Federal Preemption of State Laws That Attempt to Restrict Immigrant Access to Services Necessary to Protect Life and Safety[12]

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State Efforts to Regulate Immigration, Create Immigration Related State Crimes and Restrict Immigrant Crime Victim Access to Services Necessary to Protect Life and Safety

Although the power to regulate immigration and to enact immigration laws rests exclusively with the federal government, in recent years a number of state laws and local ordinances have been enacted designed to involve state and local officials in immigration enforcement and to cut off access to programs, benefits, and services to non-citizens including undocumented immigrants. Between 2005 and 2009, there has been a five-fold increase in the enactment of state laws designed to accomplish these goals.[4] The recent immigration laws passed Arizona, SB 1070,[5] Georgia HB 87,[6] South Carolina H3148,[7] Utah HB497,[8] Indiana SB590,[9] and Alabama HB656,[10] are examples of this trend. The decision by the Supreme Court

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[4] *See Lozano v. City of Hazleton*, 620 F.3d 170, 201 (3rd Cir. 2010) (citing National Conference on State Legislatures, 2009 State Laws Related to Immigrants and Immigration January 1-December 31, 2009).

[5] Arizona SB 1070 "Support Our Law Enforcement and Safe Neighborhoods Act" (http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf). In *Arizona v. United States*, 132 S.Ct. 2492 (2012), the Supreme Court struck down § 3 (making it a state crime to be in the United States without proper authorization), § 5(C) (making it a state crime to apply for jobs and work in Arizona), and § 6 (authorizing state and local officers to make warrantless arrests of aliens they have probable cause to believe have committed a deportable offense); and upheld § 2(B) on grounds that the law would need to go into effect before it would become clear whether the provision was preempted.

[6] Georgia HB 87 "Illegal Immigration Reform and Enforcement Act of 2011" (http://www1.legis.ga.gov/legis/2011_12/pdf/hb87.pdf). In *Georgia Latino Alliance for Human Rights v. Governor of Georgia*, 691 F.3d 1250 (11th Cir. 2012), the United States Court of Appeals for the 11th Circuit affirmed a temporary injunction barring implementation of new state immigration related crimes including concealing, harboring, shielding, moving, or transporting undocumented immigrants or inducing undocumented immigrants to enter Georgia, but upheld a section of the law that permitted state law enforcement officers to investigate the immigration status of suspects.

[7] South Carolina H3148, "South Carolina Immigration Compliance Act of 2011" (http://www.scstatehouse.gov/sess119_2011-2012/bills/20.htm).
In *Lowcountry Immigration Coal., vs. Haley*, the Federal District Court for the district of South Carolina, Charleston Division, issued an injunction blocking implementation of the H3148 provisions requiring law enforcement officials to check the immigration status of any suspect they believe is in the country illegally and the provisions that make it a crime to harbor or transport an illegal immigrant. Civil Action File No. 2:11-cv-02779-RMG.

[8] Utah HB 497, "Illegal Immigration Enforcement Act" (http://le.utah.gov/~2011/bills/hbillenr/hb0497.htm). In *Utah Coalition of La Raza v. Herbert*, Case No. 2:11-cv-00401 BCW, the United States District Court for the District of Utah, Central Division, delayed the decision on the constitutionality of the law awaiting the Supreme Court's decision in *United States v. Arizona*.

[9] Indiana SB590 (http://www.in.gov/legislative/bills/2011/PDF/IN/IN0590.1.pdf). Implementation of SB 590 has been delayed while the Federal Court determines whether its provisions are constitutional.

in *Arizona v. United States*[11] confirmed that several of the provisions contained in state and local immigration enforcement laws and ordinances are unconstitutional in light of federal power to preempt such laws under the Supremacy Clause of the United States Constitution. In *Arizona vs. United States*[12] the Supreme Court held unconstitutional laws making it a state crime to violate state alien registration laws or to apply for, solicit, or preform work as an undocumented immigrant. Laws promoting warrantless arrests of undocumented immigrants are also unconstitutional because they "provide state officers with even greater arrest authority, which they could exercise with no instruction from the Federal Government. This is not the system Congress created. Federal law specifies limited circumstances in which state officers may perform an immigration officer's functions."[13]

In addition to the state law provisions designed to involve state and local law enforcement in immigration enforcement activities some of the state immigration laws also included provisions designed to limit immigrant access to state and local public benefits and other services. In the Personal Responsibility and Work Opportunity Act of 1996 ("PRWORA")[14] Congress completely reformed the extent to which non-citizens would be eligible to receive federal, state or local *public benefits*. In enacting PRWORA, Congress exempted from PRWORA's *public benefits* definition a range of services that received federal, state and local funding that were under PRWORA's federal legislative scheme services that were not *public benefits* that were as a matter of federal law to remain open to all persons without immigrant status restrictions.[15] The Supreme Court decision on federal preemption in *Arizona vs. United States* outlines the approach courts should take in analyzing whether and to what extent PRWORA preempts state and local laws that attempt to restrict immigrant access programs and services necessary to protect life and safety.[16] Under the conflict preemption approach state and local laws that cut immigrants off from benefits and services PRWORA provides to immigrants, are preempted by federal law to the same extent that the Immigration and Nationality Act preempt state laws aimed at enforcing immigration laws.[17]

Several of the state immigration laws discussed above also contain provisions designed to limit immigrant access to state or local public benefits, which are only permissible under PRWORA if the restrictions fall within the specific parameters set by PRWORA within which state laws regulating immigrant access to state or locally funded public benefits were permitted. States are prohibited from placing immigrant access limitations on programs and services that

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[10] Alabama HB56, "Hammon-Beason Alabama Taxpayer and Citizen Protection Act" (http://www.ago.state.al.us/Page-Immigration-Act-No-2011-535-Text). In *Hispanic Interest Coal. of Alabama v. Governor of Alabama*, 691 F.3d 1236 (11th Cir. 2012) the United States Court of Appeals for the 11th Circuit issued an injunction barring implementation of the provisions criminalizing failure to carry specified identity documents; barring Alabama courts from enforcing contracts involving undocumented immigrants; making it a felony for an undocumented immigrant to enter into a business contract with the state; and barring undocumented immigrants from obtaining driver's licenses. The Alabama legislature removed provisions prohibiting a wide array of immigrants from attending public schools.

