the course of the Obama presidency. The pieces of the patchwork of state laws, about which Attorney General Holder had warned, grew more varied and distinct. In part, this process reflected a raft of new state laws, approved between 2013 and 2016, that were prompted by the growing clout of pro-immigrant forces in some states. During that period, ten states and the District of Columbia enacted laws allowing unauthorized immigrants to obtain a driver's license, provided the individual could produce a foreign passport, consular card, or evidence of state residency (NCSL 2016a).³ Five state legislatures and two state university systems made most undocumented high school graduate eligible for in-state tuition at post-secondary public schools, bringing to twenty the number of states with such a policy (NCSL 2015a). California went further than any state in pursuing pro-immigrant policies, passing laws that extended financial aid to undocumented students, allowed unauthorized immigrants to practice law, and made unauthorized immigrants eligible for up to forty different professions governed by state licensing boards (Ramakrishnan and Colbern 2015). The Trust Act, signed by Governor Jerry Brown in October 2013, followed the lead of Connecticut (which approved a similar law in 2013) in prohibiting state and local law enforcement from holding detainees longer than forty-eight hours for federal immigration agents absent a previous conviction for a specified list of crimes.

However, in other states the political winds turned decidedly anti-immigrant. In December 2014, Texas and twenty-six other states—all with Republican attorneys general—sued to enjoin DAPA. In April 2015, Judge Andrew Hanen of the U.S. District Court for the Southern District of Texas issued a preliminary injunction against DAPA's implementation, in a ruling affirmed by a panel of the U.S. Court of Appeals for the Fifth Circuit. When the U.S. Supreme Court deadlocked in the case, on a four–four vote, in June 2016, the injunction was allowed to stand. This injunction against the DAPA program was still in effect when Donald Trump terminated the program in June 2017. Two months later, Trump also announced his intention to end the DACA program.

The backlash by restrictive states to the Obama administration's executive actions demonstrated that these state officials were not content to cede policymaking authority to the executive branch. In this new policy climate, state officials had both the will and the political and legal resources to challenge the president and advance their own agendas. States even began offering resistance to the president in areas that have long been the domain of the federal government, such as refugee and immigrant admissions. In November 2016, more than half of the nation's governors—all Republicans, save one—stated their intention not to allow any of the 10,000 Syrian refugees that the President had decided to accept from settling in their states. While this act of gubernatorial defiance received no judicial support, state and local officials did have the power to hinder refugee resettlements, as exemplified by the mayor of Roanoke, Virginia, who ordered local agencies to refuse to provide assistance to Syrian refugees (Gulasekaram and Ramakrishnan 2016).

In a climate of partisan division and state policy activism, the make-shift nature of policymaking via executive action became clear by the close of the Obama administration. Lacking the political backing of Congress, executive actions provoked legal challenges and inflamed a backlash at the state and local level. Simmering anti-immigrant and anti-globalization sentiment within the Republican party found an outlet in Donald Trump, whose hyperbolic rhetoric and proposals were diametrically opposed to the recommendations of the 2012 RNC post-mortem report. As Donald Trump assumed the presidency, with Republican majorities in both houses of Congress and in state governorships, he was well-placed to completely undo the Obama-era initiatives. However, Trump would also find that the policy climate similarly constrained his ability to reorient immigration policy, especially given the continued legislative fecklessness of Congress.

The Trump Administration: Different President, Same Policy Process

As president, Donald Trump made good on his campaign promises to undo the pro-immigrant policies of his predecessor. Within his first few months in office, Trump issued a series of executive actions, policy goals, and enforcement decisions that made clear his intention to effect nothing less than a nativist remaking of U.S. immigration policy. Among the most significant policy moves in Trump's first year was his executive action on "Border Security and Immigration Enforcement Improvements," issued within days of his January 2017 inauguration. Trump simultaneously declared his intention to plan, design, and construct a physical wall along the United States–Mexico border, while also affirming the administration's plan to reinvigorate Section 287(g) agreements, once again allowing state and local law enforcement to collaborate with ICE in arresting and detaining immigrants.

