

The Impact of Federalism on Immigration: A Reconstruction of the System to Alleviate the
Immigration Crisis in America

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THE IMPACT OF FEDERALISM ON IMMIGRATION

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Abstract

Illegal immigration is a complex and relevant issue in the United States. In particular, its long-term implications for American communities has elevated its significance. Within America's federalist system, the immigration dilemma has raised tension among federal, state, and local governments, which have different perspectives on how to approach the matter. The federal government is responsible for enforcing immigration laws but delegates numerous immigration responsibilities to state and local law enforcement. However, the degree to which local officials should cooperate with federal authorities is the subject of intense debate. Should immigration enforcement be a federal or local responsibility? Under federalism and other political principles, this responsibility should be uniquely shared and balanced in order to alleviate the immigration crisis.

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The Impact of Federalism on Immigration: A Reconstruction of the System to Alleviate the Immigration Crisis in America

In today's political climate, the subject matter of immigration has ignited a heated debate about the rise of illegal immigration in America, its effect on the civilian population, and the role of the federal government. To deem this complicated situation as a mere challenge would be a genuine understatement of the current immigration dilemma in the United States. Recent statistics indicate a record number of immigrants, legal and illegal, entering the U.S. in the past several years alone.¹ A record number of people entering has brought about numerous consequences for American society, since the government has not been able to handle and alleviate the situation with necessary care in the past several decades. As a result, many of these consequences have been negative in nature and stem from an ineffective dynamic between the national government and state and local ones. For the politics and policy sphere, the intriguing dichotomy between national level issues and more local ones has fascinated U.S. government analysts for quite some time.

Upon observing the American news cycle, one will realize that political matters of national scope are emphasized more than state and local ones. This dichotomy seems logical since politics and policymaking at the federal level generally has broader implications than at other levels of government—leading one to believe that all major issues must be resolved by the national government. However, in light of the Constitution and historical precedence, this way of thinking is not completely accurate. The right approach to political issues is often more nuanced than first perceived by the general public and sometimes government officials. Specifically,

¹ John Gramlich, "Monthly encounters with migrants at U.S.-Mexico border remain near record highs," Pew Research, January 13, 2023, <https://www.pewresearch.org/fact-tank/2023/01/13/monthly-encounters-with-migrants-at-u-s-mexico-border-remain-near-record-highs/>.

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when dissecting the problem of illegal immigration, political leaders must determine whether federal authority and decisions should circumvent state and local ones.

From a practical standpoint, state and local governments are actually more poised to solve issues related to their jurisdiction since they are more familiar with it. Is there legal and constitutional basis, though, for localities having more control in this area than the federal government? And how can the American political system function in a way that alleviates the immigration crisis? To address these questions, this thesis will first examine the current immigration crisis, its various effects on the nation, and proposed solutions in the past. The current dynamic among the three levels of U.S. government regarding immigration will be discussed, before constitutional and legal perspectives about immigration control in light of federalism will be put forward. Finally, this thesis will argue that increased consistency among the states, a more effective structure of resource, and a return to constitutional authority delegation can help calm the American immigration crisis.

Current Immigration Crisis

To discern the proper role of the different levels of government in the immigration crisis, one must first understand how the situation has been unfolding in the U.S. today. Illegal immigration has been an issue throughout American history, but it has received more attention in the recent decades as it has become increasingly prevalent and problematic. Especially because of the fallout from the COVID pandemic, unauthorized immigration and its impact on the nation has been greatly exacerbated. In just December 2023 itself, the U.S. Border Patrol processed more people illegally entering the southern border than any other month in the agency's record,

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which is historic.² The Migration Policy Institute estimates that almost eleven million unauthorized immigrants reside in the U.S. as of 2019 and make up at least 23 percent of the immigration population.³ How do these migrants come into the country, though? In the year 2022, U.S. Customs and Border Control reported that they apprehended more than 2.3 million people attempting to cross the southern border illegally, a record high for the country.⁴

Even though many illegal migrants come from Asian nations, the majority of them come from Central and South America in order to seek asylum.⁵ These migrants are often children without parents or guardians, so this situation can complicate how American officials decide to respond. Needless to say, the recent spike in illegal Central American migrants has placed an enormous strain on the U.S. immigration system and created backlog. For instance, by the middle of 2023, U.S. immigration courts had almost two million pending cases to address.⁶ Most illegal immigrants are actually those who overstay their visas, whereas a lesser portion of them are those who unlawfully travel across the U.S. border. In fact, almost half of illegal immigrants were originally legal since they came to America with unexpired or legal visas, but they overstay their visas and thus become unauthorized.⁷ Nevertheless, both groups of immigrants pose a complex problem for American authorities.

² Camilo Montoya-Galvez, “Migrant crossings at U.S. southern border reach record monthly high in December,” CBS News, December 28, 2023, <https://www.cbsnews.com/news/migrant-crossings-u-s-southern-border-record-monthly-high-december/>.

