



# **An Immigration Patchwork in the States: How Partisanship, Regionalism, and Shifting Priorities Impact State Immigration Laws**

*November 2018*



**BIPARTISAN POLICY CENTER**

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## ACKNOWLEDGEMENTS

The authors would like to thank the following individuals for their contributions to this report: Laura Hall, Hunter Hallman, Jordan LaPier, Tim O'Shea, Raven Quesenberry, Joshua Rodriguez, and Katie Sullivan.

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# Introduction

Congress has traditionally held exclusive authority when it comes to national immigration legislation. But over the last decade, influenced by factors both national and local, an increasing number of states have enacted their own immigration laws, seeking to regulate issues related to education, enforcement, and employment within their states. Two pieces of federal immigration legislation, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 helped this trend by authorizing states to engage in limited immigration enforcement and to extend or limit public benefits to noncitizens in their states, including undocumented immigrants.<sup>1</sup>

This trend of additional legislating at the state level also stems from state government efforts to manage immigration within their states. For instance, immigration-control measures from the 1990s, especially California's Proposition 187, served as the forerunner for laws such as Arizona's Senate Bill (S.B.) 1070 in 2010 and Texas's S.B. 4 in 2014, both of which sought to control illegal immigration in those states.<sup>2</sup> More recently, many states, including California, have gone in the opposite direction, enacting legislation more favorable to immigrants to counter federal immigration enforcement efforts. Finally, political, social, and institutional factors within states as well as debates over immigration and immigration policy at the national level have contributed to this legislative activity, especially in the wake of Congress's failure to pass comprehensive immigration reform at the national level.

A review of a database<sup>3</sup> and reports<sup>4</sup> of state immigration laws enacted since 2005 and compiled by the National Conference of State Legislatures (NCSL) shows several trends that shed light on the increasing prevalence of state immigration legislation. First, the number of states that enacted immigration laws expanded from 25 in 2005 to 46 in 2007 and 49 in 2017, as more state legislatures weighed in on immigration policy issues. Second, the Bipartisan Policy Center's review found that state legislatures enacted a total of 2,100 immigration-related laws between 2005 and 2017, with identification and driver's licenses, budgets, and enforcement emerging as the top three categories of laws enacted during this period. Some states were more active than others, however. California, Utah, and Virginia enacted the most immigration laws between 2005 and 2017, accounting for 38 percent of all state immigration laws enacted during this time.

BPC also found that partisanship in state government can shape the content of these laws, albeit with major caveats. Democratic- and Republican-led governments have enacted different sets of laws—especially ones related to public benefits and driver's licenses—that take opposite approaches to immigrants in their states, reflecting the influence of local and external actors as well as shifts in national party platforms. However, demand for workers in key state job sectors, the need to regulate important state industries, and federal legislation can lead both Democratic- and Republican-led governments to enact similar laws in these areas. Regional disparities within the parties can also limit the influence of strict partisanship at the state level: Southeastern Democratic-led and Mountain State Republican-led governments have enacted laws that align more with their political counterparts than their national party platforms. In short, local economic factors and regionalism can limit the extent to which partisanship pushes Democratic- and Republican-led governments to enact diverging immigration laws.

This state-level research could have broader implications for national immigration policy and politics. Given that both parties have found some key areas of consensus around immigration at the state level, national lawmakers could use these points of agreement to guide the development of broader immigration reform that could overcome rigid partisanship. Regional differences in both parties can also play a mediating role, with conservative Democrats in the South and moderate Mountain State Republicans sharing similar policy prescriptions. Although the national debate over immigration policy will continue to exert partisan influence on this issue, the existing consensus at the state level suggests some possible avenues for breaking partisan gridlock in Washington. Conversely, deepening partisanship at the state level and enactment of state laws that attempt to push the national immigration debate in one direction or the other could further weaken efforts at bipartisanship at both levels of government.

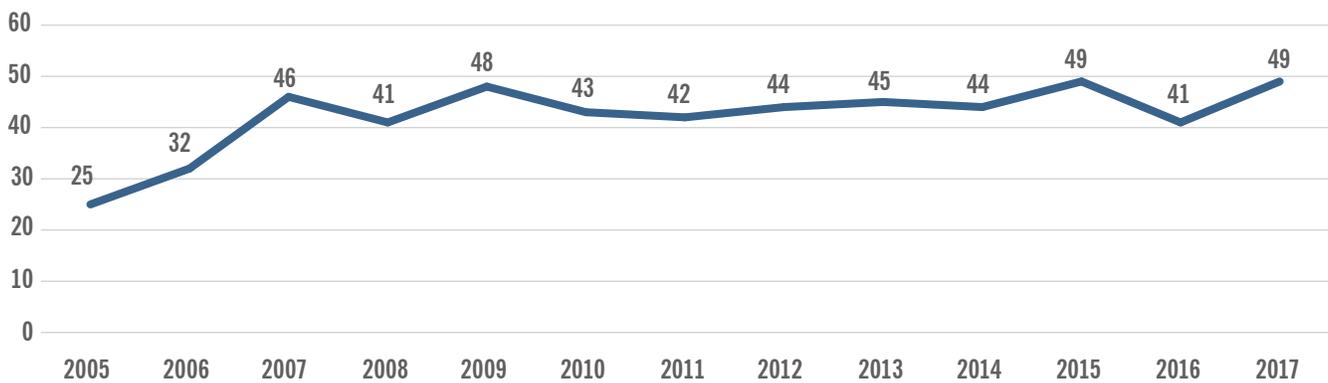


# Overview of State Immigration Legislation

## MORE STATES ARE ENACTING IMMIGRATION-RELATED LAWS

BPC’s review of the NCSL database found that an increasing number of states have enacted immigration laws covering a broad spectrum of policy areas since 2005. As Figure 1 shows, the number of states enacting these laws dramatically increased between 2005 and 2009 before plateauing at the start of the last decade. However, the last five years have seen another increase, with 2015 and 2017 showing the largest number of states enacting immigration laws recorded in the NCSL database and 49 out of 50 states enacting some law related to immigration during that time frame.

**Figure 1: Number of U.S. States Passing Immigration Laws (2005–2017)**



Source: National Conference of State Legislatures

A review of the NCSL database shows that California, Utah, and Virginia are the three states that enacted the most immigration laws between 2005 and 2017. As Figure 2 shows, these states enacted 414 laws, or 19.8 percent of the total of 2,100 state-level laws enacted nationwide in this period. The top 10 states enacted 914 laws during this period, accounting for 43.8 percent of all immigration laws enacted by states through 2017.

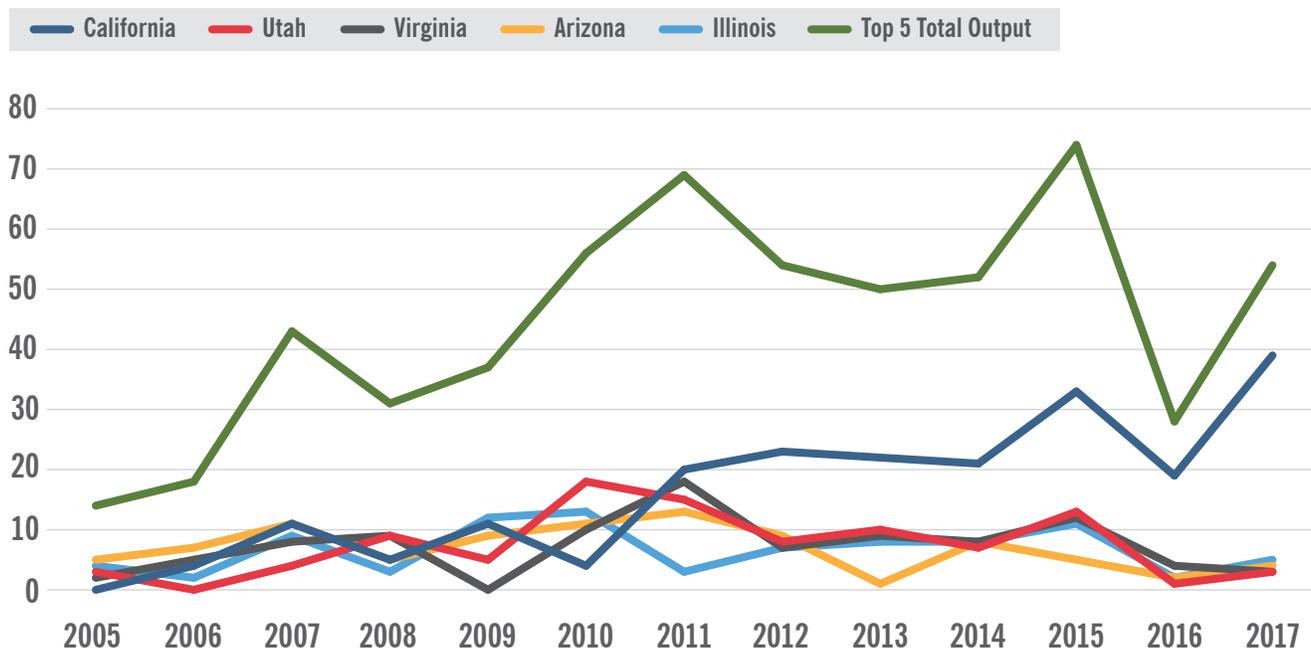
**Figure 2: Top 10 States by Number of Immigration Laws Enacted (2005–2017)**

STATE	NUMBER OF LAWS ENACTED	PERCENT OF TOTAL LAWS ENACTED
California	216	10.3%
Virginia	100	4.8%
Utah	98	4.7%
Illinois	89	4.3%
Arizona	86	4.1%
Colorado	83	4.0%
Washington	66	3.2%
Texas	61	2.9%
Florida	58	2.8%
Georgia	57	2.7%
<b>Total</b>	<b>914</b>	<b>43.8%</b>

Source: National Conference of State Legislatures

California's rise as the state that has enacted the most immigration laws has driven the increased overall output of state immigration legislation—even as other states enacted fewer laws. As Figure 3 shows, Virginia, Utah, Illinois, and Arizona had small to modest peaks in legislative activity between 2008 and 2011. In contrast, California became significantly more active in enacting immigration laws after 2011 while the other states' output decreased. Though more states enacted an increasing number of immigration laws between 2005 and 2017, the NCSL data suggests that the number of states that actively legislate in this area is small, especially if California is omitted from this group. Since 2016, almost all the state legislative output from the top five states has come from California.