Trump also used executive action in his first month in office in an effort to rein in pro-immigrant states and localities. He ordered that jurisdictions failing to comply with federal immigration authorities would no longer receive federal funds “except as mandated by law” (The White House, Office of the Press Secretary 2017).

In the first four months of his presidency, Trump began a program of stepped up immigration raids by ICE. Between January and April 2017, arrests by ICE increased 38 percent compared to same period the previous year. And those arrests cast a much wider net. Rather than focusing solely on apprehending immigrants accused or convicted of felonies (as was the practice under the Obama administration), ICE agents began arresting unauthorized immigrants convicted of minor crimes and even those who were not wanted for a criminal offense. Arrests of immigrants with no previous criminal record increased by 156 percent in the first four months of 2017, compared to a year earlier (Gomez 2017). Trump also moved in his first year to reverse Obama’s executive actions. In June 2017, Department of Homeland Security head John Kelly signed an order that officially rescinded the DAPA program and in September 2017, Trump announced the termination of the DACA program, effective in March 2018.

The effort to reorient immigration policy extended to legal immigrant and refugee admissions. One week into his presidency, Trump issued an executive order suspending for ninety days the entry of most immigrants from seven Muslim-majority countries (Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen). That same month, Trump slashed the limit for refugee admissions for fiscal year 2018 to 45,000, down from 110,000 in the last year of the Obama presidency. This represented an historic low in refugee admissions over the forty years of the refugee assistance program’s existence. In August 2017, Trump announced his support for the Reforming American Immigration for a Strong Economy (RAISE) Act, sponsored by Senators Tom Cotton (R-AR) and David Perdue (R-GA), which would cut legal immigration in half from existing levels, curtail family-based visas, and end the “Diversity Visa Lottery” program.

Trump’s initial actions forcefully broadcast his intention to redirect immigration policy. However, amidst the policy cancellations, arrests, and threats, a dynamic of executive provocations and state and local counter-challenges emerged that was reminiscent of the Obama years. The inclination of many Democratic-controlled states to challenge Trump’s authority became apparent almost immediately, when Trump’s executive order banning travelers from seven Muslim-majority countries was challenged in federal court and temporarily blocked by federal judges in Hawaii and Maryland. Washington, Minnesota, and Hawaii became plaintiffs in a federal lawsuit requesting that the stay on the travel ban be affirmed. These states were supported, via *amicus curiae* briefs, by seventeen other states. In the face of these mounting legal challenges, the Trump administration reissued a revised version of the travel ban in March 2017, but this

second executive order also generated lawsuits from pro-immigrant states and led to court rulings enjoining its implementation. A third iteration of the travel ban, issued in September 2017, modified the list of affected countries and altered the rationale for the ban, basing it on a set of requirements applied to all countries' vetting procedures for immigrants.⁴ The modifications may not only have strengthened the administration's ability to withstand challenges in federal court (Turley 2017), but also demonstrated—much as with resistance to Obama's refugee admission policies—the determination of states to contest an area of immigration policy that is considered an exclusive prerogative of the federal government.

In fact, all of Trump's major executive orders dealing with immigration were met with federal lawsuits backed by states and municipalities and resulted in either partial or full injunctions against them. Trump's executive order threatening to pull federal funds from jurisdictions with "sanctuary city" policies was challenged in federal court by California Attorney General Xavier Becerra, as well at the county of Santa Clara and cities of San Francisco, Chicago, Philadelphia, Seattle, and Portland. In an April 2017 ruling, in a case brought by Santa Clara and San Francisco, Judge William Orrick of the U.S. District Court for the Northern District of California barred the Trump administration from withholding federal funds from jurisdictions that the administration deemed sanctuary jurisdictions. Similar rulings were issued in cases brought by Philadelphia and Chicago, with the ruling in the Chicago lawsuit upheld on appeal by a panel of the U.S. Court of Appeals for the Seventh Circuit, in April 2018.