[11] 132 S.Ct. 2492 (2012).

[12] *Id.*

[13] *Id.* at 2496.

[14] Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (codified as amended in scattered sections of 42 U.S.C.) [hereinafter "PRWORA"].

[15] These included emergency Medicaid; short term, in-kind emergency disaster relief programs; public health assistance for immunizations and testing and treatment of communicable diseases; programs and services at the community level necessary for the protection of life and safety as designated by the U.S. Attorney General; programs for housing and community development assistance to the extent that the immigrant is receiving such assistance on August 22, 1996; and school lunch and breakfast programs.

[16] Arizona v. United States, 132 S.Ct. 2492, 2508 (2012).

[17] The United States Supreme Court reiterated the same principles of preemption when analyzing sections 3, 5(C), and 6 of the controversial Arizona immigration law. 132 S.Ct. 2492 (2012).

fall outside of the federal law definition of "state and local benefits."[18] When state laws seek to regulate access to services that do not fall within the PRWORA definition of federal, state or local public benefits, these restrictions are preempted by federal law. The following state immigration laws contain provisions that may impermissibly interfere with immigrant, including immigrant crime victim, access not only to services offered within the state:

- Arizona SB 1070 Section 2(F)(1)[19]
- Utah H497[20]

Other state immigration laws Georgia HB 87,[21] South Carolina H3148,[22] and Alabama HB 56,[23] have included language designed to help reduce the impact of state immigration laws on the ability of immigrants to access services that are necessary to protect life and safety to protect life and safety.

[18] *See* 8 U.S.C.§ 1611(b); 8 U.S.C.§ 1621; 8 U.S.C.§ 1624(b). Just as with § 1611, § 1621 carves out an exception for life and safety benefits.

[19] This section provides that officials or agencies of this state and all political subdivisions of the state may not be prohibited or restricted from sending, receiving, or maintaining information relating to the immigration status of any individual or exchanging that information with any other federal, state, or local governmental entity for the purpose of "determining eligibility for any public benefit, *service* or license provided by any federal state, local or other political subdivision of this state."

[20] Section 76-9-1008 requires verification of immigration status regarding application for public *services* or benefits provided by a state or local governmental agency or subcontractor except as exempted by federal law (or when compliance could reasonably be expected to be grounds for the federal government to withhold federal Medicaid funding). The section requires the state or local governmental agency to verify a person's lawful presence in the United States by requiring that the applicant sign a certificate (in person or electronically) under penalty of perjury, stating that the applicant is a United States citizen, or is a qualified alien as defined by 8 U.S.C. Sec. 1641, and that the agency verify eligibility through the federal SAVE program or an equivalent program designated by DHS. Agencies may adopt variations of these requirements with concurrence of the Utah Attorney General in unique individual circumstances where the verification procedures would impose unusual hardship on a legal resident of the state. If the agency receives verification that a person applying for any benefit, service, or license is not a qualified alien, the agency shall provide the information to the local law enforcement agency for enforcement unless prohibited by federal mandate. Although this language attempts to exempt from restrictions programs that are open to all persons without immigrant restriction, Utah's HB 497 imposes restrictions on access to *services* in addition to state and local benefits and may impose restrictions that go beyond those authorized by federal law.

[21] Section 7 exempts privately funded social services and persons providing services to infants, children, crime victims, persons providing emergency medical care, and attorneys representing criminal defendants from the state crime of illegally transporting, concealing and harboring immigrants. The federal court has stayed the implementation of these provisions.

[22] H3148 exempts the following from the state crime of transporting or harboring someone who is in the United States illegally: programs, services, or assistance including soup kitchens, crisis counseling, and intervention; churches or other religious institutions recognized as 501(c)(3) organizations by IRS. It also exempts short-term shelters specified by the U.S. Attorney General which: deliver in-kind services at community level, including through public or private nonprofit agencies; do not condition provision of assistance, amount of assistance provided, or cost of assistance provided on recipient's income or resources; and are necessary for protection of life or safety. Shelter provided for strictly humanitarian purposes or under the Violence Against Women Act does not violate this section, so long as the shelter is not provided in furtherance of or in attempt to conceal a person's illegal presence in the United States. Providing health care treatment or services does not violate this section. Implementation of these criminal provisions under South Carolina law has been enjoined by the federal courts.

[23] HB 56 contains language designed to keep its restrictions on immigrant access to state and local public benefits in line with PRWORA requirements. HB 56 prohibits an alien unlawfully present in the United States from receiving any state or local public benefits except: where exempted by federal law; for primary or secondary school education, and state or local public benefits listed in 8 U.S.C. § 1621(b); for obtaining health care items and services necessary for the treatment of emergency medical conditions and not related to an organ transplant procedure; for short term, noncash, in kind emergency disaster relief; public health assistance for immunizations with respect to immunizable diseases; for Special Supplemental Nutrition Program for Women, Infants, and Children; and for testing and treatment of symptoms of communicable diseases, whether or not such symptoms are caused by a communicable disease. It also provides an exception for programs, services, or assistance, such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by federal law or regulation that satisfy all of the following: deliver in-kind services at the community level, including services through public or private nonprofit agencies; do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance on the income or resources of the individual recipient; are necessary for the protection of life or safety; for prenatal care; for child protective services and adult protective services and domestic violence service workers. U.S. citizens applying for state or local public benefits, except those described in (e), shall sign a declaration that he or she is a United States citizen. Verification that an alien seeking state or local public benefits is an alien lawfully present in the United States shall be made through the SAVE program operated by DHS. If for any reason the verification of an alien's lawful presence through the SAVE program is delayed or inconclusive, the alien is eligible for state or local public benefits in the interim period if the alien signs a declaration that he or she is an alien lawfully present in the United States. For the purposes of administering the Alabama Child Health Insurance Program, verification and documentation of lawful presence through any alternative means expressly authorized by federal law shall satisfy the requirements of this section. Several of these provisions may pose difficulties for immigrant crime victims trying to qualify for benefits they are able to receive as qualified aliens under federal law.