**Figure 3: Number of Immigration Laws Enacted by Top Five States (2005–2017)**



Source: National Conference of State Legislatures

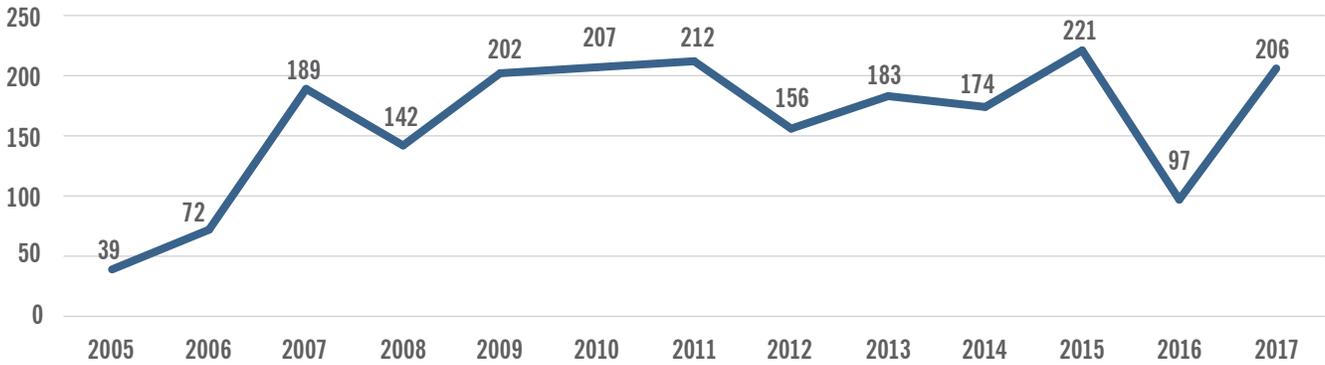
Legislatures that have longer legislative sessions and that tend to have more full-time legislators generate significantly more laws than legislatures with part-time or fully volunteer cadres of lawmakers.<sup>5</sup> Notably, these factors impact the total number of laws enacted across all policy areas, not just immigration. While 46 legislatures meet annually (with the potential for additional special sessions), the legislatures for Montana, Nevada, North Dakota, and Texas only meet in odd years.<sup>6</sup> A review of the NCSL database suggests that these biannual legislative schedules decrease the overall number of state immigration laws enacted in years they do not meet, especially since Texas (a biannual state) enacted 3 percent of all state immigration laws between 2005 and mid-2016.<sup>7</sup>

## STATES ARE ENACTING MORE IMMIGRATION LAWS IN SEVERAL DIFFERENT CATEGORIES

As noted above, the total number of state immigration laws enacted grew between 2005 and 2017. Our review found that state legislatures enacted a total of 2,100 immigration-related laws during this time as of February 2018. As Figure 4 shows, the number of laws enacted annually by states expanded significantly between 2005 and 2009, when activity changed from 39 laws to 189. While these numbers dropped after 2012, they rebounded again in 2015 and hit a peak of 221 laws in 2016.



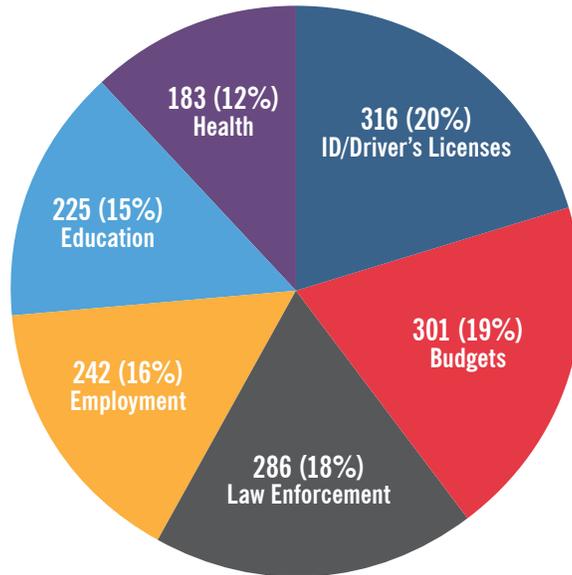
**Figure 4: Total Number of State Immigration Laws Enacted by U.S. States (2005–2017)**



Source: National Conference of State Legislatures

Among categories of state immigration laws that appear in the NCSL database, laws related to budgets, enforcement, and identification and driver’s licenses formed the three largest groups of laws enacted during this period (see Appendix A for descriptions of these categories). As Figure 5 shows, identification and driver’s license laws represent the largest category within the entire period, accounting for 316 laws, or 20 percent of all state immigration laws enacted. Laws related to budgets and law enforcement formed the second- and third-largest groups, with states enacting 301 and 286 of these laws, respectively.

**Figure 5: Number of Laws Enacted Across NCSL State Immigration Law Categories (2005–2017)<sup>a</sup>**

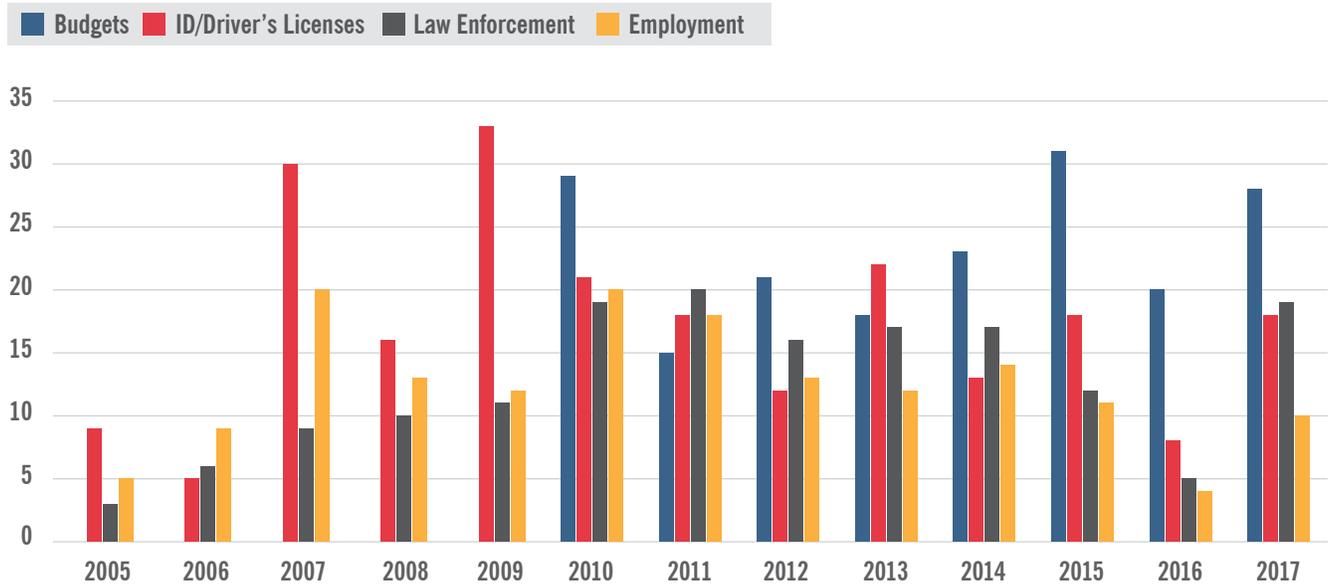


Source: National Conference of State Legislatures

Identification and driver’s licenses laws formed the largest category of immigration laws enacted by states between 2007 and 2009 as well as in 2013 (Figure 6) and may have helped increase the total number of state laws enacted during these periods. Budget-related laws formed the largest category of laws enacted by states in 2010 and between 2014 and 2017. Finally, law enforcement emerged as the largest category in 2010 and 2012; the category also sharply increased between 2016 and 2017.

<sup>a</sup> Appendix A contains the descriptions of these categories and key examples of these laws.

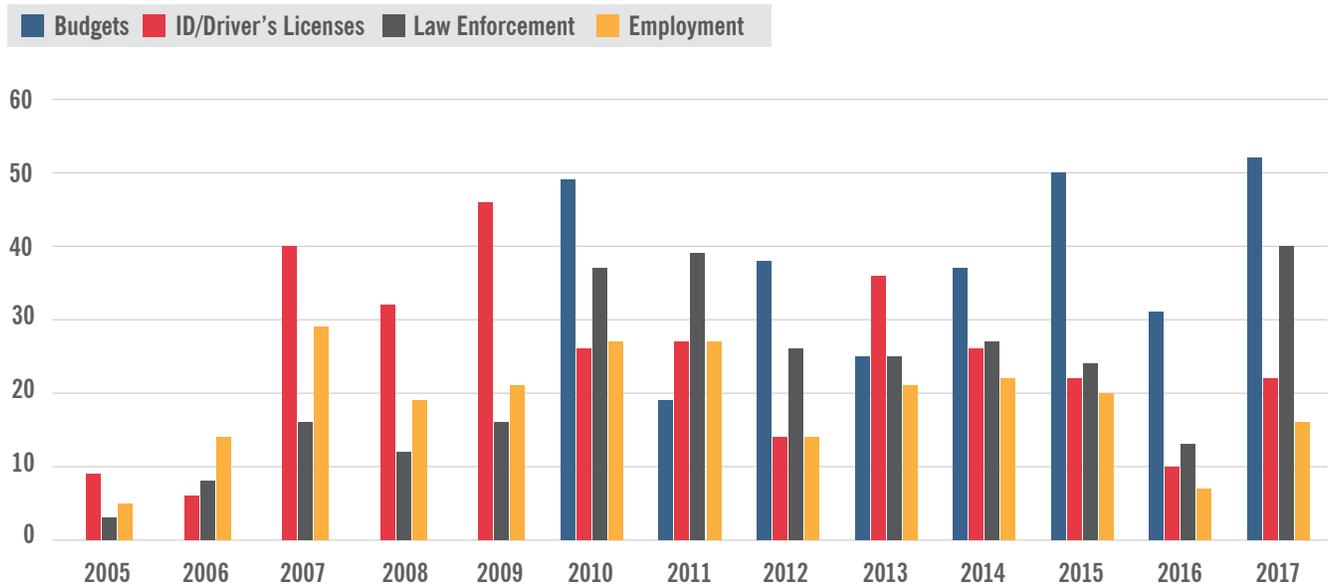
**Figure 6: Number of States Passing Immigration Laws by Category (2005–2017)<sup>b</sup>**



Source: National Conference of State Legislatures

The same pattern appears in the total number of laws enacted during this period. While NCSL did not track budget-related laws until 2010, this category had the highest number of laws enacted in a single year, with 28 states enacting 52 of these laws in 2017. In addition to this peak year, 33 states enacted 46 identification and driver's license laws in 2011, and 20 states enacted 39 laws related to law enforcement in 2011. While the overall number of enacted laws has declined since 2010, the number of enacted budget- and law enforcement-related laws has grown recently. For instance, law enforcement measures rebounded in 2017 after experiencing a significant decline since 2011.

**Figure 7: Number of Immigration Laws Passed by States by Category (2005–2017)<sup>B</sup>**



Source: National Conference of State Legislatures

<sup>b</sup> Note: The NCSL did not include budgets as a separate category in the immigration law database until 2010.