Additionally, just as Obama's DAPA order was challenged by Republican attorneys general, fifteen Democratic attorneys general filed a lawsuit challenging Trump's order ending DACA.⁵ This lawsuit, one of several filed by state officials and other plaintiffs, alleged that the president's action violated the equal protection clause of the Constitution by unfairly targeting mostly Mexican-born immigrants (who were the focus of derogatory campaign statements by Trump), while also unfairly depriving states of taxpaying residents. Judge Nicholas Garaufis in the U.S. District Court for the Eastern District of New York sided with the state plaintiffs, in a February 2018 ruling, one of several federal court decisions in early 2018 that have, to date, halted the scheduled termination of the DACA program.

Moreover, the governors of California, New York, Colorado, and Virginia issued pardons to some immigrants convicted of prior criminal convictions as a means of heading off their deportations, with similar requests for gubernatorial pardons pending in other states (Lee 2017). While the success of this tactic in influencing deportation decisions is still not clear, it illustrated the creativity of some governors in finding new ways to undermine the President's use of his plenary authority.

Neither did Trump's policy actions curtail legislative activity at the state level. The first months of Trump's term saw a marked increase in passage of state immigration legislation, with the number of enacted state laws increasing by 90

percent in the first six months of 2017 compared to the same period a year earlier (NCSL 2017). If there was any discernible pattern in this activity, it was toward a continued widening of policy differences between “pro-immigrant” and “anti-immigrant” state policies. For example, California made a point of directly challenging the administration by adopting three laws in October 2017 that created new protections for unauthorized immigrants. The Immigrant Worker Protection Act prohibited immigration raids in workplaces without a judicial warrant and prevented employers from verifying the employment eligibility of workers. The Immigrant Tenant Protection Act prevented landlords from making inquiries into the immigration status of tenants or disclosing the immigrant status of tenants to federal authorities. Finally, the California Values Act, SB 54, defied the administration’s efforts to punish so-called “sanctuary cities” by preventing state and local authorities from transferring individuals to federal immigration authorities without a warrant, a judge’s finding of probable cause, or previous convictions for a list of specified crimes.

Other Democratic-leaning states with a past record of pro-immigrant policies also adopted new accommodating laws. The Illinois legislature approved, and Republican Governor Bruce Rauner signed, the Illinois Trust Act in September 2017. Pro-immigrant states also approved resolutions defying the administration. Four states—California, Illinois, Nebraska, and New Jersey—adopted resolutions supporting refugee admissions or opposing Trump’s efforts to block resettlement of refugees from Muslim-majority nations. Eleven cities and counties in eight states expressed their opposition to stepped up arrests of unauthorized immigrants by providing free legal counsel to detained immigrants, matching public funds with funds provided by the non-profit Vera Institute of Justice (Kahn 2017).

In short, pro-immigrant states became more assertively pro-immigrant in response to Trump administration policies. A spokesperson for the anti-immigration Federation for American Immigration Reform captured this aspect of state policy in the Trump era by arguing that “states that were committed to sanctuary policies and non-cooperation in immigration enforcement kind of doubled down.” (Wilson 2017). However, the converse was also true: states that leaned toward restrictive immigrant policies seemed more inclined, in the wake of Trump’s presidency, to move further in a restrictionist direction. In particular, Trump’s efforts to rein in sanctuary cities were reinforced by Indiana and Mississippi, which passed laws in 2017 that prohibited cities from refusing detainer requests from federal authorities. Georgia passed a similar ban that applied only to state universities and colleges. Anti-refugee sentiment fostered a law in South Dakota that banned agreements between state social service agencies in relation to the Refugee Act of 1980. Texas pursued a far-reaching set of policies that aligned closely with the objectives of the Trump administration. In May 2017, Governor Greg Abbott signed into law SB 4, which both required local officials to honor

federal detainer requests, added jail time and penalties for those who refused to honor such requests, allowed local law enforcement to investigate the immigration status of detained or arrested individuals, and forbade government officials from preventing such investigations. Other cities and counties, took up the Trump administration's call for new 287(g) partnerships: in the first half of 2017, seventeen Texas county sheriffs signed Memoranda of Agreement (MOA) with ICE to cooperate in incarcerating unauthorized immigrants. Nationwide, twenty-eight new 287(g) MOAs were signed in the first six months of 2017 (US Immigrations and Customs Enforcement, n.d.).

