

SPRING 2012 IMMIGRATION LAW & POLICY PROGRAM GUIDE

As the national conversation on immigration assumes a central place in the 2012 election, and the Supreme Court considers its second immigration-related case in as many years, ACS encourages its chapters to plan programming in the Spring of 2012 and beyond on issues related to immigration law and policy. The legal and political landscape in this area has changed dramatically over the last few years, leading to new concerns, challenges, and debate. For example, the proliferation of state immigration enforcement laws has raised significant questions about what role the states may constitutionally play in legislating with regard to immigration. There has also been renewed discussion around workforce and labor issues, particularly in light of last year's Supreme Court decision in *Chamber of Commerce v. Whiting*. And some in Congress have called for a constitutional amendment to eliminate the "birthright citizenship" clause of the Fourteenth Amendment in an attempt to deny American citizenship to children born in the U.S. to undocumented immigrants. Finally, immigrants face increasingly unique and difficult challenges when caught up in our civil and criminal justices that are worthy of examination.

ACS hopes that chapters will host events across the country to explore these and other issues. This brief guide, along with its associated speaker list, has been designed to help individuals and chapters in their planning for such events.

State and Local Immigration Enforcement

Some states and localities, offering as a rationale their frustration at the lack of progress on immigration reform by the federal government, have passed their own laws designed to address undocumented immigration. Last year, Arizona passed the controversial SB 1070, which, among other things, requires local law enforcement officers to inquire about immigration status if they have a reasonable suspicion to believe someone is an undocumented immigrant. The U.S. Supreme Court has recently agreed to review the constitutionality of SB 1070. Alabama and Georgia, among other states, have followed suit with laws of their own intended to discourage undocumented immigration. The Department of Justice is levying challenges to these laws, arguing that they are preempted by federal immigration law. Are these state laws valid or are they preempted? What role may the states play (if any) in the immigration arena? For more information on this subject, see *Immigration: The Federal-State Showdown*, an ACS panel, a [video](#) of which is available online; *The Constitutionality of Arizona's SB1070 and Other State Immigration Laws*, an ACS [Issue Brief](#) by Gabriel Chin, Toni Massaro, and Marc Miller; *No Exception to the Rule: The Unconstitutionality of State Immigration Enforcement Laws*, an ACS [Issue Brief](#) by Pratheepan Gulasekaram; a *Washington Post* [article](#) about efforts to amend Alabama's immigration law and the pending litigation in that state; a *New York Times* [article](#) about the Supreme Court's decision to grant *certiorari* in the Arizona SB 1070 litigation; and a *Washington Post* [article](#) about the Justice Department's challenges to state immigration laws.

In addition, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g) to the Immigration and Nationality Act (INA), which now allows the federal government to delegate immigration enforcement authority to state and local law enforcement, provided they undergo training. Among the delegated authorities are the power to inquire about immigration status, issue detainers to hold people on immigration violations until the federal government takes custody, and generate the charges that begin the deportation process. The federal “Secure Communities Program” further entwines local law enforcement with federal immigration enforcement pursuant to federal-state agreements that call for the processing of the fingerprints of all local arrestees through the database of the federal Immigration and Customs Enforcement (“ICE”) agency. What are the problems associated with the federal government’s delegation of immigration enforcement authority to local law enforcement? Are there workable and constitutional solutions to those problems? For more information on this subject, see *Delegation and Divergence: A Study of 287(g) State and Local Immigration Enforcement*, [published](#) by the Migration Policy Institute; a [backgrounder](#) on the 287(g) program by the American Immigration Council; a *New York Times* [article](#) about the 2010 Department of Homeland Security inspector general report on the 287(g) program; and an ACLU [backgrounder](#) on the Secure Communities Program.

Immigration and the Workforce

A critical component of the immigration debate is the importance of immigrant labor to the U.S. economy, which has resulted in an intense focus on undocumented workers and the employers who hire them. The federal Immigration Reform and Control Act of 1986 (IRCA) put the onus of legal compliance on employers, not immigrant workers, and established a system of employer sanctions imposed for the hiring of unauthorized workers. The federal “E-Verify” program purports to provide a nationwide employment verification system, although some claim inaccuracies in the database make it unreliable. And here, too, states have also jumped into the fray. For example, the Legal Arizona Workers Act, which mandates that employers in that state use E-Verify and penalizes employers who hire undocumented immigrants, was upheld by the Supreme Court in its 2011 *Chamber of Commerce v. Whiting* decision. And Utah recently passed laws that would create a state-based temporary worker program and allow Utah citizens to sponsor immigrant workers. How should the law address the challenges posed by our economic need for immigrants in the workforce? What kinds of verification programs are constitutional? What are the legal and policy issues posed by temporary worker programs? For more information on these subjects, see *A Briefing on Chamber of Commerce v. Whiting*, an ACS panel, a [video](#) of which is available online; [background](#) on the E-verify program provided by the Migration Policy Institute and an [assessment](#) of its problems provided by the American Immigration Council; [information](#) about the Utah immigration bills provided by the National Immigration Law Center; a PBS [report](#) on the impact of Alabama’s immigration law on that state’s workers and economy; and *ICED Out: How Immigration Reform has Interfered with Workers’ Rights*, a [report](#) released jointly by the AFL-CIO, American Rights at Work, and the National Employment Law Project.