The trends in Figures 6 and 7 can be correlated with key developments in the national discussion about immigration policy and policies that target immigrant populations, such as driver's license and identification laws as well as enforcement efforts. While local political factors related to immigration and non-immigration issues can also lead state legislatures to enact immigration-related laws, the prevalence of national discussions about immigration or changes to federal policy creates a context where state laws may emerge in response.

In the case of driver's license and identification laws, the enactment of the 2005 REAL ID Act at the federal level drove the expansion of state laws relating to licenses for immigrants generally and undocumented immigrants specifically. Aside from establishing new federal security standards and requirements for state driver's licenses and identification cards, the law allows states to issue temporary driver's licenses to individuals with lawful nonimmigrant status and alternative driver's licenses to undocumented immigrants.<sup>8</sup> However, those licenses would have to be differentiated from REAL ID-compliant licenses for federal ID purposes.<sup>9</sup> The spike in laws enacted in 2013 was due to eight states and the District of Columbia enacting laws to meet a 2014 Department of Homeland Security (DHS) deadline for deciding on alternative licenses for undocumented populations.<sup>10</sup>

Another external trigger for state legislation was the Obama administration's 2012 enactment of the Deferred Action for Childhood Arrivals (DACA) program, which allows undocumented individuals who came to the United States as children to apply for temporary protection from deportation and for the opportunity to work legally.<sup>11</sup> While only Arizona and Nebraska enacted laws that target—and deny licenses to—DACA recipients specifically,<sup>12</sup> the program's introduction preceded the 2013 spike in these types of laws, suggesting that the national discussion about expanding benefits to this population contributed to this development.<sup>13</sup>

The peaks in law enforcement legislation also came during key points in the debate about the enforcement of federal immigration laws and the role that states play in this system. As Figure 7 shows, the 2011 peak occurred after Arizona enacted S.B. 1070, which requires local law enforcement to inquire about an individual's legal status in criminal and non-criminal detentions to deter undocumented immigration.<sup>14</sup> Alabama, Georgia, Indiana, South Carolina, and Utah later enacted similar pieces of legislation, citing their perception that the Obama administration failed to deter undocumented immigration through the enforcement of the nation's immigration laws.<sup>15</sup> While the number of enforcement laws declined after the U.S. Supreme Court and other federal courts struck down components of these six laws between 2011 and 2014, their emergence shows how state efforts to target undocumented immigration and the national debate about immigration enforcement were significant factors in generating these laws.

Other research on state enactment of immigration laws suggests additional factors that can influence the output of state legislatures. Scholars find that the length of a state's history of immigration and contact with immigrants,<sup>16</sup> an increase in the number of Democrats or Republicans in a state legislature,<sup>17</sup> or legislative professionalism (in other words, whether legislatures have the resources and career legislators to produce more laws)<sup>c</sup> can result in enactment of more immigration laws.<sup>18</sup> For instance, the expanding number of progressive Democratic lawmakers in California's legislature coupled with the nation's largest population of documented and undocumented immigrants established the conditions for more immigration laws in that state, many of them integrative in nature.<sup>19</sup> In contrast, Virginia lawmakers enacted more immigration legislation in 2007 targeting undocumented immigrants as corollary concerns about terrorism and the impact of immigrants on local services emerged in the state.<sup>20</sup>

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<sup>c</sup> Research on legislative professionalism defines this concept as the amount of resources available to legislatures and the capacity of legislators to pursue careers as lawmakers. See: Peverill Squire, "Measuring State Legislative Professionalism: The Squire Index Revisited," *State Politics and Policy Quarterly*, 7(2), 2007.

## THE BATTLE OVER STATE “SANCTUARY CITY” LAWS

The national debate over so-called “sanctuary cities,” and the appropriate role of state and local law enforcement in immigration enforcement generated new state laws to address this issue. The federal Secure Communities Program allows fingerprints of detained individuals transmitted by local law enforcement to the FBI to be shared with DHS for review. If the individual is believed by Immigration and Customs Enforcement (ICE) to be removable for immigration violations, ICE can issue a “detainer,” asking local law enforcement to hold the noncitizen until ICE can take him or her into custody.<sup>21</sup>

While the Bush administration created this program, its expansion under the Obama administration led localities that opposed to these practices due to their impact on immigrant communities to enact sanctuary policies, which either allow or require local jails to ignore detainer requests and which restrict other forms of cooperation between local law enforcement and ICE. Several states, including California, Massachusetts, and Connecticut, also enacted legislation extending these protections statewide. This resistance eventually led the Obama administration to replace the Secure Communities Program with the Priority Enforcement Program, which targeted individuals with specific, severe criminal histories for deportation.<sup>22</sup>

The arrival of the Trump administration renewed this debate. In addition to relaunching Secure Communities, the Trump administration made efforts to punish sanctuary jurisdictions through executive orders and Department of Justice policies, which generated new state legislation that opposed or supported these efforts. The California state legislature enacted<sup>23</sup> S.B. 54 (2017),<sup>24</sup> which prohibits<sup>25</sup> state and local law enforcement from using personnel or funds to hold, question, or share information about individuals with federal immigration enforcement unless those individuals have a conviction for specific crimes. Meanwhile, Texas enacted<sup>26</sup> S.B. 4 (2017),<sup>27</sup> an anti-sanctuary city law that prohibits cities from adopting sanctuary policies that limit cooperation with immigration enforcement authorities and allows all state and local officers to ask all detained individuals about their immigration status.

The debate over state sanctuary policies has also led to overlapping battles of jurisdiction on the state, local, and national level. For example, several California counties are suing the state government for its passage of a sanctuary state law; meanwhile, the city of Austin, Texas, enacted a law meant to circumvent their state’s anti-sanctuary law.<sup>28</sup> The federal government has also stepped into this debate, with the Trump administration suing the state of California in March 2018 for preempting the federal government’s authority over immigration enforcement.<sup>29</sup> However, a U.S. District Court ruled in July 2018 that most of the state’s law did not preempt this authority,<sup>30</sup> which may prompt other Democratic-controlled legislatures to enact similar laws. In short, the debate over immigration enforcement policies will likely continue to prompt state legislatures to take positions on these issues.

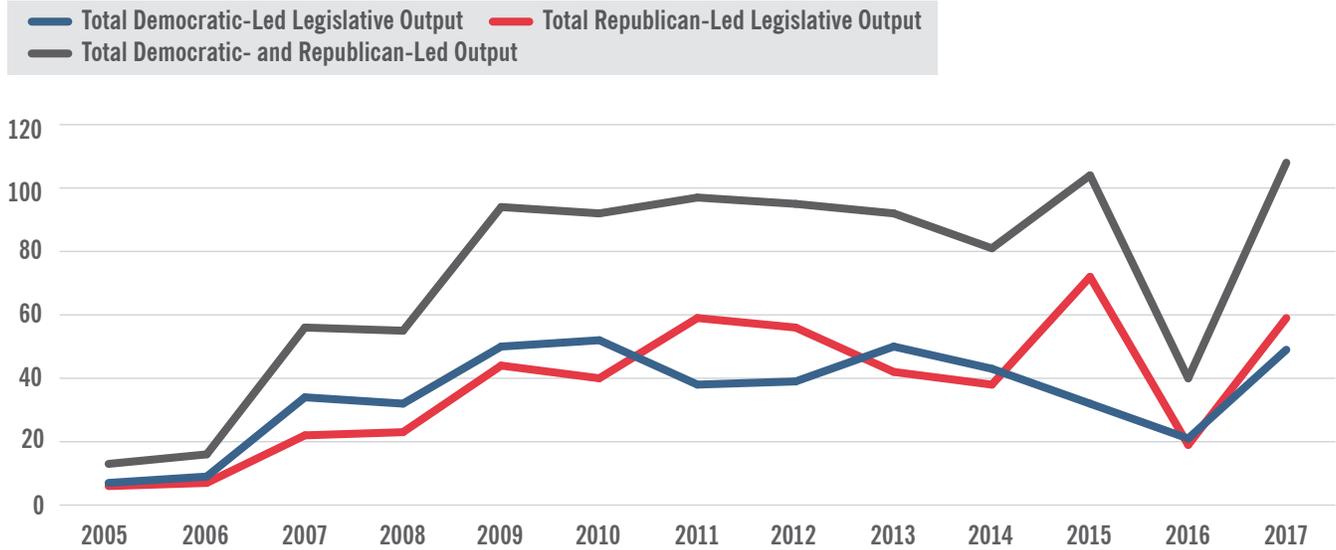
## Factors Influencing State Immigration Laws

### STATE GOVERNMENT PARTISANSHIP

Partisanship has generated significant differences in legislative output and types of immigration legislation between Democratic- and Republican-led governments. Between 2005 and 2017, Democratic-led governments (majority Democratic legislatures with Democratic governors) enacted 459 laws, and Republican-led governments (majority Republican legislatures with Republican governors) enacted 496. As Figure 8 shows, Democratic-led governments were more active between 2009 and 2010 as well as in 2013, when protecting immigrant rights became a policy priority for the party. In contrast, Republican-led governments were active between 2009 and 2011 and again in 2014 and 2015 when the party focused on promoting stricter regulation of immigration.



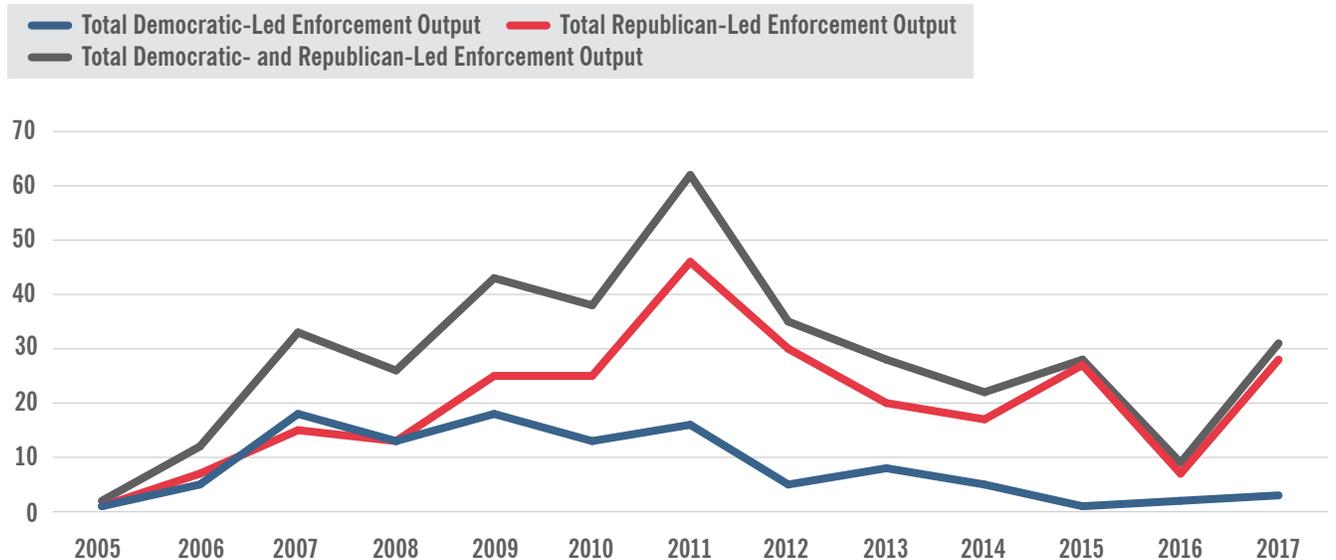
**Figure 8: Democratic- and Republican-Led Government State Immigration Legislative Output (2005–2017)**



Source: National Conference of State Legislatures

These periods of legislative activity also generated a significant policy divergence between Democratic-led and Republican-led governments. Between 2005 and 2017, Democratic-led governments enacted 296 integration laws and 107 enforcement laws, while Republican-led governments enacted 267 enforcement laws and 159 integration laws. As Figure 9 and 10 show, this divergence began occurring in 2008, when Democratic-led governments began enacting more integration laws and fewer enforcement laws than their Republican counterparts.