Texas's SB 4 law also demonstrated that centrifugal forces were becoming prominent *within* states as well. Several Texas cities and counties (including Houston, Austin, and San Antonio) sued in federal court to block the law. In contrast, in California, some cities and counties began passing ordinances and resolutions opposing that state's "sanctuary state" law, SB 54. The city councils of Los Alamitos and Beaumont passed ordinances declaring their intention to not abide by the law and, as of early 2018, several other California cities, as well as San Diego and Orange Counties, were contemplating similar ordinances (Holder 2018).

Amidst the growing activity at the state and local level, President Trump found, much like his predecessor, that congress remained a recalcitrant legislative partner. The centerpiece of Trump's get-tough approach to unauthorized immigration, the proposed United States–Mexico border wall, hit a wall of congressional doubts about its cost and effectiveness. Republican voices were among the naysayers, with some of the loudest coming from the Texas congressional delegation: most of its members, including most Republican members, argued for more technologically sophisticated methods to prevent border crossings and expressed concerns about the need for the federal government to seize privately owned land in order to build the wall (Nixon 2017). By March 2018, Trump had secured only \$1.6 billion of the \$25 billion in funding that he sought for the border wall.

Meanwhile, comprehensive immigration reform remained elusive. In mid-2017, Trump appeared willing to risk the ire of members of his own party by supporting a bipartisan congressional proposal. However, in September 2017 he backed away from an apparent deal with Democratic leaders that would have created a legislative fix for DACA in return for border wall funding. In the face of opposition from Republicans, Trump instead linked the DACA legislative fix to support for his other anti-immigration initiatives, foreclosing Democratic cooperation.

In short, immigration policymaking during the first year of the Trump administration showed a great deal of continuity with the Obama years. The pattern of congressional inaction, unilateral presidential action, and vigorous state and local reactions to initiatives coming from Washington suggested that Trump's quest to remake immigration policy faced a tenuous future.

The State of State Immigrant Policy: The Growing Divergence

The past decade of immigration federalism has had an enduring effect not only on the policy relationship between the state and federal government, but also on the quality of life for immigrants across the United States. State policies have bifurcated more decisively during this period, creating wide cross-state discrepancies in the ability of immigrants to be legally recognized as state residents, access public services, gain employment, attend public universities, and avoid arrest and deportation. In addition, as detailed below, state policymaking often yields a high degree of incoherence across policy areas, with some states now featuring a contradictory mix of both accommodating and restrictive immigrant policies.

In order to assess variations in the effects of state policies on immigrant populations, [Tables 1](#) and [2](#) present a range of both accommodating and restrictive state policies in effect as of 2017. The state policies included in the tables focus on those most likely to alter immigrants' ability to work, study, receive health care, and avoid deportation. Thus, the accommodating policies reflect the ability of unauthorized immigrants to achieve recognition as state residents with regard to higher education (in-state tuition status, access to financial aid), their ability to drive and to be recognized as state residents (issuance of driver's licenses), and the ability of employers to hire them (mandatory use of e-verify immigration status checks). In addition, [table 1](#) compares state coverage of immigrants across three types of health care programs, of which some are solely state-funded (e.g., programs for unauthorized immigrants who are ineligible for federal programs) and others jointly funded by states and the federal government (Medicaid and CHIP). [Table 2](#) presents restrictive policies that, in contrast, seek to exclude legal immigrants from health care programs to the maximum extent allowable under federal law and that seek to bar unauthorized immigrants from employment or public post-secondary education.