³ Nicole Ward and Jeanne Batalova, “Frequently Requested Statistics on Immigrants and Immigration in the United States,” Migration Policy Institution, March 14, 2023, <https://www.migrationpolicy.org/article/frequently-requested-statistics-immigrants-and-immigration-united-states>.

⁴ Claire Klobucista, Amelia Cheatham, and Roy Diana, “The U.S. Immigration Debate,” Council on Foreign Relations. Last modified June 6, 2023, <https://www.cfr.org/backgrounder/us-immigration-debate-0>.

⁵ Klobucista, Cheatham, and Diana, “The U.S. Immigration Debate.”

⁶ Ibid.

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Consequences of the Immigration Crisis and Attempted Policy Solutions

With the severity of the current situation in mind, the immigration crisis has resulted in notable implications, economic or otherwise, for American communities, most of which are not even near the border. First and foremost, illegal immigration negatively impacts the American native work force overall. An estimated 7.6 million undocumented immigrants work in the U.S. as of 2017, accounting for nearly 5 percent of all workers.⁸ Recently, a government report from the U.S. Commission on Civil Rights noted that illegal immigration has generally depressed both wages and employment rates for low-skilled American citizens, a disproportionate number of whom are minorities.⁹ This observation is reaffirmed by a report from the Migration Policy Institute.¹⁰

Undocumented immigrants drive down the price of labor because they are willing to work for lower pay. Even if certain businesses do not hire these immigrants, they will often perform poorly since they cannot outcompete the firms that do and can spend less on wages.¹¹ Furthermore, as stated in a 2016 article, the annual salary of high school dropouts has decreased by \$800 to \$1500 because of the high influx of illegal and legal immigrants in America, which

⁷ Robert Warren, "US Undocumented Population Continued to Fall from 2016 to 2017, and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year," Center for Migration Studies, January 16, 2019, <https://cmsny.org/publications/essay-2017-undocumented-and-overstays/>.

⁸ Krogstad et al., "A majority of Americans say immigrants mostly fill jobs U.S. citizens do not want," Pew Research, June 10, 2020, <https://www.pewresearch.org/fact-tank/2020/06/10/a-majority-of-americans-say-immigrants-mostly-fill-jobs-u-s-citizens-do-not-want/>.

⁹ United States Commission on Civil Rights, "The Impact of Illegal Immigration on the Wages and Employment Opportunities of Black Workers," April 4, 2008, https://www.usccr.gov/pubs/docs/IllegImmig_10-14-10_430pm.pdf.

¹⁰ "The Economics and Policy of Illegal Immigration," Migration Policy Institute, December 2, 2009, <https://www.migrationpolicy.org/multimedia/illegal-immigrations-effects-us-economy-and-policy>.

¹¹ Dennis Jacobe, "The Real Impact of Illegal Immigration," Gallup Business Journal, September 14, 2006, <https://news.gallup.com/businessjournal/24448/real-impact-illegal-immigration.aspx>.

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has expanded the low-skilled workforce by about 25 percent.¹² Unauthorized migrants are replacing about 1.5 million American workers every year at a cost of roughly nine billion dollars.¹³ Thus, contrary to the belief of many, illegal immigration does inflict some kind of harm to the American workforce. However, illegal immigrants often occupy unwanted jobs in areas such as farming, construction, and the service industry, so their impact on the job market is not as bleak as one may believe.¹⁴

Second, illegal immigration causes a tremendous drain on public funds and hence U.S. taxpayers. For one, unauthorized immigrants tend to participate in government assistance programs at higher rates than natives. The higher cost of all the services provided to such migrants and the lower taxes they pay due to their lesser earnings inevitably implies that on a year-to-year basis, immigration can create a deficit of at least \$50 billion—a financial burden that the native population has to deal with and pay for.¹⁵ These costs come from services such as education for the children of unauthorized migrants and emergency hospitalizations and medical procedures. According to a 2018 study, 63 percent of households with illegal immigrants utilize at least one kind of welfare program like TANF, while only 35 percent of citizen households do.¹⁶ This same study demonstrated that non-citizen families participated in food programs and Medicaid at a much higher rate than citizen families—45 versus 21 percent and 50 versus 23

¹² George J. Borjas, “Yes, Immigration Hurts American Workers,” *Politico Magazine*, September 2016, <https://www.politico.com/magazine/story/2016/09/trump-clinton-immigration-economy-unemployment-jobs-214216/>.

¹³ “Why Illegal Immigration is Bad,” Federation for American Immigration Reform, 2023, <https://www.fairus.org/issue/illegal-immigration/whats-wrong-illegal-immigration>.

¹⁴ Jeffrey S. Passel and D’vera Cohn, “2. Occupations of unauthorized immigrant workers,” Pew Research Center, last modified November 3, 2016, <https://www.pewresearch.org/hispanic/2016/11/03/occupations-of-unauthorized-immigrant-workers/#:~:text=types%20of%20jobs,-,State%20occupation%20patterns,this%20measure%20in%2032%20states>.