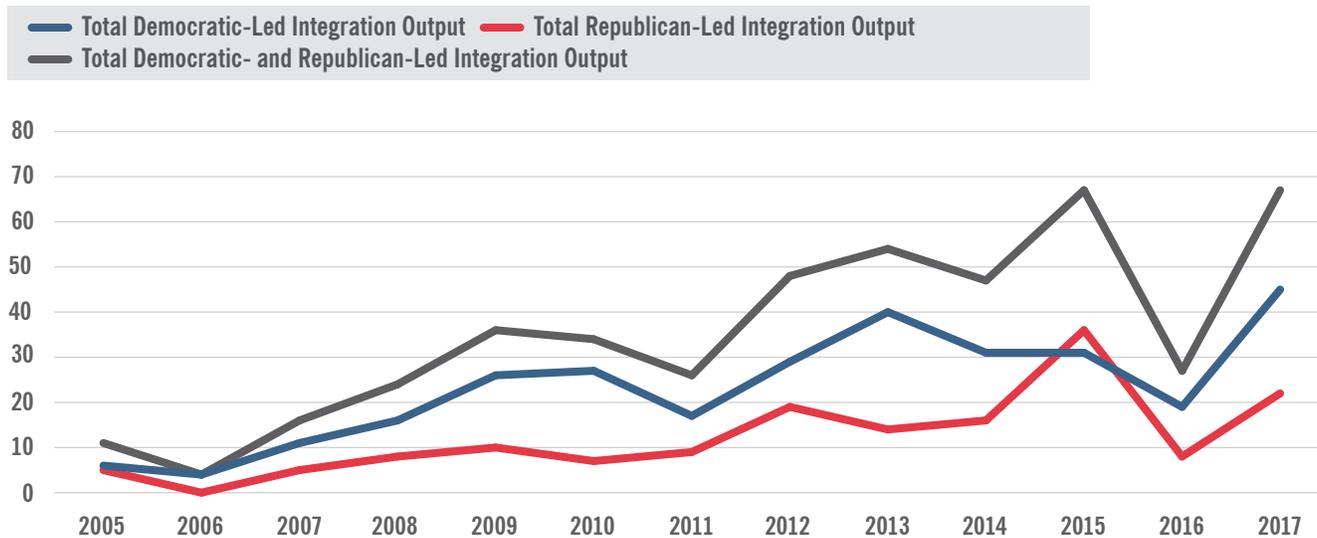
**Figure 9: Democratic- and Republican-Led Government Enforcement Legislative Output (2005–2017)**



Source: National Conference of State Legislatures

As Figure 10 shows, the only period where Republican-led integration measures superseded Democratic-led measures occurred in 2015, when several states enacted laws adjusting licensing requirements to hire individuals with foreign degrees. Democratic-led governments also enacted more enforcement laws in 2007, a period that predated the party’s gradual shift toward more pro-immigrant measures.

**Figure 10: Democratic- and Republican-Led Government Integration Legislative Output (2005–2017)**



Source: National Conference of State Legislatures

These policy divergences appeared in employment, benefits, and driver’s license laws. Democratic-led governments enacted more employment laws that protect immigrant workers’ rights. For example, a Democratic-led government in Maine enacted House Bill (H.B.) 133 (2009), which adds migrant and seasonal farmworkers to a law providing protections for forestry workers. Connecticut enacted a law (H.B. 5145, 2012) that makes keeping payments owed to immigrant laborers or individuals without English-language proficiency a Class A misdemeanor in the state. California enacted S.B. 666 (2013), which protects immigrant workers from retaliation from their employers for seeking workplace rights or civil rights, including debarring any employer’s lawyers who threaten to reveal the citizenship status of these employees.

In contrast, Republican-led governments targeted the employment of undocumented immigrants. States such as Georgia (H.B. 2, 2009; S.B. 160, 2013), Pennsylvania (S.B. 637, 2012), Utah (S.B. 251, 2012), Tennessee (H.B. 1378, 2011; S.B. 1965, 2016), and Texas (S.B. 312, 2017) required employers to adopt E-Verify to ascertain the statuses of their employees.<sup>d</sup> Other Republican-led governments prohibited employers with undocumented workers from accessing employer public benefits (Texas H.B. 1196, 2007), tax credits (Missouri H.B. 2058, 2008), and procurement opportunities with state agencies (Tennessee S.B. 170, 2013). States such as Idaho (H.B. 230, 2011) and South Carolina (H.B. 3085, 2006) established criminal penalties for helping undocumented immigrants access work in the United States.

Democratic-led governments have generally enacted health care laws that grant more benefits to a greater number of immigrants. The most expansive example is California S.B. 75 (2015), which extends Medi-Cal Medicaid benefits to individuals under 19 who do not have or cannot establish satisfactory immigration status and instructed agencies to use state funds to cover these expenses if they cannot access federal funding due to immigration issues. The state also enacted S.B. 10 (2016), which allows individuals who are ineligible for health coverage through the state’s health benefit exchange to obtain coverage. The state also permitted counties to extend health insurance to impoverished children and adults who meet the Children’s Health Insurance Program’s (CHIP) citizenship and immigration requirements (S.B. 36, 2011).

<sup>d</sup> In contrast, many Democratic governments were more averse to adopting this system, with some enacting laws that delay the implementation of E-Verify until state agencies can vet their capacity to avoid false positives (Illinois H.B. 1744, 2007) or that completely prohibit localities from using the system unless required by law (California A.B. 1236, 2011).



Other Democratic-led governments extended health care benefits to immigrant populations in more targeted ways. New York allowed lawfully present aliens with incomes below 133 percent of the federal poverty guideline to receive basic health services if their immigration status makes them ineligible for medical assistance (S.B. 6914, 2014). States such as Colorado (H.B. 1353, 2009) and Iowa (Senate File 2425, 2008) extended their states' CHIP programs to legal immigrant children. Oregon enacted a law (S.B. 558, 2017) that grants all children in the state access to medical assistance under its Healthy Kids program and extends free reproductive health services to all women in the state (H.B. 3391, 2017).

In contrast, Republican-led governments targeted the capacity of undocumented immigrants to access public benefits. Republican-led governments such as Arizona (H.B. 2008, 2009; H.B. 2016, 2007), Michigan (H.B. 4409, 2011), Texas (S.B. 589, 2007), Tennessee (H.B. 227, 2017; S.B. 1325, 2012), and Utah (S.B. 35, 2011) required state agencies to verify the status of individuals applying for federal, state, or local benefits. Georgia (H.B. 714, 2014), Idaho (H.B. 577, 2006), Kansas (H.B. 2258, 2015), Michigan (H.B. 4408, 2011), Tennessee (S.B. 200, 2013), and West Virginia (S.B. 222, 2017) enacted laws limiting access to unemployment insurance, worker's compensation, food assistance, and other public benefits to U.S. citizens and lawfully present individuals. Finally, states such as Arizona (S.B. 1043, 2010) and Florida (H.B. 5101, 2016) excluded undocumented children from accessing their CHIP programs.

Different parties enacted different state laws on granting driver's licenses and identification cards to noncitizens. Democratic-led governments gradually embraced legislation that extends these benefits to greater numbers of noncitizens in their states. Between 2008 and 2010, Democratic-led governments in states such as Maine (H.B. 540, 2005; LD 812, 2007; House File 1669a, 2008) and Maryland (H.B. 387, 2009) limited these benefits to U.S. citizens and legal permanent residents, with many citing the federal REAL ID Act to justify these laws. Around 2013, states such as California (Assembly Bill [A.B.] 60, 2013),<sup>6</sup> Colorado (S.B. 251, 2013), Connecticut (H.B. 6495, 2013), and Hawaii (H.B. 1007, 2015) extended these benefits to individuals without lawful presence, including DACA recipients (A.B. 2189, 2012). Oregon (S.B. 833, 2013) and Vermont (S.B. 38, 2013) completely reversed or modified their previous positions and also extended benefits to this population.

In contrast, Republican-led governments in states such as Alabama (S.B. 181, 2008), Arizona (H.B. 2102, 2011), Florida (H.B. 7209, 2011), Maine (H.B. 803, 2011), Michigan (S.B. 494, 2011), and Utah (S.B. 223, 2005) required status documentation to receive driver's licenses and/or limit licenses to U.S. citizens and, in certain instances, legal permanent residents or lawfully present individuals. Some of these laws also linked accessing these benefits to federal immigration enforcement efforts: Utah (S.B. 138, 2011; S.B. 184, 2015) allowed the state to share driver's license applicant data with ICE, while Georgia (S.B. 488, 2008) required its Department of Motor Vehicles to screen applicants for lawful presence with DHS's Systematic Alien Verification for Entitlements, or "SAVE," system.