Victim services providers and government entities serving victims in states and communities across the country are concerned about the impact that state laws or local ordinances imposing immigrant access restrictions have on immigrant victims and the agencies that serve them. Both victim services and justice system programs that serve immigrant victims are seeing the effects of how state and local legislation imposing immigration based restrictions result in immigrant victims being less likely to seek services, to make police reports, and to cooperate with prosecutors. Programs are faced with conflicting sets of laws and obligations. State laws or local ordinances require that victims without specific forms of immigration status be turned away from services. Federal anti-discrimination, violence against women, and victim services laws and funding prohibit denial of services based upon the applicant's national origin, language abilities, or immigration status. Federal laws also require that certain types of services, including particular services necessary to protect life and safety, be open to all persons without regard to immigration status.

Federal law controls the extent to which local ordinances and state laws can limit access to programs and services that all persons, including all non-citizens, have a federally guaranteed right to access for assistance. In 1996, Congress passed the Personal Responsibility and Work Opportunity Act of 1996 ("PRWORA")[24] completely reforming the laws governing access to federal and state public benefits for non-citizens. Under the Supremacy Clause of the United States Constitution, after the passage of PRWORA, federal preemption does not permit states to regulate in the field of public benefits provision to immigrants without obtaining affirmative federal authority to do so. Any state or local law that purports to restrict immigrant access to benefits more than allowable under federal law is unconstitutional.

Under federal law, there are categories of programs and services exempt from any and all federal, state, or local restrictions based on the applicant's immigration or citizenship status. The U.S. Department of Justice issued regulations interpreting and implementing PRWORA's complex elements.[25] As the following analysis of PRWORA's legal requirements demonstrates, PRWORA guarantees that services and assistance necessary to protect life and safety and other services exempted from immigration restrictions under PRWORA (e.g. HHS funded health care provided by community clinics) are to be open to all persons, citizens and non-citizens alike, without regard to immigration status even when the programs providing services receive no federal funding.

The bar against imposing immigrant status based restrictions on these programs applies when the program receives solely or any combination of funding from federal, state, local, or non-governmental sources. Thus, programs providing forms of assistance or services that federal law requires be open to all persons without regard to citizenship or immigration status, must offer their services to all persons even when they are fully funded with state and/or private funding, and despite local legislation to the contrary.

[24] *See* Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

[25] *See* Programs Necessary For Protection of Life or Safety, 66 Fed Reg. 66, No. 10 at 3613-16 (Jan. 16, 2001) Interim Guidance on Verification, **AG Order No. 2129–97, 62 Fed Reg 61415 (Nov. 17, 1997)** ("Verification Guidance"), 62 Fed. Reg. 61,344, 61,361 (1997). No final guidelines were ever completed. Thus, the Interim Guidelines are still in effect; Determination of Situations that Demonstrate a Substantial Connection Between Battery or Extreme Cruelty and Need for Specific Public Benefits, AG Order No. 2097-97, 62 Fed Reg. 142, 39874-75 (1997).

This paper provides guidance for state and local services providers and government entities serving crime victims about federal government requirements when state and local laws and ordinances conflict with federal law. This memorandum addresses three issues of crucial importance for non-citizen victims of violence against women and crime victims who need access to life saving services. First, PRWORA forbids State and local governments from restricting on grounds of immigration status benefits that are (a) provided in-kind, (b) necessary for the preservation of life and safety, *and* (c) open to applicants regardless of income level, even if such programs are funded entirely from state funds. Second, any state or local government law or ordinance that restricts benefits on the basis of immigration status is preempted by PRWORA unless the state legislation falls with the narrow realm of state legislation specifically authorized by PRWORA.[26] Third, states and other beneficiaries of the Victims of Crime Act ("VOCA") may generally make payments to immigrant crime victims under VOCA without verifying immigration status.

II. PRWORA Background

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("PRWORA") dramatically overhauled the public welfare system in an effort to "promote work over welfare and self-reliance over dependency."[27] PRWORA's welfare reforms included dramatic reductions in immigrant access to federal and state public benefits. However, Congress acknowledged that there were certain categories of needed assistance offered at the federal, state, and local levels that all vulnerable persons, both immigrants and citizens, must remain eligible to access. Congress, therefore, included provisions ensuring that specific types of programs remained open to all immigrants and were not subject to PRWORA's immigration status restrictions. To help those in need, the bill "retains protections for those who experience genuine and intractable hardship."[28] A series of federal laws, federal regulations, and guidance confirm that undocumented immigrants and immigrant victims of violence against women are legally entitled to non-discriminatory access to a range of government funded benefits, services and assistance that are explicitly exempted from immigrant access restrictions. The federal laws, regulations, and policies that grant access to federal and state funded benefits, assistance and services without regard to the victim's immigration status include but are not limited to:

- The Violence Against Women Act (VAWA),
- Orders issued by the U.S. Attorney General,
- The Family Violence Prevention and Services Act,
- The Fair Housing Act,

[26] Prior to the passage of PRWORA in 1996, federal law did not place limitations on state and local governments' ability to grant access to general assistance and other state-funded benefits to immigrants whether they were documented or undocumented. PRWORA restructured immigrant access to benefits defining "federal public benefits," "federal means tested public benefits," and "state or local benefits." PRWORA gave states discretion to expand "state or local benefits" eligibility for non-qualified immigrants and also gave states discretion to limit state public benefits eligibility for many qualified immigrants, non-immigrants (persons residing legally in the United States on immigrant visas), and certain immigration parolees. PRWORA § 412(a), 8 U.S.C. § 1622(a). States were barred from restricting access to "state or local benefits" to exempt qualified immigrants listed in PRWORA § 412(b), 8 U.S.C. § 1622(b). For a full discussion of state authority to grant and deny "state and local benefits" to certain immigrants, *see* Soraya Fata, Leslye E. Orloff and Monique Drew, Access To Programs And Services That Can Help Victims of Sexual Assault and Domestic Violence, in Leslye Orloff et. al. "Empowering Survivors: Legal Rights of Immigrant Victims of Sexual Assault" (Legal Momentum, February 2011). http://iwp.legalmomentum.org/reference/additional-materials/public-benefits/memos-and-tools-for-advocates/public%20benefits%20chapter%20ver%202010.pdf/view?searchterm=drew

[27] H.R. REP. NO. 104-725, at 261 (1996).