¹⁵ Borjas, “Yes, Immigration Hurts American Workers.”

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percent, respectively. Moreover, the costs of incarceration, processing, and trials for unauthorized migrants must come from U.S. taxpayers.

As a whole, the United States is simply unprepared to handle the skyrocketing number of migrants. The nation does not have the resources and policies in place to accommodate millions of people that are trying to escape violence or poverty all at the same time. Congress has certainly tried to step in and address the immigration issue. For example, they passed a bill in February 2024 that allocates millions of funding dollars to hiring and using more border patrol agents, but the process of fielding more agents will take quite a bit of time considering the level of scrutiny involved.¹⁷ Nevertheless, the U.S. legislative branch has failed to reach agreement on major, comprehensive immigration reform for numerous years, effectively moving some major policy decisions into the executive and judicial branches of government and fueling debate in the halls of state and municipal governments.¹⁸ Consequently, federal responsibility for the direction of immigration control has largely fallen on the executive branch, presidents, and their various agencies.

Under the Trump administration, immigration was a major issue emphasized during both his campaign and presidency. It is of no surprise, then, that he made bold executive actions to reform and change asylum, deportation, and border policy.¹⁹ Because he wanted a way to physically stop drugs and gangs from coming into the country, he committed to extending the

¹⁶ Steven A. Camarota and Karen Zeigler, “63 of Non-Citizen Households Access Welfare Programs,” Center for Immigration Studies, November 20, 2018, <https://cis.org/Report/63-NonCitizen-Households-Access-Welfare-Programs>.

¹⁷ Elaine Kamarck, “Fixing the border: Four reasons the immigration crisis isn’t going away,” Brookings Institute, February 29, 2024, <https://www.brookings.edu/articles/fixing-the-border-four-reasons-the-immigration-crisis-isnt-going-away/>.

¹⁸ Klobucista, Cheatham, and Diana, “The U.S. Immigration Debate.”

¹⁹ Ibid.

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border wall between the U.S. and Mexico. After attempts to earn federal funding, which led to a government shutdown, he declared a national emergency in order to gain the necessary funds for the barrier. Additionally, Trump pushed a zero-tolerance policy so that officials arrested and prosecuted anyone crossing the southern border without authorization. He also sent more personnel to the border and tried to implement travel bans on refugees and new restrictions on asylum seekers, but his efforts to end the DACA program were unsuccessful.²⁰ In relation to local governments, he tried to take away federal funding from sanctuary cities and localities that did not implement his immigration policies.

With the start of the COVID-19 pandemic, Trump implemented more policies to advance immigration control. He tried to reduce travel to America, stop any asylum procedures, refuse entry for migrants at the U.S.-Mexico border, and discontinue countless foreign worker visas and green cards.²¹ When Biden began his presidency, he vowed to take away all of Trump's immigration regulations, but he has not necessarily been able to remove every policy because some of them have proven necessary to handle the record number of immigrants that continue to enter the nation. Nevertheless, his administration has so far reduced immigration enforcement inside the country, ended most travel bans, restarted green card processing, stopped the expansion of the border wall, orchestrated the reunification of migrant families, and increased the refugee limit and the amount of Temporary Protected Statuses.²²

The Biden administration has encountered less success when trying to reverse other Trump regulations. For instance, when Biden tried to eliminate the Remain in Mexico policy,

²⁰ Klobucista, Cheatham, and Diana, "The U.S. Immigration Debate."

²¹ Ibid.

²² Ibid.

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multiple states and eventually the Supreme Court went against him.²³ Furthermore, Biden's desire to continue and further the DACA program faces various legal challenges, and he has been forced to navigate illegal immigration in a post-pandemic world. To try to solve the root causes of the immigration crisis, Biden attempted to send \$4 billion of help to nations in Central America.²⁴ His administration has pushed for a comprehensive immigration reform in various ways, but his attempts to establish new immigration legislation have been often rejected by Congress.²⁵

Current Dynamic Among Different Levels of Government

In the United States today, the local, state, and federal governments function according to a certain dynamic for immigration and dealing with illegal migrants. According to decades of judicial and legal precedent, which will be explored later in this paper, the national government as a whole is usually responsible for creating overarching regulations about immigration and making sure that states and localities enforce these regulations in their own particular way. The Supreme Court specifically has helped to establish that the final authority to regulate immigration and matters concerning aliens in or seeking to enter the United States is vested with the federal government, first and foremost. For instance, the case *De Canas v. Bica* has proven consequential in setting up the immigration dynamic among the various levels of American government.²⁶

Besides such judicial precedent, the Immigration and Nationality Act, or INA (1952) is

²³ Daniel Wiesser, "Biden's bid to end 'remain in Mexico' immigration policy blocked by judge," Reuters, December 16, 2022, <https://www.reuters.com/legal/government/bidens-bid-end-remain-mexico-immigration-policy-blocked-by-judge-2022-12-16/>.