## SHIFTING POLICY PRIORITIES AND PARTY CONSOLIDATION

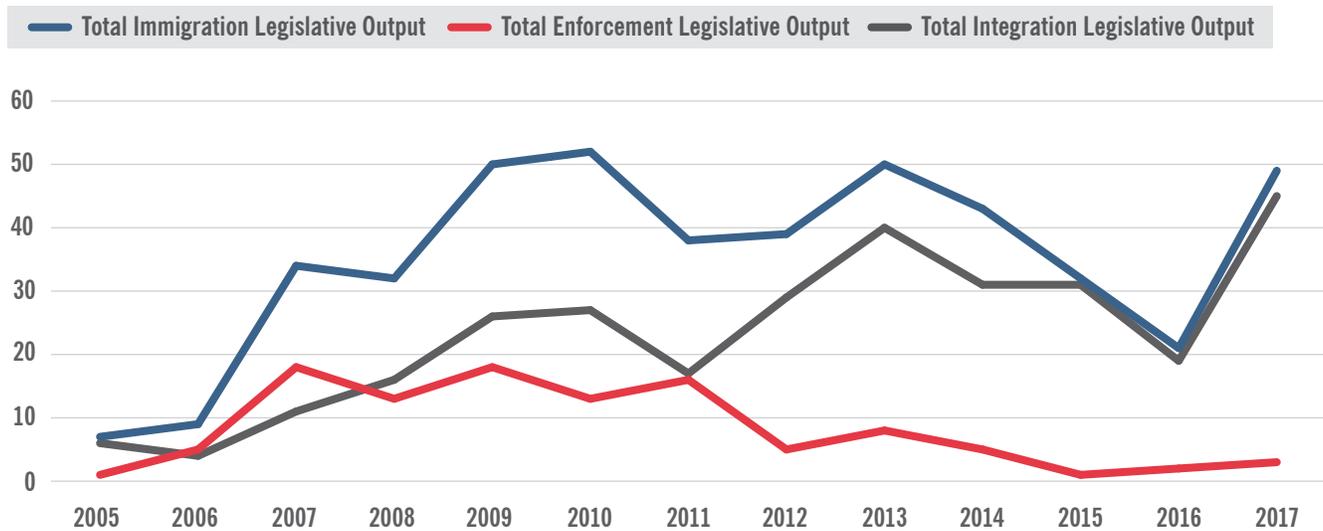
Shifts or consolidations in both parties' positions on immigration have reinforced the divergence in the laws enacted by Democratic- and Republican-led governments. In the case of state Democratic-led governments, internal state factors such as local grassroots activists, actions of national activists in those states, and the national party's gradual embrace of immigrant rights issues created upward and downward pressures that led them to enact more integration-focused legislation. Likewise, consolidation around strict immigration enforcement policies in the Republican Party has reinforced enforcement-based state immigration legislation, even in the wake of the U.S. Supreme Court decision in *Arizona v. United States*.

The Democratic Party's shift gradually emerged in 2008 and expanded significantly over the next nine years. Democratic-led governments across the United States enacted more enforcement laws than integration laws between 2006 and 2007. As Figure 11 shows, they enacted more integration measures in 2008, a reversal that became a consistent position for the party by 2012. The total legislative output for Democratic-led governments also stabilized between 2009 and 2013 as an increase in the number of integration laws offset the decrease in enforcement laws, eventually leading to a situation in 2013 where total output reflected only increases or decreases in integration legislation.

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<sup>6</sup> It should be noted that a Democratic government in California enacted A.B. 1465 (2015), which requires applicants for original driver's licenses or identification cards to submit proof of California residency.

**Figure 11: Democratic-Led Government Immigration Legislative Output (2005–2017)**



Source: National Conference of State Legislatures

This policy shift appeared in laws related to driver’s licenses and immigration enforcement. As noted earlier, states such as Maine, Maryland, and Vermont initially enacted laws limiting driver’s licenses to U.S. citizens and green-card holders between 2008 and 2010. As party activists and immigrant rights coalitions began advocating for more rights for undocumented immigrants around 2011, Democratic-led governments in California, Colorado, Connecticut, and Hawaii extended these benefits.

The party also saw an evolution on its position on state-federal cooperation in immigration enforcement. Between 2006 and 2012, states such as Illinois (S.B. 2962, 2006; S.B. 624, 2006; S.B. 2621, 2012), New Hampshire (H.B. 2, 2009), North Carolina (S.B. 1955, 2008; S.B. 229, 2007), and Washington (H.B. 1547, 2011) enacted laws that allow authorities to check on an individual’s immigration status, deport undocumented immigrants who commit a crime, release these individuals to federal enforcement authorities for removal, or allow the U.S. attorney general to deport these individuals from state and local confinement institutions.

A push from party activists and grassroots groups in 2011 prompted a group of Democratic-led state governments, led by California, to enact laws taking significantly harder lines against the deportation of undocumented immigrants. California enacted several laws that limit cooperation between local and state law enforcement and federal immigration authorities, including S.B. 54 (2017), the state’s signature sanctuary city law that prohibits state and local law enforcement from using their resources to arrest individuals for immigration violations.<sup>f</sup> The state also enacted laws that limit the penalties that immigrants face when charged or convicted for violating local, state, and federal laws, including:

- Requiring courts to inform noncitizen defendants of the immigration consequences of accepting guilty pleas or *nolo contendere* (A.B. 1343, 2015);
- Allowing defendants granted deferred entry of judgment on or after January 1, 1997, with dismissed charges to enter a plea of not guilty (A.B. 1352, 2015); and
- Changing the confinement period in county jails for individuals who commit offenses punishable by imprisonment in these facilities from one year to 364 days, which reduces the chances authorities can deport these individuals for criminal violations under immigration law, which states that a conviction with a sentence of one year renders someone deportable (S.B. 1310, 2014; S.B. 1242, 2016).

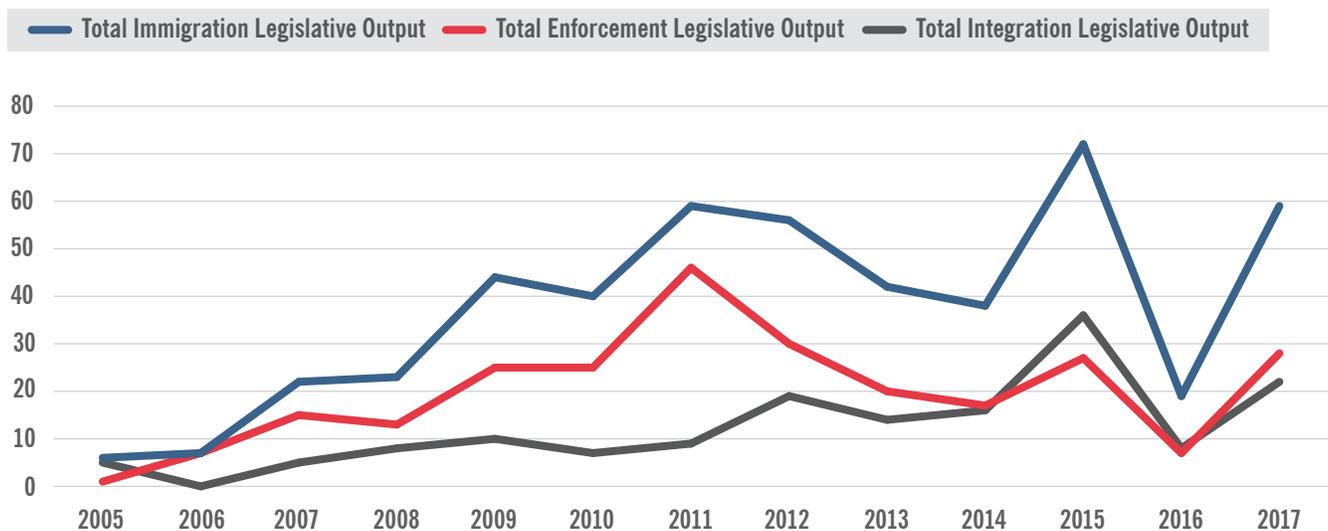
<sup>f</sup> Other laws include California S.B. 112 (2017), which prohibits localities or local law enforcement agencies from renewing or entering into new contracts with federal authorities to detain noncitizens as of June 15, 2017. The state’s legislature enacted laws requiring local law enforcement officers to provide individuals with written consent for interviews with ICE (A.B. 2792, 2016).



Other Democratic-led governments followed suit after advocacy organizations turned their attention toward gaining similar victories outside California. Connecticut enacted a sanctuary law (H.B. 6659, 2013) that limits the instances authorities can honor immigration detainees to specific cases, including when individuals have been convicted of a felony, have an outstanding arrest warrant or final order of deportation, or present a risk to public safety. Similar to California S.B. 1310 and S.B. 1242, Washington enacted S.B. 5168 (2011), which reduced the maximum sentence for a gross misdemeanor to 364 days to minimize the negative immigration consequences of being sentenced for these crimes. Finally, Hawaii (H.B. 1059, 2013) required courts to notify all noncitizen defendants that the results of their cases could lead to immediate detention, deportation, or exclusion from admission or denial of naturalization.

In contrast, the Republican Party has consolidated around a platform of controlling migration through enforcement measures. As Figure 12 shows, an increasing number of Republican-led governments began enacting enforcement laws between 2010 and 2011, as Republican-led governments in states such as Alabama, Georgia, and Utah enacted laws like Arizona S.B. 1070 (2010). While the number of these laws decreased after legal challenges blunted their expansion, the party’s support for this platform dictated the extent to which enforcement measures impacted overall state legislative output on immigration.

**Figure 12: Republican-Led Government Immigration Legislative Output (2005–2017)**



Source: National Conference of State Legislatures

Figure 12 shows that these Republican-led governments also enacted more integration legislation—mostly related to licensing requirements for foreign workers—in 2015, showing that the process of policy consolidation did not eliminate the influence of regional differences or in-state factors, such as demand for workers, to enact integrative measures. Nevertheless, these more integrative laws were a distinct minority of those enacted by Republican-led governments and may not be harbingers of major policy shifts away from enforcement.

## EXCEPTIONS TO PARTISAN DIVISIONS IN IMMIGRATION LEGISLATION

Despite these policy differences, some Democratic- and Republican-led governments enacted laws that fall outside the mainstream of their parties. Democratic-led governments such as Louisiana (S.B. 753, 2006), Colorado (H.B. 1073, 2011; S.B. 193, 2008), and West Virginia (H.B. 3301, 2010; S.B. 659, 2012) enacted laws between 2006 and 2012 that prohibit state agencies from contracting with employers who hire undocumented workers and that allow these agencies to investigate whether contractors have violated federal immigration laws. States such as California (A.B. 109, 2011), Maine (S.B. 593, 2010), and West Virginia (S.B. 70, 2007; H.B. 3301, 2010) enacted laws between 2007 and 2011 that make using false documentation to conceal citizenship or alien status or hiring an unauthorized worker a criminal violation, including the revocation of an employer's business license. These governments also passed some more-restrictive public-benefits laws, but mainly in areas where federal law required them to do so, especially in delineating who could access services paid for by federal, as opposed to state, funds.<sup>g</sup> As noted above, these laws were mostly enacted during a period in which the Democratic Party had not adopted a more pro-immigrant position and reflected accommodations to federal law or policy.