[28] *Id.*

- Laws governing Federally Qualified Health Centers,[29] Migrant Health Clinics,[30] and Rural Health Clinics,[31]
- The McKinney Homeless Act.

The balance struck by Congress *within* PRWORA is codified at Title 8 § 1611 and §1621 of the United States Code. Three major categories remain open to all immigrants, regardless of status. First, programs that do not fall within the definition of "federal public benefits" or "state or local public benefits" under the statute remain unrestricted. Second, PRWORA also exempted important categories of federal public benefits and state public benefits from the federal PRWORA's immigration restrictions. Exempt programs include emergency Medicaid, in-kind emergency disaster relief, immunizations, treatment of communicable diseases, and programs that are *necessary for the protection of life or safety*. With regard to programs necessary to protect life and safety, PRWORA created a *categorical* exemption from both the "federal public benefits" and "state and local benefits" definitions for all programs that – (a) are necessary for the preservation of life or safety; (b) provide in-kind goods or services; and (c) are not means-tested. Programs that fall within this "life and safety benefits" definition are categorically exempted from immigrant restrictions and, therefore, must be open to persons without regard to the person's immigration status.[32] PRWORA gives as examples soup kitchens, temporary emergency housing, and other similar programs. Finally, as a result of PRWORA, state and local governments may not impose additional burdens on the provision of any non-cash public benefits, whether or not they are necessary for the preservation of life and safety or open to all applicants, under both field and conflict preemption theories.[33]

III. PRWORA, when properly interpreted, prevents denial of in-kind services necessary for the preservation of life and safety to any person with regard to immigration status.

Title 8 § 1611(b) of the United States Code provides that immigrants who are not "qualified aliens"[34] may not receive "federal public benefits". "Qualified alien" is a defined term whose meaning is narrower than all immigrants -- it refers to immigrants with who meet one of the conditions specified in 8 U.S.C. § 1641.[35]

Under PRWORA,[36] only "qualified immigrants" can access state and local benefits. Immigrants who are not "qualified immigrants" can only access "state and local benefits" if the state passes a post August 22, 1996 law specifically authorizing access to state and local benefits for non-qualified immigrants. Federal laws govern the ability of states to impose immigrant restrictions that limit access to state or locally funded benefits programs and services. Under

[29] 42 U.S.C. §254b et seq.
[30] 42 U.S.C. §254b.
[31] 42 U.S.C. §1395x(aa).
[32] 8 U.S.C. § 1611(b)(4); 8 U.S.C. § 1621(b)(4).
[33] *See* Section IV, *infra*.
[34] The term "qualified immigrant" is used interchangeably with the term "qualified alien" in this memo.
[35] The list of immigrants who are qualified immigrants under 8 U.S.C. § 1641 are: lawful permanent residents, conditional residents, asylees, refugees, immigrants paroled into the United States for a period of at least one year, persons granted withholding of deportation, persons granted conditional entry into the United States under 8 U.S.C. 1153 (a)(7), Cuban Haitain Entrants, trafficking victims, and immigrant victims of battery or extreme cruelty perpetrated by the victims' U.S. citizen or lawful permanent resident spouse, former spouse, parent, step-parents, or a family member residing in the same household as the victim who have filed an application for immigration benefits and have received either an approval or a prima facie determination.
[36] *See* 8 U.S.C.§ 1621

federal law, states may not restrict cash assistance benefits to qualified immigrants more narrowly than the federal government itself does.[37] States are also prohibited from placing immigrant access limitations on programs and services that fall outside of the federal law definition of "state and local benefits."

PRWORA carves out an exception from the "federal public benefits" and "state and local benefits" definitions for in-kind benefits necessary for the preservation of life and safety that are to be open to applicants regardless of immigration status.[38] Congress, in PRWORA, specifically provided that the United States Attorney General be statutorily given the sole authority to interpret, implement, and determine the range of life and safety programs and services that are to be open to all persons as a matter of federal law[39]. The Attorney General exercised this authority.[40] The Attorney General's interpretation concludes that life and safety benefits *may not be denied* to undocumented immigrants, unless some provision of federal law other than PRWORA (8 U.S.C. § 1611(a)) so provides.[41] PRWORA is the most restrictive federal authority on this issue. No other federal authority forbids organizations from providing life and safety assistance. Thus, the maximal reach of PRWORA's restrictions permits provision of a significant range services necessary to protect life and safety services to all persons seeking services regardless of immigration status. Federal law does impose an important requirement on programs providing life and safety services -- that agencies providing life and safety services not discriminate on the basis of immigration status.[42]

When a state or municipality passes a law that conditions life and safety benefits on an applicant's immigration status, the effect of such a law would be to require programs offering any of the services that are necessary to protect life and safety under federal law to verify immigration status of applicants for assistance in order to comply with state law. Immigrants who are not qualified under the state law would be turned away. Immigrants who are qualified under the state law, but who nevertheless could not prove that they are qualified, would be turned away. United States Citizens who could not prove that their citizenship status would also be turned away. It is likely that the measure would have a disparate impact on minority racial groups.

The U.S. Department of Justice advises that providers should not attempt to ascertain beneficiaries' immigration status, as such an attempt is an invasion of privacy, risks

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[37] *See* 8 U.S.C.§ 1624(b).

[38] *See* 8 U.S.C.§ 1611(b); 8 U.S.C.§ 1621; 8 U.S.C.§ 1624(b). Just as with § 1611, § 1621 carves out an exception for life and safety benefits.

[39] *See* 8 U.S.C.§ 1624(b).

[40] *See* Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation ("Life and Safety Regulations"), 66 Fed. Reg. 3613.

[41] *See* Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation ("Life and Safety Regulations"), 66 Fed. Reg. 3613.