²⁴ Klobucista, Cheatham, and Diana, "The U.S. Immigration Debate."

²⁵ Ibid.

²⁶ *De Canas v. Bica*, 424 U.S. 351, 354 (1976).

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the most significant and major of piece of legislation that has governed America's immigration policy and dictates how the national government interacts with state and local ones about illegal aliens. This law is the main way that the federal government exercises its authority over immigration in states and localities, and the INA additionally contains numerous implications for how jurisdictions are to respond to immigration directives from the national government.²⁷

Whenever state and local governments enforce immigration policies, their actions have to be consistent with the regulations and requirements established by the Immigration and Nationality Act.²⁸

The U.S. Department of Homeland Security has also established how states and localities are to address immigration policy in light of Supreme Court rulings and various pieces of legislation. The DHS was formed as a result of the events of 9/11 but does possess additional discretion over immigration, since it deals with national defense. Drawing direction from the specifics of the Immigration and Nationality Act, the DHS has released guidelines for state and local governments to follow. The DHS has established that the INA allocates “various responsibilities for its implementation and enforcement” to the President and a number of Executive Branch officials—including the Secretary of Homeland Security, the Attorney General, and the Secretary of State.²⁹ According to the DHS, any kind of action for immigration taken by state and local governments has to fall under the category of “genuine cooperation” with the federal government, to ensure that they are not infringing upon federal authority.³⁰

²⁷ Immigration and Nationality Act, 8 U.S.C. §§ 1101 et seq. (1952).

²⁸ “Immigration and Nationality Act,” U.S. Citizenship and Immigration Services, July 10, 2019, <https://www.uscis.gov/laws-and-policy/legislation/immigration-and-nationality-act>.

²⁹ “Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters,” U.S. Department of Homeland Security, September 20, 2011, <https://www.dhs.gov/xlibrary/assets/guidance-state-local-assistance-immigrationenforcement.pdf>.

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In America today, various states have created different policies on how to handle illegal migrants, even though the national government has instituted overarching guidelines for them to obey. Treatment of such immigrants will thus differ quite significantly depending on the state. This inconsistency in crisis response has resulted in a dysfunctional immigration system across the nation, with governments and officials who have been struggling to work together to address the situation. As one report states, the current local law enforcement situation for immigration appears more “like a patchwork of overlapping and potentially conflicting authorities than a systematic nationwide approach” for immigration law and enforcement.³¹ Among the states, general consensus about how to approach unauthorized immigrants and their impact on communities does not exist.

California and Massachusetts, for example, currently permit illegal immigrants to receive drivers licenses, healthcare, and in-state tuition at universities.³² These liberal-leaning states may even direct their state and local officials not to comply fully with federal enforcement officials, such as ICE (Immigrations and Customs Enforcement) or the National Guard, in order to protect the interests of illegal immigrants within their borders. On the other hand, more conservative states such as Texas would never try to offer benefits for undocumented individuals. Instead, such states strictly adhere to the direction of federal law and may initiate even tighter immigration standards through the means of state legislation.³³

Texas has recently received attention in 2024 for asserting its “constitutional right to

³⁰ “Guidance on State and Local Governments' Assistance in Immigration Enforcement and Related Matters,” U.S. Department of Homeland Security.

³¹ Monica Varsanyi et al., “Immigration Federalism: Which Policy Prevails?” Migration Policy Institute, October 9, 2012, <https://www.migrationpolicy.org/article/immigration-federalism-which-policy-prevails>.

³² Klobucista, Cheatham, and Diana, “The U.S. Immigration Debate.”

³³ Ibid.

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defend itself from the invasion” at its border through continual funding of Operation Lone Star, to fill the national security gaps opened by Biden and the federal government.³⁴ Taking matters into their own hands, the Texas government has sought to establish its own crime-fighting policies by hiring thousands of border personnel, leading to over 39,000 criminal arrests and millions of drug doses seized since 2021.³⁵ Texas has also tried to install barriers on the border and close open gaps—actions which have induced much controversy but decreased undocumented migration.

Within a specific state itself, different kinds of officials may also hold inconsistent policies about how to handle illegal immigrants. A 2012 study, for example, indicated that sheriff’s deputies and police officers within their respective individual localities will have different procedures for responding to a potential unauthorized migrant. In addition, this study demonstrated that only “39 percent of chiefs and 33 percent of sheriffs have written policies on this topic.”³⁶ This inconsistency inside certain localities and states simply furthers the confusion and inefficiency of the U.S. immigration system.