Divergences from party positions among Republican-led governments often reflect either regional differences or local issues. A Republican-led government in Utah enacted a law (S.B. 17, 2015) that provides cash assistance to noncitizen legal residents with funds from the state's General Fund if its agencies could not use federal funds to assist this population. Wyoming enacted a law (S.B. 50, 2014) that allows legal immigrants to access health care benefits if they were domiciled in the state the day they applied for them, showing more flexibility than other states on this issue. Florida (S.B. 498, 2005) provided child-welfare services to children irrespective of their immigration status. Lastly, states such as Georgia, Michigan, and Utah have appropriated funding for migrant education and refugee assistance in their state budget laws. Regional differences among Democratic-led governments also generated similar trends in the laws these governments enacted (see Section 2.3).

Finally, some Republican-led governments have enacted more pro-immigrant identification laws. Utah enacted S.B. 227 (2005), which allows unauthorized immigrants to use identification cards for driving. Kentucky extended identification benefits to refugees and DACA recipients (H.B. 410, 2017), and Oklahoma allowed H-2A temporary agricultural workers and J-1 exchange visa holders to access non-domiciled commercial learner's permits and driver's licenses (S.B. 1018, 2016). Georgia allowed noncitizens eligible for U.S. driver's licenses to keep their foreign licenses unless federal law compels them to terminate this identification (S.B. 488, 2008); the state also granted temporary driving permits to lawful noncitizens with expired licenses who have asked the U.S. Citizenship and Immigration Services to extend the duration of their status (S.B. 122, 2013).<sup>h</sup>

## SOME ISSUE AREAS PROMPTED SIMILAR LAWS ACROSS PARTIES

Governments of both parties enacted laws that make it easier for foreign workers to seek employment in their states, especially in the health care sector. Both parties used their power over issuing medical, nursing, and dental licenses to alter or waive various requirements for accessing these benefits for health care professionals with foreign licenses or training. State governments across parties took similar measures with other licensed professions, establishing waivers or altering the requirements for architects, surveyors, and social workers to make it easier to contract foreign workers.

Several Democratic-led governments enacted laws making it easier for foreign doctors to work in their states. States such as Iowa (SF 2388, 2008) and Oregon (S.B. 684, 2015) enacted laws that allow their medical boards to issue special licenses for general medical practice as well as osteopathic medicine to foreign medical graduates. Furthermore, California (A.B. 1533, 2012) and Minnesota (S.B. 1340, 2014) created initiatives that make it easier for foreign doctors to receive training or integrate into their local job markets. Finally, California (S.B. 1139, 2016) allowed

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<sup>g</sup> Examples of these laws include California's A.B. 6 (2011), which prohibits immigrants who cannot provide proof of "eligible alien status" from applying for federal homeless assistance aid. New York also enacted S.B. 2607 (2013), which limits access to public benefits to immigrants eligible for them under the Federal Unemployment Tax Act. Finally, Oregon enacted H.B. 2859 (2013), which prohibits individuals from using self-attestation to verify their citizenship or immigration status to access medical assistance benefits.

<sup>h</sup> These states have also enacted laws establishing reciprocal requirement agreements with other governments. Texas enacted H.B. 1137 (2005), which allows the state's Department of Motor Vehicles to enter into agreements with foreign governments with similar licensing and driving laws so that licenses issued by one entity are recognized by the other. Nevada also enacted a similar law (A.B. 383, 2015), which authorizes reciprocal agreements with other countries with comparable requirements concerning the licensing of drivers.



students, including individuals without lawful immigration status, to enter a medical degree program if they met its admission requirements, making it a significant example of state efforts to allow noncitizens to enter the health care profession.

Republican-led governments have taken similar actions in the health care field, especially for nurses, dentists, and physical therapy licenses. Idaho (H.B. 55, 2009) and Georgia (H.B. 394, 2015) enacted laws that allow individuals with foreign nursing licenses or degrees to work in their state. Louisiana (H.B. 491, 2015), South Dakota (H.B. 1045, 2015), and Utah (S.B. 92, 2015) enacted laws that make it easier for individuals with foreign training or licenses to apply for a dental license in those states. Arizona (H.B. 2149, 2010), Nevada (S.B. 393, 2015), Texas (H.B. 3717, 2009), and Utah (S.B. 131, 2015; H.B. 194, 2015) also enacted legislation that makes it easier for individuals with foreign educations or licenses to obtain physical and occupational therapy licenses. Finally, Arizona (H.B. 2612, 2010), Oklahoma (S.B. 434, 2015), and South Dakota (S.B. 51, 2008) enacted similar legislation for veterinarians, chiropractors, and psychologists.

Both government configurations have also enacted similar laws for other licensed professions. Democratic-led governments in Illinois (H.B. 4535, 2014) and West Virginia (H.B. 2762, 2013) enacted laws making it easier for noncitizens with foreign credentials to work as adjusters or architects in their states. A Republican-led government in Florida (S.B. 1744, 2009) allowed foreign individuals who successfully completed or enrolled in an approved course of study for surveyors and mappers to sit for an examination for this license. Another Republican-led government in Utah (S.B. 108, 2015) allowed graduates with a master's degree in a social work program accredited by the Canadian Association of Schools of Social Work to qualify for social work licensure or certifications. In short, these areas show that where states are addressing workforce issues of importance to their communities, partisan politics may not be the primary driver of legislative activities.

## STATE-LEVEL FACTORS IN STATE IMMIGRATION LAWS

In addition to the impact that a state government's political configuration has on the development of its immigration laws, other state-specific drivers—including responses to federal enforcement actions targeting key industries in states, meeting the workforce needs of a state's core industries, and regulating the activities of noncitizens in important leisure and commercial sectors in each state—can impact these laws. These factors can generate significant policy convergences, especially in meeting workforce needs and regulating key commercial sectors.

One of the key internal drivers for the development of state immigration laws is whether the state has economic sectors that employ large numbers of undocumented immigrants. States may enact E-Verify laws in the wake of high-profile ICE raids to protect an important state industry from future enforcement actions. Georgia, which has one of country's largest poultry sectors, has enacted several laws (H.B. 2, 2009; S.B. 447, 2010; H.B. 868, 2012; H.B. 1027, 2012; S.B. 160, 2013) that require employers to use E-Verify to confirm the statuses of their employees in response to ICE raids at the state's poultry facilities, which employ large numbers of undocumented workers.<sup>31</sup> However, Alabama and Arkansas, which also have large poultry sectors, have seen employers adopting E-Verify in greater numbers without state laws, indicating that the private sector can self-regulate in the face of immigration enforcement actions.

Some state immigration laws also reflect the demand for workers in industries critical to a state's economy. Minnesota, which has a robust health care research industry, saw a government with a Republican governor and a Democratic legislature enact laws (S.B. 26, 2007; HF 3708, 2008) that waived medical licensure requirements for individuals who received their green cards on or before October 1, 1991, and granted medical licenses to individuals who passed Canada's medical licensing certification process despite failing the U.S. Medical Licensing Examination. A Democratic-led government in Minnesota enacted H.B. 3142 (2016), which extends similar benefits to other professionals, such as individuals with a valid foreign medical license who received a green card after October 1, 1991, as a person of extraordinary ability in the field of science. These laws were likely enacted to address the demand for physicians in the state's major health care facilities, such as the Mayo Clinic and its universities.

States with robust agricultural and forestry industries have also enacted laws across party lines regulating the work of foreign laborers in these sectors. In Maine, for instance, a Democratic-led government enacted H.B. 1049 (2009), which triples the penalty for requiring foreign bond workers in logging to use employer-owned equipment. The same government also enacted S.B. 593 (2010), which prohibits employers in the logging industry from using foreign workers for a given number of years if they violate foreign labor certifications. A Republican-led government in Alabama enacted

a law (S.B. 145, 2010) that limits licenses for foresters to U.S. citizens or legally present individuals. Meanwhile, a Democratic-led government in Oregon enacted H.B. 3315 (2013), which requires the state's Employment Department to notify the federal Department of Labor of violations of the H-2B non-agricultural seasonal workers visa program by employers with federal contracts to maintain forestland in the state.

Finally, in states where leisure activities such as hunting and fishing drive tourism or local businesses, legislators have enacted laws that regulate the ability of noncitizens to participate in these activities. For instance, Maine enacted laws establishing the conditions for accessing hunting and fishing licenses for noncitizens (S.B. 776, 2008) and eliminated or amended the costs of turkey hunting licenses (H.B. 161, 2013), permits for hunting with crossbows (H.B. 1118, 2016), and archery licenses (H.B. 721, 2017). South Carolina also enacted laws that allow citizens of other countries to access hunting and fishing licenses for specific fees (S.B. 1340, 2010). Utah (H.B. 48, 2007) allowed resident and nonresident aliens to purchase hunting, fishing, trapping, seining, and fur-dealer licenses and certificates of registration in the same terms as U.S. citizens.

## REGIONAL PARTY DIFFERENCES

BPC's review of the NCSL database also revealed regional divisions within Democratic- and Republican-led governments, with Democratic-led governments in the South enacting more restrictive laws and Republican-led governments in the Mountain States enacting more progressive laws than their counterparts in other parts of the country. In both cases, the regional differences reflect variations in the political positions that these parties have adopted on immigration policy issues, especially in immigration enforcement and granting individuals immigration benefits.

In the past, Democratic-led governments in the southeast and other more conservative states enacted stronger enforcement laws than Democratic-led governments in other regions. For instance, Democratic-led governments in Arkansas enacted laws allowing judges to grant ICE arrest warrants for undocumented immigrants within six months of a previous arrest warrant (H.B. 1338, 2009). A North Carolina Democratic-led government enacted laws allowing authorities to deport undocumented immigrants who committed a crime (S.B. 1955, 2008) and required jail administrators to ascertain the legal status of individuals (S.B. 229, 2007). A Democratic-led government in West Virginia also enacted H.B. 3301 (2010), which punishes employers who knowingly employ undocumented workers with penalties that include revoking their business licenses. While state elections subsequently replaced these governments with Republican legislatures, the continuity in the laws enacted by these newer governments suggests that Democrats and Republicans in these states shared similar positions in these policy areas.

Republican-led governments in the Mountain States have also enacted more permissive driver's license and benefits laws. In Utah, a Republican-led government enacted S.B. 227 (2005), which allows unauthorized immigrants to use identification cards for driving and no other purposes. In Nevada, a Republican-led government enacted A.B. 383 (2015), which allows the state to develop reciprocal agreements with other countries with comparable driver's licenses requirements. Finally, North Dakota enacted S.B. 2112 (2007), a law regulating driver's licenses that extends benefits to individuals with asylum, deferred action, or temporary protected status. While these governments have also enacted legislation that parallels more restrictive laws in other states—Utah enacted a law similar to Arizona's S.B. 1070 (H.B. 497, 2011), for example—these laws show that the historic independent streak in these western states also applies to Republican-led governments and their immigration laws.