[42] The Department of Justice's concerns regarding the risks of discrimination based on either national origin or race led to recommendations that no inquiries be made into an individual applicant's immigration status unless the program providing assistance first determines that the benefit being sought is as a matter of law a "federal public benefit," "a federal means-tested public benefit," or a "state or local benefit." If the assistance sought falls within PRWORA's definitions for one of these federal, state or local benefits, agencies should next determine whether the applicant is otherwise eligible for the benefit before asking any questions about immigration status. Only if the program is a federal, state or local public benefit and if the applicant would meet all of the other program requirements to receive the benefit should questions be asked regarding the applicant's eligibility based upon immigration or citizenship status. Interim Guidance on Verification, 62 Fed. Reg. 61415 (Nov. 17, 1997) ("Because the process of verifying an individual's status as a U.S. citizen, U.S. non-citizen national or qualified immigrant raises significant issues involving privacy and anti-discrimination protections, no verification of an applicant's status as a U.S. citizen, U.S. non-citizen national or qualified immigrant should be undertaken where benefits are not contingent on such status.")

discrimination, and risks error.[43] PRWORA preempts the ability of states to impose restrictions on access to programs and services that as a matter of federal law are to be open to all persons, including both documented and undocumented immigrants. For programs in states or communities that pass state or local laws that attempt to restrict access to federally guaranteed programs, an understanding of federal preemption laws will enable programs serving immigrant victims to continue providing benefits and services to immigrant victims secure in the knowledge that they are complying with federal law.

> The relevant portions of 8 U.S.C. § 1624 are reproduced in full:
> **[Title]: Authority of States and political subdivisions of States to limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance**
>
> (a) In general: Subject to subsection (b) of this section and notwithstanding any other provision of law, a State or political subdivision of a State is authorized to prohibit or otherwise limit or restrict the eligibility of aliens or classes of aliens for programs of general cash public assistance furnished under the law of the State or a political subdivision of a State.
>
> (b) Limitation: The authority provided for under subsection (a) of this section may be exercised only to the extent that any prohibitions, limitations, or restrictions imposed by a State or political subdivision of a State are not more restrictive than the prohibitions, limitations, or restrictions imposed under comparable Federal programs [...]

By its terms, 8 U.S.C. § 1624 prohibits discrimination on the basis of immigration status if the discrimination is more restrictive than a comparable federal scheme in the issuance of public aid. The comparable federal scheme -- indeed, the identical federal scheme -- permits nondiscriminatory provision of life and safety benefits and forbids discrimination in the provision of life and safety benefits.[44] Thus, this section of PRWORA prohibits state and local governments from imposing discriminatory restrictions on the provision of life and safety benefits in the same manner as it imposes this prohibition on federal government benefits and assistance.

The following discussion is designed to assist programs in responding to counterarguments that programs serving immigrant victims may face from state or local authorities:

States are only barred from restricting "qualified alien" access to benefits: 8 U.S.C. § 1624 (b) only limits state and local governments' ability to discriminate among classes of *qualified* aliens as defined in PRWORA. Thus, one may mistakenly assert that it has no bearing on a state and local government's power to deprive immigrants who are not qualified aliens of

[43] Interim Guidance on Verification, 62 Fed. Reg. 61415 (Nov. 17, 1997).
[44] Interim Guidance on Verification, 62 Fed. Reg. 61360 (Nov. 17, 1997).

benefits. However, both "alien" and "qualified alien" have well established meanings in immigration law.[45] Congress is presumed to act intentionally when it uses a word in one section of an Act but not another.[46] Here, Congress used the word "alien", as opposed to "qualified alien". Under established rules of statutory construction, by choosing the word "alien" Congress is presumed to have meant the definition of the term "alien" that applies throughout immigration law "The term 'alien' means any person not a citizen or national of the United States."[47]

By choosing the term "alien," Congress intended that 8 U.S.C. § 1624(b) place a restriction on the extent to which state and local governments were authorized to limit benefits access for persons who are not citizens or nationals of the United States. 8 U.S.C. § 1624(b) assures that no action by a states and local governments will have the legal effect of imposing immigrant access restrictions interfere with a non-citizen's ability to access benefits and programs legally available to them under federal law. Laws passed by state and local governments, whatever their terms, do not have the legal effect of denying non-citizens access federal public benefits and to access federally guaranteed programs -- emergency Medicaid, in-kind emergency disaster relief, immunizations, treatment of communicable diseases, health care offered by federally qualified health centers and programs that are *necessary for the protection of life or safety*.

States are only prohibited from discriminating among immigrants in cash benefits programs: 8 U.S.C. § 1624(b) limits the powers granted in 8 U.S.C. § 1624 (a). However, 8 U.S.C. § 1624(a) only provides for a state's power to discriminate among immigrants "for programs of general *cash* public assistance" (emphasis added). One may wrongly interpret that the limitation in subsection 8 U.S.C. § 1624(b) also only applies to *cash* public assistance and that state and local governments may provide non-cash public benefits on a more restrictive basis than the federal government. Additionally, since life and safety benefits are also provided in-kind states may incorrectly interpret 8 U.S.C. § 1624(b) to allow states to impose greater restrictions on life and safety benefits than the federal government does. However, this interpretation ignores the fact that under PRWORA does not give states and local governments any authority to restrict non-cash benefits and argues that there are no limits on the state and local government exercise of authority in limiting non-cash benefits.

8 U.S.C. § 1624's title is "Authority of States and political subdivisions of States to limit assistance to aliens and to distinguish among classes of aliens in providing general cash public assistance." 8 U.S.C. § 1624 is part of a subchapter which comprehensively outlines the eligibility of aliens and qualified aliens for state public benefits.[48] 8 U.S.C. § 1624 is the *only* part of the subchapter granting state and local government *any* authority to limit assistance.[49] The expression of one thing is the exclusion of others.[50] Nowhere else does Congress provide state and local governments with the authority to limit state and local government non-cash benefits.