[Table 1](#) indicates that the most accommodating states—those that have adopted all six accommodating policies—are California, Illinois, and Washington, followed by Connecticut and Hawaii, which have adopted five of the policies. The most widely adopted accommodating policies were those that included federal support—extension of the Medicaid and CHIP programs—which were adopted, respectively, by thirty and twenty-three states. In contrast, accommodating policies that relied purely on state funding (health programs for unauthorized immigrants), were least likely to be adopted. At the other end of the spectrum, some states (Alabama, Arkansas, Arizona, Georgia, Indiana) adopted none of the six accommodating policies and also figure prominently among those with the most restrictive policy approaches toward immigrants in [table 2](#). Among the most restrictive states, the most commonly implemented policy was the mandatory use of the E-Verify system for public sector hires, adopted by twenty states. The second most common

Table 1 Accommodating state immigrant policies, as of 2017

	Growth of Latino population, 2000–2010 ^a (%)	In-state tuition for undocumented students	State financial aid for unauthorized immigrant students	Driver's licenses for unauthorized immigrants	State-funded program for select unauthorized immigrant health care	Medicaid coverage for lawfully-residing immigrants without 5-year wait	CHIP or state coverage for lawfully-residing immigrant children without 5-year wait
California	28	X	X	X	X	X	X
Colorado	41	X		X		X	X
Connecticut	50	X		X	X	X	X
Delaware	96			X		X	X
Florida	57	X				X	X
Hawaii	38	X*	X	X		X	X
Illinois	33	X	X	X	X	X	X
Iowa	84					X	X
Kansas	59						
Kentucky	122					X	X
Maine	18					X	X
Maryland	107	X					
Massachusetts	96				X	X	X
Michigan	35	X					
Minnesota	75	X*	X			X	
Montana	58					X	X
Nebraska	77	X				X	
Nevada	82						
New Jersey	39	X				X	X
New Mexico	25	X	X	X		X	

Table 2 Restrictive state immigrant policies, as of 2017

	Growth of Latino population, 2000-2010 (%) ^a	Mandatory immigration checks and/or compliance with ICE detainer requests	Ban on in-state tuition	No immigrant healthcare spending beyond federally mandated minimum	Required use of e-verify for most public sector hires	Required use of e-verify for private sector hires
Alabama	145	X	X	X	X	X
Arizona	46	X	X	X	X	X
Arkansas	114				X	
Colorado	41				X	
Florida	57				X	
Georgia	96	X	X	X	X	X
Indiana	82	X	X	X	X	
Idaho	73			X	X	
Kansas	59			X		
Louisiana	79				X	X
Mississippi	106	X		X	X	X
Missouri	79		X		X	
Nebraska	77				X	
Nevada	82			X		
New Hampshire	79			X		
North Carolina	111	X			X	X
North Dakota	73			X		
Oklahoma	85				X	
Pennsylvania	83				X	
South Dakota	103		X	X		
South Carolina	148	X		X	X	X
Tennessee	134	X			X	X
Texas	42	X			X	
Utah	78				X	X
Virginia	92				X	
Total	(Average = 87)	9	6	12	20	9

Data gathered from NCSL (2016a, 2016b); Brooks et al. (2017); National Immigration Law Center (2014).

States with none of the above policies: Alaska, California, Connecticut, Delaware, Hawaii, Iowa, Illinois, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, New Mexico, New York, Ohio, Oregon, Rhode Island, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

^aSource: U.S. Census Bureau (2011).

restrictive policy involved maintaining the most stringent eligibility rules for health care programs allowable under federal law, including the rejection of federal funding to extend Medicaid and CHIP coverage to pregnant women and immigrant children with less than five-years of legal residency, a policy maintained by twelve states as of 2017.