## CONTINUITY OF LEGISLATION ACROSS PARTIES

Party regionalism can also affect the total output of immigration legislation in these regions. Democratic-led governments, majority Democratic-led governments, or split governments with Democratic governors or Democratic legislatures enacted more restrictive laws, particularly earlier in the review period, which subsequent Republican-led governments left in place, with little incentive to generate new laws. This trend appeared mostly in the southeast, where the region's conservative Democrats and mainstream Republicans had more or less shared immigration priorities.

Arkansas serves as an exemplar of this trend. For driver's license and identification laws, a Democratic-led government enacted three laws (H.B. 1860, 2009; H.B. 1978, 2009; H.B. 1497, 2011) between 2009 and 2013 that limit driver's licenses and identification cards to U.S. citizens, green-card holders, and individuals with other legal status. Later, a split government, with a Republican governor and Democratic legislature, enacted H.B. 1012 (2005), which allows the state's law enforcement officers to enforce immigration laws. The subsequent Democratic-led government enacted



two enforcement laws, including H.B. 1338 (2009), which allows judges to grant arrest warrants for undocumented immigrants within six months of a previous arrest warrant with confirmation from ICE that they will detain these individuals. The subsequent Republican-led governments remained inactive in this area, suggesting that the original Democratic legislation met their needs for addressing these issues.

Tennessee serves as an example where transitions between majority Democratic-led governments to fully Republican-led ones saw little change with immigration enforcement laws. Between 2007 and 2008, a majority Democratic-led government established fines for transporting undocumented immigrants (H.B. 600, 2007) and authorized highway patrol officers to enforce federal immigration laws. The subsequent split government, with a Democratic governor and Republican legislature, enacted six stringent laws, including ones that require jail administrators to report individuals who may have violated immigration laws to ICE (H.B. 670, 2010; S.B. 2724, 2010; H.B. 2995, 2010). A Republican-led government enhanced sentences for defendants who were illegally present when they committed the offense and had been previously deported for committing a criminal offense (H.B. 1041, 2017). This legislative continuity may reflect the state's overall public sentiment on immigration.

The transition from majority or fully Democratic-led to fully Republican-led governments does not necessarily signify immigration policy changes. In Virginia, a government with a Democratic governor and Senate and a Republican House enacted five stringent laws, including ones that punish employers for hiring undocumented immigrants (H.B. 2126, 2008; H.B. 926, 2008; S.B. 782, 2008) and limit public benefits for companies that only have U.S. citizens or legal resident aliens (H.B. 1386, 2008). The subsequent government with a Republican governor and House alongside a Democratic Senate followed suit, enacting three laws between 2010 and 2012 that implement E-Verify for various sized employers (H.B. 737, 2010; S.B. 1049, 2011) and punish employers for hiring undocumented immigrants (S.B. 515, 2012). However, the following Republican-led government became more permissive, enacting a 2014 law (H.B. 360, 2014) that extends worker's compensation to all employees who are lawfully or unlawfully employed in the state.

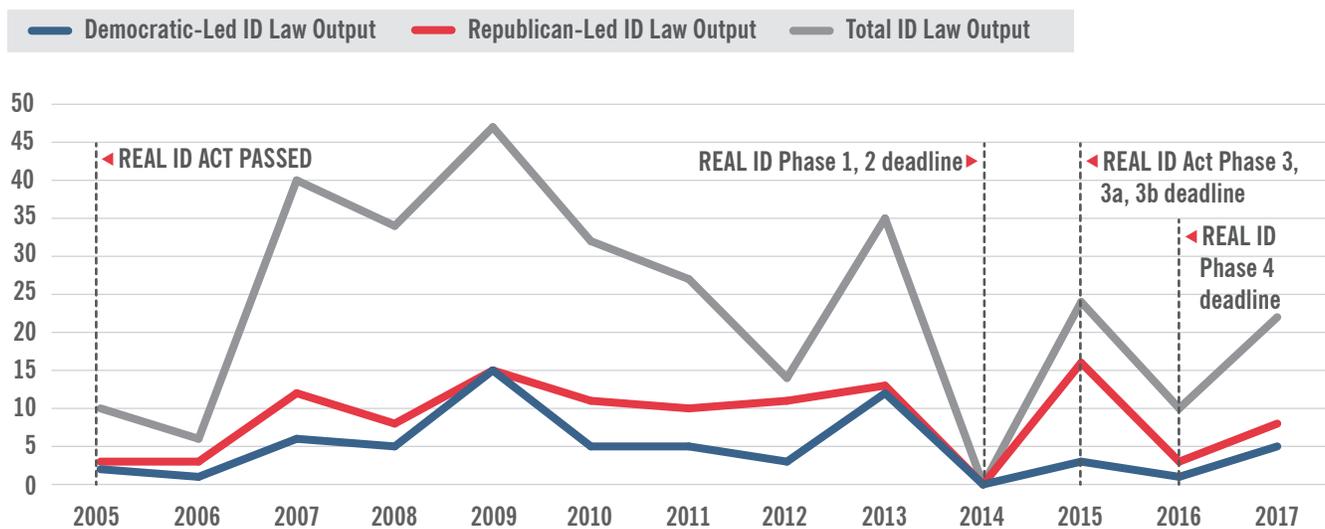
Louisiana presents another example of this trend. A Democratic-led government enacted a law (S.B. 753, 2006) that allows state agencies to investigate a contractor's hiring policies if the contractor potentially contracted undocumented immigrants. The subsequent majority Republican-led government and its Republican-led successor enacted six additional laws between 2011 and 2014 that build on this legislation, including some that required all public contractors to use E-Verify (H.B. 342, 2011; H.B. 996, 2012). Iowa and Pennsylvania have also seen successive Democratic-led, Republican-led, and split governments enact yearly budget laws that allocate funding for immigrant and refugee integration services, demonstrating that these government transitions do not automatically generate more restrictive immigration laws. In short, government transitions may not generate policy direction for immigration legislation, particularly when state sentiment is not as aligned with strict party positions.

# National Factors Affecting State Immigration Laws

National external factors reflecting developments in immigration policy and the immigration debate can also impact the development of state immigration laws. Federal laws and policies such as the REAL ID Act and DACA generated state laws regarding eligibility for driver's licenses and other state benefits for noncitizens. Outside groups that aim to make immigration laws more stringent and that focus on the enforcement of federal immigration laws at the local level, or other outside groups that push for more progressive laws that concentrate on the integration of legal immigrants and undocumented immigrants, have both also influenced state legislative activity.

In terms of federal policy, the passage of the REAL ID Act in 2005 led states to enact laws establishing new eligibility for state driver's licenses for citizens and noncitizens to meet new security standards for these cards.<sup>32</sup> As Figure 13 shows, state legislatures enacted a significant number of immigration-related driver's license laws two to four years after REAL ID's initial passage and the years preceding the act's compliance deadlines. The chart also shows that Republican-led governments were more active immediately after REAL ID Act's passage, with these governments enacting 111 laws.

**Figure 13: Democratic- and Republican-Led ID Law Output During REAL-ID Compliance Period**



Source: National Conference of State Legislatures

BPC's review of laws related to REAL ID requirements showed that both Democratic- and Republican-led governments began complying with the law after Republican-led governments attempted to enact legislation opposing the law. Initially, Republican-led governments in states such as Georgia (S.B. 5, 2007), Montana (H.B. 287, 2007), New Hampshire (H.B. 1374, 2010), and Virginia (H.B. 1587, 2008) enacted "messaging" laws that explicitly state their opposition to the act's efforts to mandate state driver's licenses as an infringement on states' rights, the expenses needed for its implementation, and the potential privacy issues for U.S. citizens. In some instances, states such as Arizona (H.B. 2426, 2009), Alaska (S.B. 202, 2008), Idaho (H.B. 606, 2008), Louisiana (H.B. 715, 2008), Minnesota (H.B. 988, 2009), and Utah (H.B. 234, 2010) limited state resources for implementing the act.

Nevertheless, Democratic- and Republican-led governments began implementing the act as its deadlines for implementation drew near. Idaho (S.B. 1069, 2017), Massachusetts (H.B. 4488, 2016), Missouri (H.B. 361, 2009; H.B. 151, 2017), Montana (S.B. 366, 2017), Pennsylvania (S.B. 133, 2017), and South Carolina (H.B. 3358, 2017) created REAL ID-compliant licenses and non-REAL ID-compliant licenses. Maine (S.B. 92, 2017) and Washington (S.B. 5008, 2017) only issued REAL ID-complaint licenses, while Oregon (S.B. 374, 2017) issued the licenses to lawfully present noncitizens. Nebraska (Legislative Bill 623, 2015) and Wyoming (S.B. 38, 2009) incorporated the act's definition of lawful status and document requirements for applicants, including immigration documents needed to prove a noncitizen's identity. However, Oklahoma (H.B. 1465, 2017) complied with the act while limiting the information the state would gather for aligning with its requirements.



Federal statutes on the eligibility of undocumented immigrants to possess firearms has also shaped the development of state immigration laws across party lines. Under 18 U.S. Code 922(g)(5)(B), aliens who are illegally or unlawfully present in the United States or admitted to the country on nonimmigrant visas are prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition. In accordance with these provisions, states such as California (S.B. 997, 2007), Florida (S.B. 948, 2008), Kentucky (H.B. 639, 2008), Maine (H.B. 413, 2015), and Michigan (S.B. 219, 2017) enacted laws that limit access to firearms to U.S. citizens and green-card holders, including licenses for carrying concealed weapons and transporting these weapons. Other states such as Virginia (S.B. 382, 2008) enacted laws that make providing firearms to individuals who are unlawfully present a state felony.

The Obama administration's creation of the DACA program in 2012 also drove some state legislation. California (A.B. 2189, 2012), Indiana (H.B. 1087, 2016), Kentucky (H.B. 410, 2017), and Nebraska (Legislative Bill 623, 2015) granted deferred-action recipients driver's licenses to support the program. Florida (H.B. 755, 2014) and Illinois (S.B. 23, 2015) allowed DACA recipients to join their state bar associations as full-fledged attorneys if they met legal requirements in these states. California (S.B. 1139, 2016) allowed individuals without lawful status, a population that includes DACA recipients, to enter a medical degree program or a healing arts medical residency. The state also appropriated funding (S.B. 79, 2015; A.B. 130, 2017) to support services and organizations that provide DACA applicants with assistance applying for this benefit.

National advocacy groups have also shaped the development of state laws, especially regarding immigration enforcement. A range of immigration restrictionist groups played a significant role in developing and spreading stringent immigration laws in Alabama (H.B. 56, 2011), Arizona (S.B. 1070, 2010), Georgia (H.B. 87, 2011), Indiana (S.B., 590, 2011), South Carolina (S.B. 20, 2011), and Utah (H.B. 497, 2011) between 2010 and 2011. Arizona's law, which served as a template for the other states, allowed state law enforcement officers to determine an individual's status during the course of their duties, made failure to possess proper documents a state misdemeanor, and barred state and local officials from limiting cooperation with federal immigration enforcement agencies.<sup>33</sup> The law also inspired other legislatures to attempt to enact similar legislation, only to abandon those attempts when immigrant advocacy groups launched litigation that led the Supreme Court to strike down most of S.B. 1070 in 2012.