[45] *See* 8 U.S.C. § 1641(b) (defining "qualified alien") *and* 8 U.S.C. § 1101(a)(3) ("The term 'alien' means any person not a citizen or national of the United States.").
[46] *See Rodriguez v. United States*, 480 U.S. 522, 525 (1987).
[47] 8 U.S.C. § 1101(a)(3).
[48] *See* 8 U.S.C. § 1621 *et seq*.
[49] *See* 8 U.S.C. § 1621 *et seq*.
[50] *Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit*, 507 U.S. 163, 168 (1993).

After PRWORA was enacted, state and local governments were required to obtain affirmative federal authority to regulate in the field of public benefit provision to immigrants.[51] PRWORA provided states on option to limit cash assistance to non-citizens so long as qualified aliens were entitled under the state law to the same level of access to state cash assistance as qualified aliens are to federal cash assistance. Even as PRWORA limited the use of federal cash funds making federal cash benefits only open to qualified immigrants, the federal government scheme explicitly permits federal funds to be used for services and benefits necessary to protect life and safety.[52] Reading 8 U.S.C. § 1624 to permit state and local governments entirely to withhold life and safety benefits but not to provide a scheme of cash benefits more restrictive than the federal government's would be a perverse reversal of priorities.

There is no federal authority permitting any person, agency or government entity to restrict immigrants from accessing life and safety benefits. Further, state and local government law or executive action permitting state or local government officials, agencies and individuals in the state to restrict immigrant access to benefits and services necessary to protect life and safety violate PRWORA and therefore are invalid under the United States Constitution's Supremacy Clause. The Department of Justice has issued guidelines that provide a response to state and local authorities for agencies providing services and assistance to immigrant victims that are necessary to protect life and safety. The Department of Justice's guidelines advise:

> "Because the process of verifying an individual's status as a U.S. citizen, U.S. non-citizen national or qualified alien raises significant issues involving privacy and anti-discrimination protections, no verification of an applicant's status as a U.S. citizen, U.S. non-citizen national or qualified alien should be undertaken where benefits are not contingent on such status."[53]

Since as a matter of federal law the following programs are not "federal public benefits" or "state or local benefits" no person's access to these programs is *contingent on immigration status*[54] –

- Emergency Medicaid;
- In-kind emergency disaster relief;
- Immunizations, treatment of communicable diseases:
- Health care offered by federally qualified health centers; and
- Programs and services that are *necessary for the protection of life or safety*.

[51] *See League of United Latin American Citizens v. Wilson*, 997 F. Supp. 1244, 1255 ("LULAC") (C.D. Cal. 1997) ("Congress' intention to displace state power in the area of regulation of public benefits to immigrants is manifest in the careful designation of the limited instances in which states have the right to determine alien eligibility for state or local public benefit.") This is discussed at greater length in Section IV, below.

[52] *See* 8 U.S.C. § 1611.

[53] Interim Guidance on Verification, 62 Fed. Reg. 61415 (Nov. 17, 1997).

[54] For examples of lawful restrictions based on immigration status for "state and local benefits" that **do not** include the programs listed above, *see* Gov. Janice Brewer, EXEC. ORDER NO. 2012-06, *available at* http://azgovernor.gov/dms/upload/EO_081512_2012-06.pdf (restricting undocumented immigrants with Deferred Action from accessing "state public benefits" and "taxpayer funded benefits."). *See also* GA. CODE ANN. § 50-36-1(e) (West 2012) (stating that "an agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to.... provide at least one secure and verifiable document.... and execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States....")

IV. Preemption

In communities across the country, programs providing a range of services and assistance to immigrant victims of domestic violence, sexual assault, human trafficking, and other crimes are faced with the question of how to comply with conflicting state and federal laws governing what services can be provided to non-citizen victims. Federal law and the U.S. Constitution anticipated, and federal preemption law was designed to, resolve such conflicts. Courts recognize three types of cases in which Congressional legislation preempts state or local laws.[55]

- First, in express preemption, a state or local law is preempted because a Congressional Act expressly provides for preemption.[56]
- Second, in field preemption, a state or local law is preempted because Congress has occupied or been entrusted with an entire field.[57]
- Third, in conflict preemption, a state or local law is preempted because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[58]

Congress has occupied the field of the provision of all federal, state and local public benefits to immigrants. Congress has left open a narrow exception that allows state or local governments to pass laws that restrict access to "cash" benefits based on immigration status. 8 U.S.C. § 1624(a) provided that states follow the conditions established in Title 8 § 1624(b) of the U.S. Code which prohibit states from limiting immigrant access to cash benefits more than is allowable under federal law. However, PRWORA preempts any state or local government restrictions placed on non-cash services, benefits or public assistance based on immigration status. This includes any laws that attempt to restrict the provision of benefits deemed necessary to protect health and safety by PRWORA and by the implementation guidance issued by the U.S. Attorney General. However, the federal prohibition on states imposing immigrant restrictions also includes any measure restricting non-cash aid, even if the aid is means tested or not necessary for the preservation of life and safety, or both. State or local measures are not expressly pre-empted. PRWORA contains no provisions forbidding companion state regulations, and includes two provisions that expressly permit states to pass law regulating immigrant access to benefits.

1. 8 U.S.C. § 1624 allows states to impose restrictions on "general cash public assistance furnished under the law of the State or a political subdivision of a State" so long as these restrictions are not more restrictive than the federal law's restrictions with the effect that qualified immigrants have the same access to state funded and federally funded cash benefits .

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[55] *Arizona*, 132 S.Ct. at 2500 -01(stating that the Supremacy Clause of the United States Constitution gives Congress the power to preempt state law and that Congress may enact a statute with "an express preemption provision)(citing *Crosby v. National Foreign Trade Council*, 530 U.S. 363,372; *Chamber of Commerce of United States of America v. Whiting*, 131 S.Ct. 1968, 1974-75); *Georgia Latino Alliance for Human Rights, et al. v. Governor of Georgia*, 691 F.3d 1250, 1262-63 (11th Cir. 2012)(citing *Fla. State Conference of the NAACP v. Browning, 522 F.3d 1153, 1167 (recognizing the doctrines of express, field, and conflict preemption).*

[56] *English v. General Elec. Co.*, 496 U.S. 72, 78 (1990).