The accommodating and restrictive policy adoptions in tables 1 and 2 evince a pattern that remains consistent with past research. For example, variations in policy adoptions are consistent with arguments that the growth of non-Anglo immigrant communities incites a sense of threat among Anglo citizens (Avery et al. 2017; Ybarra, Sanchez, and Sanchez 2015; Marquez and Schraufnagel 2013; Filindra 2012; Creek and Yoder 2012; Newman 2013; Boushey and Ludtke 2011). Notably, among states that adopted at least one restrictive policy, the growth rate of state Latino populations between 2000 and 2010—which strongly tracks the growth rate of immigration—was higher (87 percent) on average than in those that adopted at least one accommodating policy (65 percent). Furthermore, across states, growing Latino populations were significantly associated both with more restrictive policy adoptions (table 2) and fewer accommodating policies (table 1).⁶

Meanwhile, tables 1 and 2 also suggest the role of partisan and ideological influences on immigrant policies (Gulasekaram and Ramakrishnan 2016; Ramakrishnan and Wong 2010; Chavez and Provine 2009). The most immigrant-accommodating states (California, Illinois, Washington, Connecticut, and Hawaii), which adopted five or six of the accommodating immigrant policies in table 1 and none of the punitive policies in table 2, are characterized by ideologically liberal electorates in which Democrats tend to dominate elected state offices. By contrast, Alabama, Arizona, Arkansas, Georgia, Indiana, Mississippi, and South Carolina (which adopted four to five restrictive policies and no accommodating policies) have become strongholds of ideological conservatism and Republican electoral control.

The implications of the policy differences between the most accommodating and the most restrictive states are stark, with life-altering implications for immigrant families. To illustrate: an unauthorized immigrant child brought to California by its parents can now generally expect equality under state law with a native-born citizen. If that child lived within a low-income family, for example, they might receive health services via California's Medicaid program, Medi-Cal. The child's parents could legally drive the child to a doctor's appointment because they could acquire a state driver's license; and, provided the parents had no outstanding criminal warrants, law enforcement officials could not use a traffic stop to investigate whether a family member was in California in violation of federal immigration law, potentially leading to their detention and deportation hearings. Upon reaching sixteen years of age, the same young adult would be permitted to acquire a driver's license or state identification card, and could plan

for college with the expectation of receiving in-state tuition at a public post-secondary school, as well as the possibility of state financial aid. After graduation, they would be able to apply for jobs in both the public and private sectors in California without potential employers having to verify their immigration status and would be able to receive a professional license from a state licensing board.

In contrast, in Alabama no unauthorized immigrant child is eligible for publicly funded health services, aside from emergency room treatment. Indeed, even legally present immigrants remain ineligible for state health programs for five years after becoming permanent residents. While an unauthorized immigrant child in Alabama would be entitled to attend a public school (as mandated by federal law), they would never be able to legally drive a car, receive in-state status at a public post-secondary schools, or be eligible for state financial assistance for their education. Gaining employment would also be a severe challenge, as both public and private sector employers are required to verify the immigration eligibility of all new hires via e-verify.

While the most restrictive and most accommodating states represent the extremes of current state immigrant policy, many states now feature a contradictory mix of both accommodating and restrictive immigrant policy adoptions. As of 2017, nine states (Colorado, Florida, Kansas, Nebraska, Nevada, North Carolina, Pennsylvania, Texas, and Utah) had implemented at least one of the accommodating policies in [table 1](#) and one of the restrictive policies in [table 2](#). Several states—Florida, North Carolina, Texas, and Utah—had multiple adoptions of both accommodating and restrictive policies. In practice, this produces immigrant policies that work at cross-purposes. For example, in Texas unauthorized high school graduates are recognized as state residents at post-secondary schools; however, the same students cannot legally drive a car in the state and are barred from being hired by any public agency or university. In Utah, unauthorized immigrants can get a state driver's license, as well as receive in-state tuition but, because of e-verify requirements, cannot legally be employed by public or private sector employers in the state.

Such conflicting policy combinations suggest that the political forces informing state immigrant policies are arrayed differently across policy domains. In this environment, the factors that influence the adoption of, for example, higher education laws benefiting “Dreamers” may not be operative when states move to consider restrictive employment laws or law enforcement measures. Centrifugal political forces are not merely state-specific but also issue-specific within states. Adding yet more complexity, the recent clashes between state and local authorities alluded to above suggest that centrifugalism is moving vertically as well: county and local governments are increasingly emboldened to pursue immigrant policies that stand in direct opposition to state laws, adding more contrasting patterns to the patchwork of US immigration policy.