Inevitably, differences of opinions among and within states will result in intranational tension, and variations of policy between federal leaders and state governments has given rise to conflict and complicated situations. For instance, reports show that the city of New Haven, Connecticut has had tensions with the national government because its innovative immigration policies conflict with federal standards and the actions of federal officials in the city itself.³⁷ New

³⁴ “Texas Upholds Constitutional Right To Defend Itself From Invasion,” Office of the Texas Governor press release, February 23, 2024 on Office of the Texas Governor website, <https://gov.texas.gov/news/post/texas-upholds-constitutional-right-defend-itself-from-invasion>.

³⁵ Ibid.

³⁶ Varsanyi et al., “Immigration Federalism: Which Policy Prevails?”

³⁷ Ibid.

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Haven, however, is not alone in its disputes with national enforcement. Generally, the idea of federal preemption, which will be explored later in the paper, has driven America's immigration politics and given the federal government priority over state and local ones. Nevertheless, states and localities which may disagree with certain policies have grown resentful of their superiors. Such resentment is demonstrated in frequent deliberate disregard from states or localities for initiatives or policies put into place by presidential administrations or congressional legislation. Gridlock, a chaotic immigration system, and undocumented migrants are the unfortunate results of ineffective communication and policy creation among the federal government, states, and localities.

As a result, numerous political analysts have espoused various ideas on how immigration enforcement should function with respect to federalism, which is a foundational American principle that dictates how power is shared and divided between state and federal governments.³⁸ According to some experts, federalism comes from the desire of the Founding Fathers to create “a unified national government of limited powers, while maintaining a distinct sphere of autonomy in which state governments could exercise a general police power.”³⁹ Immigration federalism itself can be defined as the responsibility of states and localities to make and implement immigration law and policy.⁴⁰ For immigration, U.S. states and localities have historically not fulfilled their traditional role of federal policy implementation but have instead opted to establish and operate immigration policies on their own accord. The rise and existence of tension among the three levels of government is therefore not surprising.

³⁸ “Constitution Annotated: Federalism and the Constitution,” Congress.gov, n.d., https://constitution.congress.gov/browse/essay/intro.7-3/ALDE_00000032/.

³⁹ Ibid.

⁴⁰ Varsanyi et al., “Immigration Federalism: Which Policy Prevails?”

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Even though the federal government has historically held control over immigration enforcement, the trend towards devolution—the handover of more power from the national government to states and localities—has disrupted decades of consistent policy from federal officials. Residents, especially immigrant ones, also no longer trust their state and local enforcement which have begun to crack down on unauthorized activity, and there is confusion about which policy will ultimately prevail.⁴¹ Many policymakers and officials at all levels of American government are thus faced with the following complex dilemma. In light of the system of federalism, what is the most constitutional and yet still effective way of tackling the U.S. illegal immigration situation? Are state and local governments legally obligated to listen to the federal government and its regulations, and is immigration enforcement even a federal responsibility? Furthermore, is the brokenness of the current system directly causing the migrant crisis which has only continued to escalate in recent years?

Constitutional Ideas and Jurisdictional Theory

In order to address the previous questions, successful policymakers must closely examine what the Constitution and historical precedence have dictated throughout American history. A lack of coordination among various policymaking bodies for immigration enforcement has created cross-jurisdictional conflict and overlap, which results in uncertainty among immigrants regarding which policy will prevail. The Constitution, though, offers insight into solving this federalist dilemma about immigration, while various judicial and political principles have emerged to provide additional insight. As the Founding Fathers began to establish and develop the United States Constitution, they managed to include two seemingly conflicting ideas in this foundational document.

⁴¹ Varsanyi et al., “Immigration Federalism: Which Policy Prevails?”

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On the one hand, statements such as the well-known Supremacy Clause support the idea of national supremacy for the federal government. This constitutional clause holds that the national government and its statutes will take precedence over state governments and their statutes. Furthermore, it prevents states “from interfering with the federal government’s exercise of its constitutional powers” and from hindering operations that should solely be the responsibility of federal officials.⁴² The Supremacy Clause relates to the doctrine of preemption, which establishes that when conflict arises between federal and state laws, federal law will triumph.⁴³ The federal branches of government have the ability to preempt various forms of state regulation, and immigration is no exception to this.

Next, the Commerce Clause has been used to support federal immigration control since this issue has indirect impact on international and interstate commerce, but the original intent of the clause was merely to grant Congress control over the actual function of interstate trade and transactions itself.⁴⁴ Third, the Naturalization Clause of the U.S. Constitution, which is the congressional power most closely tied to immigration control, has been used by the Supreme Court to allow federal control of immigration. This clause notes that Congress can “establish a Uniform Rule of Naturalization,” which relates to the means by which immigrants can become citizens.⁴⁵ The text does not directly give the federal government jurisdiction over the flow of immigration. Nevertheless, the federal government has followed judicial precedent for this

⁴² “Supremacy Clause,” Cornell Law School, last modified 2024, https://www.law.cornell.edu/wex/supremacy_clause.