Citizenship

Section 1 of the 14th Amendment states that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.” Lately, some have been calling for the repeal of this section so that children born in the U.S. to undocumented immigrants are not automatically granted United States citizenship. One legislative solution offered to naturalize undocumented immigrants brought to the United States as children is the Development, Relief and Education for Alien Minors, or “DREAM Act.” The federal version of the DREAM Act would give certain undocumented immigrants who came to the U.S. at a young age an opportunity to enlist in the military or go to college (and perhaps be eligible for financial aid), and offers a path to citizenship which they otherwise would not have. Because the federal legislation has seemingly stalled, states have begun to act by passing their own DREAM Acts. What did the Framers of the 14th Amendment intend? What are the counter-arguments to the “birthright citizenship” repeal effort? What are the policy and legal issues associated with the DREAM Act? For more information on these subjects, see *Born in the USA?: The Historical and Constitutional Underpinnings of Birthright Citizenship*, an ACS and Center for American Progress panel discussion, a [video](#) of which is available online; *Born Under the Constitution: Why Recent Attacks on Birthright Citizenship are Unfounded*, an ACS [Issue Brief](#) by Elizabeth Wydra; a *Washington Post* [op-ed](#) about Republicans’ efforts to alter the 14th Amendment; an [article](#) in *The Atlantic* about the assault on birthright citizenship; *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*, a Congressional Research Service report available [online](#); and a *Los Angeles Times* [article](#) about California’s state-level DREAM Act that was recently signed into law.

Undocumented Immigrants and Social Benefits

Whether and to what extent immigrants and their families should receive social benefits has been a widely discussed and highly controversial issue in the political conversation. Some oppose giving benefits, such as Social Security and healthcare, to undocumented immigrants and their families. Others believe that benefits should be extended to people living and working in the United States regardless of immigration status. Moreover, while the Supreme Court in its 1982 *Plyler v. Doe* decision struck down a Texas statute allowing public schools to refuse to admit undocumented immigrant children, recently enacted state laws have required public schools to check the immigration status of their students. What types of public benefits do legal and undocumented immigrants currently receive? How have lawmakers tried to provide or curb benefits for immigrants, and what legal and policy responses are available? For more information on this subject, see the National Immigration Law Center’s [webpage](#) on immigrants and public benefits; a *Washington Post* [op-ed](#) about how undocumented immigrants bolster Social Security; an [article](#) on the dilemma Alabama’s new immigration law presents for public schools; and a *New York Times* online [debate](#) about whether public schools should help “catch” undocumented immigrants through their children.

Immigrants in the Criminal and Civil Justice Systems

Immigrants caught up in our criminal and civil justice systems face unique challenges. Due process concerns arise when undocumented immigrants, or those suspected of being undocumented, are detained or even deported without knowing their rights or receiving access to legal counsel, or when court backlogs delay proceedings. While the Supreme Court held in *Padilla v. Kentucky* (2010) that an attorney's failure to advise a client that his guilty plea could lead to deportation amounts to ineffective assistance of counsel, recent federal legislative initiatives may increase the risks for immigrants. For example, the "Keep Our Communities Safe Act of 2011" would authorize the indefinite detention of individuals in removal proceedings who cannot be deported, despite the Supreme Court's 2001 ruling in *Zadvydas v. Davis* that a "statute permitting indefinite detention of an alien would raise a serious constitutional problem." And the "Hinder the Administration's Legalization Temptation Act," or "HALT Act," aims to curb the Administration's prosecutorial discretion with respect to immigration enforcement. Underlying these challenges are the difficulties presented by the overwhelming caseloads in our immigration courts. How can due process principles be reconciled with law enforcement interests in the immigration context? What due process is owed non-citizens? What are the constitutional limitations on the detention and deportation of immigrants? For more information on these subjects, see Detention Watch Networks's [fact sheet](#) on the U.S. detention and deportation system; AILA's [statement](#) opposing the HALT Act and describing its potential consequences, and its [summary](#) of the Keep Our Communities Safe Act; a *New York Times* [article](#) about the Obama Administration's review of deportation cases; an [article](#) about the backlog in our immigration courts and TRAC's latest [report](#) on that backlog.

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