[57] *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

[58] *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

2. 8 U.S.C. § 1621 allows states to offer state funded benefits to immigrants who are not qualified immigrants and to qualified immigrants who are subject to a five year bar on access to federal means-tested public benefits.

Although PRWORA did not expressly preempt all state action, it set forth a federally determined scheme under which all other state or local legislative measures other than those expressly listed above are preempted under both "field" and "conflict" preemption laws.

A. In the Personal Responsibility and Work Opportunity Act of 1996, Congress occupied the field of legislation and regulations on non-cash aid to immigrants.

Field preemption occurs when Congress' regulation of a field is so pervasive that it is "to make reasonable the inference that Congress left no room for the States to supplement it."[59] In *Lozano v. City of Hazleton* the Court found that field preemption also occurs where an Act of Congress "touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." [60] Immigration is such a field.[61] However, the U.S. Supreme Court, in *DeCanas v. Bica*, also cautioned that not "every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* preempted by this constitutional power."[62] Rather, the Court further defined immigration as "essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain".[63] Case law also establishes a presumption against field preemption in fields that traditionally belong to the states' police powers,[64] "unless that was the clear and manifest purpose of Congress".[65]

In *U.S. v. State of Arizona* the United States Court of Appeals for the Ninth Circuit discussed the role of "conflict preemption" and "impossibility preemption" providing further useful direction:

> "'[E]ven if Congress has not occupied the field, state law is naturally preempted to the extent of any conflict with a federal statute.' …Conflict preemption has two forms: impossibility and obstacle preemption… Impossibility preemption exists 'where it is impossible for a private party to comply both state and federal law.' … Obstacle preemption exists 'where 'under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'…To determine whether obstacle preemption exists, the Supreme Court has instructed us that we employ our 'judgment, to be informed by examining the federal statute as a whole and identifying its purposes and intended

[59] *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (internal citations omitted); Lozano recently reversed in part a district court that had held that a regulation of employment was a regulation of immigration under this standard. *Lozano v. City of Hazleton*, 620 F.3d 170, 206 (3d Cir. 2010).

[60] *Lozano v. City of Hazleton*, 620 F.3d 170, 204 (3d Cir. 2010) *quoting Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) (alterations in original).

[61] *Id.; U.S. v. State of Arizona*, ____ F.3d_4805, 4818 (9th Cir. 2011).

[62] *DeCanas v. Bica*, 424 U.S. 351, 354 (1976).

[63] *Id.* at 355.

[64] *Lozano*, 620 F.3d at 204, *citing Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

[65] *U.S. v. State of Arizona*, ____ F.3d_4805, 4812 (9th Cir. 2011); *Wyeth v. Levine*, 129 S. Ct. 1187, 1194-95 (2009); *Arizona*, 132 S.Ct. at 2501 (citing *Rice*, 331 U.S. at 230).

effects.' …[T] here can be no constitutional application of a statute that, on its face, conflicts with Congressional intent and therefore is preempted by the Supremacy Clause."[66] (Internal citations omitted).

Although immigration law is an area of law over which federal authority has been firmly established, states have been permitted, in some limited instances, to regulate issues involving immigrants. The cases relevant to understanding whether, and to what extent, states can regulate immigrant access to benefits and services that are to be open to immigrants in the state involve an analysis of the complete scheme of regulation Congress established in PRWORA.[67] Two cases have analyzed whether PRWORA's scheme regulating federal, state and local benefits and regulating federal, state, local and privately funded services offered to immigrants preempts state law. In *LULAC*, the Federal District Court for the Central District of California flatly held that PRWORA pre-empted the regulation of benefits to immigrants, permitting only those regulations specifically authorized by PRWORA.[68] The measure, which the LULAC COURT invalidated, sought to prohibit "public entities" from providing social services to immigrants whom the entity has determined are in the United States in violation of federal immigration law.[69]

In *Equal Access to Education v. Merten*, the Eastern District of Virginia held that Congress had not completely occupied the field of immigrant admission to state universities.[70] The case is distinguishable on its facts, however, and the court illustrates why: "the scheme PRWORA creates pertains to benefits not at issue here."[71] Under *Merten* and Department of Homeland Security Policies, state universities may accept applications from, admit, and enroll students, including undocumented immigrant students.[72] *Merten*, recognized that Congress had ousted the states from the field of determining immigrant eligibility for benefits, "including even state benefits."[73] Thus, any state law or ordinance that attempts to restrict immigrant access to benefits or services that is not explicitly authorized by PRWORA is impermissible.

PRWORA authorized states to regulate only with regard to two issues. PRWORA, in 8 U.S.C. § 1624, gave states and local governments the ability to limit and to provide state funded cash public assistance to some but not all classes of immigrants, so long as state laws do not discriminate among immigrants in ways that are more restrictive than PRWORA's federal public benefits scheme. PRWORA in 8 U.S.C. § 1621 also explicitly authorizes states to benefit to immigrant who do not have access to the federal public benefits safety net. Outside of these two explicitly authorized areas, states cannot regulate. If states pass laws designed to restrict immigrant access to state or locally funded benefits or to limit immigrant access to services that

[66] *U.S. v. State of Arizona*, ____ F.3d_4805, 4813-4814 (9th Cir. 2011);

[67] The court in *U.S. v. State of Arizona*, outlines the approach courts should take in analyzing whether and to what extent PRWORA preempts state and local laws that attempt to restrict immigrant access to federal, state and local benefits and to services that immigrants can access . *U.S. v. State of Arizona*, ____ F.3d_4805, 4831 (9th Cir. 2011). Under the conflict preemption approach laid out by this 9th Circuit case, state and local laws that cut immigrants off from benefits and services PRWORA provides to immigrants, are preempted by federal law to the same extent that the Immigration and Nationality Act preempt state laws aimed at enforcing immigration laws.

[68] *LULAC*, 997 F. Supp. at 1255.

[69] *League of United Latin Am. Citizens v. Wilson*, 908 F. Supp. 755, 792 (C.D. Cal. 1995) *quoting* California Proposition 187 (1994).

[70] 305 F. Supp. 2d 585, 605 (E.D. Va. 2004).

[71] 305 F. Supp. 2d 585, 605 (E.D. Va. 2004).