⁴³ “preemption,” Cornell Law School, last modified 2024, <https://www.law.cornell.edu/wex/preemption>.

⁴⁴ Randy E. Barnett, “The Original Meaning of the Commerce Clause,” *University of Chicago Law Review* 68, no. 1 (2001): 101, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5074&context=uclrev>.

⁴⁵ Constitution Annotated. “Article I Section 8 Clause 4.” <https://constitution.congress.gov/browse/article-1/section-8/clause-4/>.

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clause and continues to manage immigration without a second thought, irrespective of the fact that the Constitution gives no explicit congressional power to dictate migrant entry.

Fourth, the Necessary and Proper Clause has been employed to justify the need for federal control over immigration. The 1819 Supreme Court case *McCulloch v. Maryland* notes that the idea of necessity can be loosely interpreted to cover any legislation potentially useful or convenient for implementing other powers.⁴⁶ Supporters of national immigration authority will thus point to this constitutional clause and the *McCulloch* case as evidence for their argument. Nonetheless, this clause cannot be a catch-all for powers that Congress feels like using but are not explicitly granted by the Constitution.⁴⁷ Instead, when figuring out how much power the federal government should have over immigration, or if they should have any power at all, one should ask whether or not it is even necessary for the federal government to completely regulate and control immigration.

When giving the federal government authority over immigration, political analysts not only consider the Constitution but also the decisions of the U.S. Supreme Court that serve to interpret this text.⁴⁸ During the past several decades, the Supreme Court has established a historical precedent that the authority to regulate immigration and matters concerning aliens in or seeking to enter the country is actually vested with the federal government. The Court declared in a case as early as 1953 that immigration control is an inherently sovereign power meant for federal oversight. In this case, America's immigration policy is "vital and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations [and] the

⁴⁶ *McCulloch v. Maryland*, 17 U.S. 316, 413-15 (1819).

⁴⁷ Congress.gov. "Constitution Annotated: The Necessary and Proper Clause: Overview." https://constitution.congress.gov/browse/essay/artI_S8_C18_1/.

⁴⁸ Victor Romero, "Who Should Manage Immigration – Congress or the States?" in *Immigrant Rights in the Shadows of Citizenship*, ed. by Rachel Ida Buff (New York: University Press, 2007).

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war power” and is “so exclusively entrusted to the political branches” of the federal government.⁴⁹ Likewise, from the case *Toll v. Moreno*, the Supreme Court decided that the primary authority over immigration should come from the national government.⁵⁰

The sovereignty of the states, on the other hand, also shows up in other parts of the Constitution, such as the Tenth Amendment which is found within the Bill of Rights. According to this amendment, powers not explicitly given to the federal government or barred from the state government will be granted to lower levels of authority—states, localities, and the common people.⁵¹ The text of the Tenth Amendment has been employed in the ongoing discourse regarding national supremacy versus state supremacy, but no decisive, situational guidelines have been established for the nation to follow. The truth remains that in the Constitution, the Founding Fathers did not actually include anything about the congressional power to regulate the movement of noncitizens into and out of the country. The Tenth Amendment declares that the states will hold powers which are not barred from them and not explicitly given to the feds. Hence, one could argue that the state and local governments should actually have significant jurisdiction over immigration, despite what the Supreme Court seems to indicate.

The simultaneous existence of these two conflicting legal realities presents an intriguing dilemma for legislative and judicial officials in American government that are navigating the illegal immigration crisis. At the end of the day, understanding the text and original meaning of the Constitution undermines the concept that the federal government has to power to control all

⁴⁹ *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953).

⁵⁰ *Toll v. Moreno*, 458 U.S. 1, 10 (1982).

⁵¹ Nicholas J. Dilley, “Constitutional Amendments—Amendment 10—‘Rights to the States or to the People,’” Ronald Reagan Presidential Library & Museum, n.d., <https://www.reaganlibrary.gov/constitutional-amendments-amendment-10-rights-states-or-people>.

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sides of immigration.⁵² The Constitution does contain implications about citizenship protocol and the process of migration in Article I, in terms of what kind of people may enter and must leave, but conservative constitutional scholars argue that the law of the land does not give Congress the authority to legislate on general immigration in every area.⁵³ In Articles I and II, a written power over immigration does not exist in the midst of the detailed list of federal powers, with actions as minor as making roads.⁵⁴

If the Founding Fathers included minor powers but omitted to mention a consequential power like immigration, one can reasonably conclude that immigration authority was not necessarily meant to be in the hands of national officials—whether exclusively or even cooperatively with localities. James Madison actually asserted that migrant control is a “power no where delegated to the federal government” in response to the Alien and Sedition Acts of 1798.⁵⁵ Thomas Jefferson took this sentiment even further and noted that immigrants are “under the jurisdiction and protection of the laws of the state” where they reside.⁵⁶ Clearly, the federal government does not hold superior authority to control immigration.