Immigration advocates have also shaped state immigration laws since 2012. For instance, by 2014 activists had pushed Democratic-led governments in Colorado, Florida, Minnesota, New Jersey, and Oregon to enact laws allowing undocumented immigrants to access in-state college tuition, bringing the total count of these laws to 17.<sup>34</sup> Activists also lobbied states to enact countervailing measures against the Trump administration's immigration policies. For instance, California (A.B. 97, 2017) and New York (A.B. 3000, 2017) created legal defense funds for undocumented immigrants fighting deportation.<sup>35</sup> California, Illinois, Massachusetts, Michigan, and New York have also created specialized immigration offices,<sup>36</sup> including agencies such as the Massachusetts Office of Refugees and Immigrants (H.B. 3800, 2017) and the Illinois Office of New Americans (H.B. 3047, 2013) that provide direct services or assist with local immigrant initiatives.

# Conclusion

As this report shows, a range of internal and external factors have influenced the development of the immigration laws that Democratic- and Republican-led governments have enacted since 2005, at times in conflicting ways. At the national level, the changing position of the Democratic Party on immigration policy pushed Democratic-led governments to adopt more progressive positions on immigration benefits and enforcement policies. In the case of the Republican Party, the national shift from a pro-business, pro-immigration foundation to one focused on immigration enforcement may reflect prior efforts of state Republican-led governments to enact more stringent immigration laws. Meanwhile, the enactment of federal legislation on issues such as REAL ID and DACA did generate some convergence among states as Democratic- and Republican-led governments aligned their existing legislation with national requirements or expanded benefits to DACA recipients.

However, state- and regional-level factors have limited the effect that partisanship has on the trajectory of immigration legislation at the state level. Internal factors such as a state's economy did generate some convergences in these laws across parties, especially in workforce development laws, where both parties made it easier for certain noncitizens to obtain licenses to work in their states. Regional factors also play a role, as the distinct characteristics of political parties in regions such as the South and Mountain States led some Democratic-led governments to enact more restrictive laws and some Republican-led governments to enact more progressive ones. While national factors have had a larger impact on the direction of state immigration laws in more recent years, local and regional factors have been the critical driver in generating convergence and divergence in the laws enacted by both parties, including the variations in partisanship that exist across states and regions.

These findings have significant policy implications for the future development of state and national immigration policy. At the state level, the existence of states such as Arkansas and Tennessee—where Republican-led governments kept in place tough enforcement-focused laws that prior Democratic-led or majority Democratic-led governments enacted—presents a significant obstacle for immigrant rights activists who want to reproduce their successes in states such as California in other regions. California has been an anomaly in both the number of integrative immigration laws enacted and the persistence in doing so over time when compared with the rest of the country, limiting its potential to serve as a template for action in additional states. In contrast to progressive states that present favorable conditions for generating higher numbers of integration laws, the combination of conservative Democrats, consistent Republican majorities, and a large body of existing enforcement laws will create significant headwinds for local and national immigration activists to see legislative gains in other states.

The existence of policy convergence between parties at the state level also points to directions for national immigration reform. Rather than using the policy positions of both national parties to guide these reforms, national lawmakers could use the points of agreement between both parties at the state-level as the foundation for adopting broader changes. In the case of workforce development, for instance, national lawmakers can learn from state legislators who have adjusted licensing requirements to meet demand for workers from affected industries. Regionalism can also play a role in developing this consensus, with conservative Democrats in the South and moderate Republicans in the Mountain States showing potential avenues for cooperation in areas such as immigration enforcement and licenses for noncitizens. Although the national debate over immigration policy will continue to exert a significant impact on immigration reform, this state-level consensus highlights ways that lawmakers can find common ground to develop federal immigration policies that meet the needs of states and localities across the United States.



# Appendix A: Glossary of Terms Used in This Report

## Terms referring to different political configurations of state governments:

**Democratic-led/Republican-led government:** terms used to refer to state governments where either the Democratic or Republican party controlled both the governorship and the state legislature when a state immigration law was enacted. For example, if the governor of the state was a Democrat, and Democrats held the majority of seats in both houses of the legislature, it would be termed a “Democratic-led” state government in this report. The state of California, which has had a Democratic governor and legislature since 2011, serves as an example of this configuration.

**Majority Republican-led/majority Democratic-led government:** terms used to refer to state governments where the Democratic or Republican party controlled the governorship but only one chamber of the state legislature when a state immigration law was enacted. For example, when the governor was a Republican, but Republicans only had a majority of seats in the lower house of the state assembly, and the upper house had a majority of seats held by Democrats, it would be termed a “majority Republican-led government” in this report.

**Split government:** term used to refer state governments in which one party controlled the governorship and the other controlled the state legislature when a state immigration law was enacted. For example, if the governor was a Republican, but both houses of the state legislature had a majority of seats held by Democrats, that would be a “split government.”

## Terms used to classify state immigration laws by their impact on immigrants:

**State immigration law:** laws that state governments enact to regulate the interactions between noncitizens and a state’s benefits systems, job market, law enforcement, or other state-based agencies or authorities. A description of the substantive categories of these laws appears in the Appendix.

**Enforcement laws:** term used in this report to refer to state-enacted immigration laws that restrict the ability of noncitizens to access benefits and/or strengthen the ability of state and local authorities to enforce or cooperate in the enforcement of immigration laws.

**Integration laws:** term used in this report to refer to state-enacted immigration laws that extend benefits to documented or undocumented immigrants and/or limit the capacity of state and local law authorities to enforce immigration law.

## Terms used to describe the relationships between the policies enacted by state governments and the configuration of the parties in control of the state government:

**Partisanship:** as used in this report, describes instances when legislation passed by state government aligns with the general understanding of the party’s orthodoxy on immigration. For example, the tendency of Republican-led state governments to pass more enforcement laws and Democratic-led state governments to pass more integration laws is an example of partisanship in state-enacted immigration laws.

**Party regionalism:** instances where the particular political, economic, or social context of a geographic region can lead to Democratic-led or Republican-led governments to adopting policy positions and enacting laws that diverge from their general party orthodoxy on the issue.

**Policy convergence:** instances in which factors such as demand for workers in an important state industry or national legislation or rulemaking leads Democratic-led and Republican-led governments to enact similar laws, regardless of partisanship or party orthodoxy.

**Policy divergence:** instances in which partisanship means that Democratic-led and Republican-led governments will enact different laws regulating immigrants or immigration in their states in line with their general party orthodoxy.

# Appendix B: Report Methodology

The analyses in this report used a database and reports from the National Conference of State Legislatures (NCSL) on state immigration laws enacted between 2005 and 2017. These two data sources, which contain all state laws related to immigration, immigrants, and immigrant-related benefits, divide this body of legislation into 10 categories:

## Overview of Legislative Categories in NCSL State Immigration Law Database

CATEGORY	DESCRIPTION
Budgets	Legislation that appropriates state funds for immigration-related programs and services
Education	Laws that impact the interaction between foreigners and state and local educational institutes
Employment	Laws that regulate the capacity of documented and undocumented foreigners to work in a state
Health	laws that regulate a foreigner’s access to state health benefits and the capacity of foreigners to work in a state’s health care fields
Human Trafficking	Laws that target and combat trafficking of persons
ID/Driver’s Licenses	Laws that regulate a foreigner’s capacity to access driving, professional, and recreational state licenses
Law Enforcement	Laws that impact the capacity of state and local law enforcement agencies and government organizations to enforce immigration laws and target criminal populations
Miscellaneous	Laws that target areas such as housing and legal definitions of immigration information
Public Benefits	Laws that impact the capacity of foreigners to access state public benefits and the adoption of foreign children
Voting	Laws that require naturalization documents for voting or limit the ability of foreigners to donate to elections

This study did not incorporate human trafficking, miscellaneous, and voting laws since BPC wanted the analysis to focus specifically on legislative issues that emerged as key policy areas in roundtables with state and local lawmaker, which BPC organized with NCSL and the National Association of Counties between December 2017 and July 2018. BPC also wanted this report to focus on state legislative issues that have been particularly relevant to the national debate on immigration reform.

After selecting these seven categories in the NCSL database, BPC used 1,543 laws to create two separate databases for this study. The first database tracked the number of laws that states enacted across and within these policy areas between 2005 and 2017. The database also tracked the number of states that enacted laws in each of these categories and the states that enacted the most immigration laws during this period. This information allowed BPC to examine broad trends in the types of laws enacted during this period and when states became more active in enacting immigration legislation over time.

The second database tracked the partisan makeup of the state governments that enacted each of the laws in these seven policy areas. These components included the bill’s author and party affiliation, the state’s governor at the time of enactment, and the partisan composition of the chambers of the state’s legislature at the time of enactment. The study designated a legislative chamber “Republican” or “Democratic” if one party controlled more than 55 percent of the chamber, representing a clear majority. The study also designated a legislative chamber “split” if Democratic legislators controlled one-half of the chamber’s seats and Republican legislators controlled the other half.

The study subsequently used these components to designate a state government as “Democratic-led,” Republican-led,” “majority Republican-led,” or “majority Democratic-led” at the time of the law’s enactment (see Glossary for definitions of these terms). In cases where one party had control over both chambers and another party controlled the governorship, BPC designated these “split governments.”



Finally, the second database also categorized each law's policy direction. The study designated laws that extend benefits to documented and undocumented immigrants or limit the capacity of state and local law authorities to enforce immigration law as "integration" measures. Conversely, the study designated laws that restricted the capacity of immigrants—especially undocumented ones—to access benefits and strengthen the ability of state and local law authorities to enforce immigration laws as "enforcement" measures. BPC designated laws that had both integrative and enforcement provisions as "neutral" measures and laws that did not relate to an immigration issue as "not applicable."

The information in the second database allowed BPC to examine how partisanship impacted the content and output of state immigration laws. First, BPC was able to compare the types of laws that Democratic- and Republican-led governments enacted and note the areas of divergence and convergence between parties. This information allowed BPC to note cases where Democratic- or Republican-led governments enacted laws outside of these trends ("outliers"), including variations that appeared across different regions in the country. This data also enabled BPC to examine how the types of laws enacted by each party evolved and to note shifts in their policy priorities over time. Finally, the categorizations also allowed BPC to examine how transitions between different government configurations impacted the output and categories of laws enacted over time.

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# Notes



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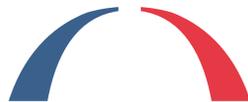
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