Conclusion

In spite of the federal government's plenary authority over immigrant and refugee admissions, deportations, and citizenship laws, the encroachment of state and local actors into federal immigration policy showed no signs of abating in 2017. Through their varied policy choices, states and localities now exercise enormous influence over the ability of immigrants—both authorized and unauthorized—to work, study, receive health care, and live openly without fear of arrest and deportation. In addition, state and local actors have become increasingly adept at using their own legislative powers, executive authority, and court challenges to counter presidential authority. Meanwhile, the U.S. Congress is largely sidelined and shows no signs of providing legislative direction. Thus, while the federal government's plenary powers give it the authority to both initiate policy and override many state and local initiatives, state and local governments are increasingly becoming *de facto* veto players over national policy.

In spite of the Trump administration's bold plans to reduce the U.S. immigrant population, his first year in office illustrated the difficulties that any president now faces in trying to centralize immigration policy. The Trump administration is becoming an image in reverse of the preceding administration. Trump came to office intent on pursuing a very different vision of immigration policy, one colored by a nativist understanding of the role of immigrants in U.S. society. However, like his predecessor, he is finding that executive actions and declarations are flawed substitutes for congressional legislation, while also encouraging resistance from state and local actors. This is not a situation that Trump created but rather the evolution of a process that has been unfolding over the past decade or more.

There is mounting evidence that immigration federalism entails substantial policy deficiencies. First, immigrants living in the United States are now increasingly at the mercy of the patchwork of laws that vary widely from state to state and locality to locality. And state policies increasingly exhibit internal contradictions that suggest a haphazard policymaking process, one that subjects the lives of immigrants to a web of policies that work at cross-purposes. Second, congressional indecisiveness and state and local policy activism have mutually reinforced the impoverishment of congress as a legislative institution. Congress's inability to legislate invites more executive action and, with it, more state and local activism that further erodes congressional authority.

It is telling that the Obama-era immigration initiative that has outlived his presidency thus far was the only one achieved with congressional support, namely, the 2009 CHIP Reauthorization Act. In contrast, both the DACA and DAPA programs, initiated via executive action, were terminated before the end of the first year of the Trump administration (although the DACA program's future still awaits a court decision). The experience of the Obama administration stands as an

omen for the Trump administration: immigration policies initiated via executive action may have a short shelf life, especially in the presence of an accelerated legal and political arms race in which presidents must now contend with an army of grassroots activists, mayors, governors, and energized state attorneys general.

Notes

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1. Settlements of lawsuits related to charges of racial profiling led to the end of enforcement of “Show Me Your Papers” laws in Alabama (2013), Georgia (2013), Indiana (2012), South Carolina (2014), Utah (2014), and Arizona (2016). Colorado revoked its law in 2013. As of 2017, Tennessee and North Carolina still had actively enforced laws.
2. Various versions of the DREAM Act have been introduced in Congress since 2001. All of them seek to provide a path to U.S. citizenship for certain undocumented immigrants (variously defined) who were brought to the United States as minors.
3. Oregon’s 2013 law was subsequently overturned by voters in a ballot measure in November 2014.
4. The third version of the travel ban excluded two of the original Muslim-majority countries on the list (Iraq and Sudan) and added two non Muslim-majority nations (North Korea and Venezuela).
5. The fifteen attorneys general who filed the lawsuit were from New York, Massachusetts, Connecticut, Delaware, Hawaii, Illinois, Iowa, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, and the District of Columbia.
6. The Spearman correlation coefficient between the growth of state Latino populations (2000–2010) and the number of accommodating policy adoptions in table 1 was -0.52 ($P = 0.0002$); the correlation between Latino population growth and the number of restrictive policy adoptions in table 2 was 0.51 ($P = 0.0001$).

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