As a side note, jurisdictional theory provides additional insight into how law and philosophy intersect with immigration federalism and the idea of sovereignty. This theory asserts that “while political states are morally required to respect everyone’s human rights, they are

⁵² Ilya Somin, “Does the Constitution Give the Federal Government Power Over Immigration?” *Cato Unbound*. September 12, 2018. <https://www.cato-unbound.org/2018/09/12/ilya-somin/does-constitution-give-federal-government-power-over-immigration>.

⁵³ Romero, “Who Should Manage Immigration – Congress or the States?”

⁵⁴ Somin, “Does the Constitution Give the Federal Government Power Over Immigration?”

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

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obligated to protect the rights of only those within their territory.”⁵⁷ The obligation to protect those within one’s jurisdiction is clearly applicable to the U.S. national government and how it treats immigrants and non-immigrants within the country. Even more, though, jurisdictional theory can transfer over to the idea of sovereignty for the various states in America. States, not just the federal government, have a responsibility to care for everyone residing within their borders. Thus, they have an obligation to create policies about immigration and control its effects on civilians.

Proposals to Effectively Address the Immigration Crisis

To determine the proper role of the different levels of U.S. government in the immigration crisis, this paper has first sought to establish an understanding of how it affects American communities and the current dynamic of the governing institutions. The past several decades of the American immigration crisis have produced instability for the general public. Besides job market volatility, undocumented immigration has also impacted how states distribute benefits such as Social Security and SNAP. Motivations for the government to enforce border security include protecting the economy and the culture of a nation. The Trump and Biden administrations have thus tried to employ various policies to address this progressively complicated political challenge, but upon assessing the results of their efforts, neither one of them has generated any kind of permanent, beneficial impact through their policies. How, then, can American politics even begin to solve the complex illegal immigration crisis in light of federalism?

The most effective and sustainable answer to this crisis starts by focusing on the states themselves, especially the border ones. As of today, the federal government seems to overrule

⁵⁷ Christopher Heath Wellman, “Immigration: Jurisdiction,” The Stanford Encyclopedia of Philosophy, last modified October 21, 2019, <https://plato.stanford.edu/entries/immigration/#Juris>.

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state governments in the sphere of immigration. Even though there is precedent for this kind of preemption in politics, better solutions for illegal immigration may in fact come from state and local governments themselves. Localized communities and states are the ones closely affected by the problem and will prove more knowledgeable in designing specific solutions to meet their regional needs. In accordance with the Tenth Amendment as previously discussed, states must maintain a nuanced position on state sovereignty and the ability of localities to make policy decisions for themselves. Nevertheless, while the Constitution does not explicitly order the federal government to control immigration, state and local officials still have a legal obligation to work together with the federal government and thoughtfully discern how to follow its regulations.

Immigration needs to be managed with a balanced approach that respects the authority of precedent and constitutional federalism without ignoring the reality that states and localities are usually in a better position to handle the current immigration situation, compared to national officials. The federal government was never meant to have complete authority over immigration, but because of continued legislative and judicial precedent, states and localities are subject to national law for immigration enforcement. Although the federal government has granted certain powers to state and local governments, the current immigration crisis in America shows that even within immigration federalism itself, there needs to be improvements and change. Comprehensive reform for immigration in general will be difficult to produce, but it is necessary to help alleviate the pressure that the immigration system is facing today.

First, there needs to be more consistency and continuity among states and localities regarding which policies they are enforcing and how they treat illegal immigrants. Border states in particular—California, Texas, New Mexico, Nevada, and Arizona—all hold to different

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protocols about how to respond to undocumented migrants. Some of them maintain more conservative positions while others do not, so they are most definitely not on the same page about working together to secure the border. Because states should certainly hold some resemblance of sovereignty, they will not all share exactly the same opinions about procedure. However, the differences among the states should not be drastic enough to cause tension and confusion for immigrants, illegal or legal.

This thesis has already mentioned how inconsistency has led to disorder not just alongside the southern border but in the country as a whole. For instance, some states have sanctuary cities, which limit their cooperation with federal authorities, hinder illegal immigration enforcement, and refuse to help ICE locate undocumented individuals.⁵⁸ Other states, though, intentionally work together with federal officials and refuse to adopt sanctuary policies. While this inconsistency among states is technically legal, it has done nothing but contribute to the havoc of the current American immigration crisis. If states and localities can strive to communicate with each other and reach general consensus, numerous problems in the American immigration system could be alleviated.

A second comprehensive solution to illegal immigration crisis would come from a more effective delegation of authority among the various branches and levels of government. This solution comes from a more practical standpoint. Particularly, the American government must recognize the need for a balance of responsibility between the federal and state governments. On the one hand, states and localities will know the specific effects of the immigration crisis on their area and what steps they should take to deal with the repercussions. State and local governments have greater awareness and insight about the ins and outs of their community and demographic,

⁵⁸ Jessica M. Vaughan and Bryan Griffith, "Map: Sanctuary Cities, Counties, and States," Center for Immigration Studies, December 22, 2023, <https://cis.org/Map-Sanctuary-Cities-Counties-and-States>.

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so they are better equipped to address issues on the ground, so to speak. They have the necessary insight to create specific protocols that work best for the situation of their regions, since not all regions will be the same.

On the other hand, the federal government has the capability to pull together vast amounts of resources and funding. The nature of the national government implies that they will have access to more finances and possess greater capabilities than state governments. The U.S. system naturally grants more power to federal officials, and they have resources like the Federal Reserve and the National Guard at their disposal. However, the national government does not hold as much understanding and insight as state governments do regarding the different regions throughout the nation. This truth is demonstrated by data which shows that U.S. communities have more confidence in their state government than the federal government.⁵⁹ Accordingly, how can the federal government be reconciled with the states about immigration?

To begin, the federal government should not be in control of absolutely everything for immigration, but they should be the primary engine to give money, resources, and assets towards the states and their various needs. State governments should be responsible for taking this federal funding and using it to implement certain policies as they deem fit. Money from the federal government will inevitably have some strings attached for states and localities, but this dichotomy will work effectively nevertheless and prove better than today's system, in light of how uncoordinated it is. While the federal government can provide the capital, state and local governments will employ this funding to provide case-by-case enforcement and decide how immigration control works best for them. This proposed dynamic relates to the idea of political self-determination for policymaking.

⁵⁹ Frank Newport, "Americans' Views on Federalism as States Take on More Power," Gallup, July 15, 2022, <https://news.gallup.com/opinion/polling-matters/394823/americans-views-federalism-states-power.aspx>.

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Third and finally, another potential solution in response to the undocumented migrant situation stems from an intentional return to the original, constitutional dichotomy between federal and state governments as established by the Founding Fathers. This paper has discussed the system of federalism in great detail, including the various constitutional ideas and judicial principles behind it, and applied these concepts to the immigration crisis. Even though the Constitution appears to contain conflicting opinions on which level of government should ultimately control immigration, this paper has established that the answer is more nuanced than it originally seems.

The Founding Fathers intended for the details of immigration protocol to fall under the discretion of individual states, as mentioned earlier and demonstrated by the Tenth Amendment and personal writings by the Founders themselves. However, given the existence of historical precedence and the Supreme Court's influence in the past several decades, people have taken the Supremacy Clause and other portions of the Constitution in order to justify federal control. The country's Framers possessed a kind of wisdom, insight, and intellect that does not really exist anymore in today's society, so there must have been a significant reason they decided not to explicitly grant the federal government complete and direct immigration control.

Furthermore, the Founders either intended for national officials to handle only overarching immigration policy for the entire nation or to delegate the majority of immigration authority to the states. They did not mean for the federal government to possess ultimate control and the ability to dictate every action from the states, hence the brokenness of the current system. Accordingly, delegation of authority and a careful balance of immigration control between different levels of American government is not only effective and practical, but it is arguably more constitutional and better for the country.

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All three of these proposed solutions operate under the assumption that the federal and state governments will actually strive to provide comprehensive border security and immigration reform. The federal and state governments must strive to bolster not just border security but interior enforcement as well. If they neglect to actually execute immigration enforcement and crack down on undocumented migration, this paper's proposals to effectively address the immigration crisis will not produce much success in the first place. A careful balance of national and state powers will fail to alleviate the illegal immigration situation if government officials continue to hold lenient immigration policies in the first place.

Conclusion

In the United States today, the illegal immigration situation has turned into a crisis that nobody seems to be able to resolve. Border crossings have reached record highs, and undocumented migration has negatively affected American society for several decades now, whether it relates to the job market or the viability of numerous government assistance programs. While presidential administrations and congressional members have attempted to address this issue in various ways, state governments and local officials have also implemented their own protocols for various circumstances. The current dynamic between federal and state governments grants the national government more control over immigration, as a result of historical precedence.

However, this thesis has demonstrated that the current immigration dichotomy among America's various levels of government is not only unconstitutional but ineffective. A large reason for the magnitude of today's immigration problems comes from a lack of attention to the Tenth Amendment and the nuances of constitutional clauses being used to justify complete federal superiority in immigration. Unfortunately, even if political officials and analysts try to

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revert back to the original intended dichotomy of federalism as established by the Framers, the United States as a country has fallen too deep into the hole of national government supremacy, where the states do not have much say over immigration policies and delegating tasks.

Nevertheless, this probable lack of major change does not mean that the U.S. government cannot begin to change its procedures now. Anything is possible, and it is not too late for the country's politicians to start advocating for balanced and constitutional immigration enforcement, in order to counter the illegal immigration situation and ensure that the country's national security remains bolstered and intact. The immigration crisis may not be perfectly resolved, but small amounts of legal and procedural change can go a long way in alleviating parts of the problem.

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