[72] U.S. Immigration and Customs Enforcement, *Aliens Who May Be Unlawfully Present In The United States And Their Access To Public Post-Secondary Educational Institutions*, July 6, 2010. http://iwp.legalmomentum.org/reference/additional-materials/public-benefits/education-financial-aid/DHS_SEVP%20Info%20Undocumented%20Student%2007%2002%2010.pdf/view

[73] 305 F. Supp. 2d 585, 605 (E.D. Va. 2004).

are not specifically authorized under PRWORA and/or the U.S. Attorney General, such laws are invalid. All state actions aimed at limiting access to programs and services necessary to protect life and safety are clearly also impermissible.

Some recent cases not decided under PRWORA are also instructive. It is important not to read them out of context, as they address whether statutes different from PRWORA occupy a given field. Such inquiries are apt to turn on particular statutory provisions and language; and provisions and language entirely different from PRWORA may well occupy a field -- or fail to – without having any particular impact on for whether PRWORA occupies the field of federal, state and local benefits and assistance immigrants are eligible to receive.

In *Villas at Parkside Partners v. City of Farmers Branch*, a city sought to require housing providers and employers to verify immigration status of their tenants or employees.[74] The Court held that this was an impermissible *immigration* regulation because it appropriated one Congressional classification of aliens for use in a local regulatory scheme in which Congress did not contemplate this classification would be used.[75] Faced with a similar ordinance, the Federal District Court for the Southern District of California held that plaintiffs were likely to show that the immigration measure was field pre-empted, and therefore issued a Temporary Restraining Order against its enforcement.[76] Finally, although the U.S. Court of Appeals for the Third Circuit in *Lozano* held that the provisions at issue (very similar to those at issue in Villas at Parkside Partners) were preempted, it held that Congress had not occupied the field those provisions also occupied.[77] In *DeCanas v. Bica*, petitioners challenged a California law forbidding the employment of unlawful immigrants.[78] The Court held that this was not an immigration measure because it only affected unlawful immigrants (and thus was not a determination of the conditions under which a legal entrant may remain), and used the federal government's definition of unlawful presence (and thus was not a determination of who should be admitted into the country).[79]

The only court that has specifically addressed the issue of whether PRWORA occupies the field of public benefits, including life and safety benefits for immigrants held that the federal law established by PRWORA did fully occupy the field.[80] Addressing the question of whether PRWORA occupies the field of educational benefits (post-secondary educational grants and loans) to immigrants, the court in *Merten* stated that it did.[81] However, the *Merten* court additionally held that PRWORA did not occupy the field of admission to university.[82] No other court addressed the issue. All federal cases agree that PRWORA occupies the field of provision

[74] 701 F. Supp. 2d 835, 855 (N.D. Tex. 2010).
[75] 701 F. Supp. 2d 835, 855 (N.D. Tex. 2010).
[76] *Garrett v. City of Escondido*, 465 F. Supp. 2d 1043, 1056 (S.D. Cal. 2006). Some other recent opinions have addressed state measures that required employers to verify the immigration status of their employees. *E.g. Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856 (9th Cir. 2009), *cert. granted*, --- U.S. ----, 130 S. Ct. 3498 (2010) (No. 09-115) (holding that measure requiring employers to verify immigration status is not pre-empted); *See Gray v. City of Valley Park*, No. 4:07CV00881, 2008 WL 294294 (E.D.Mo. Jan. 31, 2008), *aff'd on other grounds*, 567 F.3d 976 (8th Cir. 2009) (same). *But see Chamber of Commerce v. Edmondson*, 594 F.3d 742 (10th Cir. 2010). To resolve this conflict, the Supreme Court has granted certiorari. *See Chicanos Por La Causa, Inc., v. Napolitano*, --- U.S. ---, 130 S. Ct. 3498 (2010). The decision may provide more substantive law of pre-emption in the immigration context.
[77] *Lozano*, 620 F.3d at 204.
[78] *DeCanas v. Bica*, 424 U.S. 351, 354 (1976); *Lozano*, 620 F.3d at 204, *citing Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).
[79] *DeCanas v. Bica*, 424 U.S. 351, 352-53 (1976).
[80] *LULAC*, 997 F. Supp. at 1255.
[81] *Merten*, 305 F. Supp. 2d at 605.
[82] *Merten*, 305 F. Supp. 2d at 605.

of public benefits to immigrants, and thus the subset of provision of life and safety benefits to immigrants.

B. State and local government laws and ordinances regulating non-cash aid by immigration status creates an impermissible conflict with federal law

Several states and local jurisdictions across the country have passed or are attempting to pass laws designed to cut off access to non-cash benefits programs and other services available in the state based upon the applicant's immigration status. State law is preempted if it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[83] Immigration law as a whole evinces careful balancing of several competing policy objectives.[84] Given this careful balance, courts are especially likely to find, in this area, that state or local law, which prioritizes one federal policy objective (immigration enforcement) over another important federal policy objective (offering protection to crime victims and prosecuting criminals) is conflict preempted.[85]

PRWORA carefully balances the need to deter undocumented immigration with the government responsibility for promoting health and safety, with concerns about basic fairness towards undocumented immigrants. As PRWORA balances these important issues, it also weighs the administrative burdens for federal, state and local, governmental and private entities involved in providing benefits and services to immigrants and immigrant crime victims.[86] Since individualized verification is complex and time-consuming, DOJ advises providers not to verify if an alien is a "qualified alien" until after the agency has:

1) Determined that the program or service being provided is a "federal public benefit" or "state or local benefits"[87] under PRWORA's definitions;[88] and
2) Determined that the non-citizen is otherwise be eligible to receive aid.[89]

Only after it is determined that the program from which a victim is seeking services is a "federal public benefit" or "state or local benefit" and the applicant qualifies to receive benefits from the program, should a benefits provider verify the applicant's U.S. Citizen or qualified immigrant status. Since the process of verifying eligibility raise "significant issues involving privacy and anti-discrimination protections, no verification of an applicant's status as a U.S. citizen, U.S. non-citizen national, or qualified alien should be undertaken where benefits are not contingent on such status."[90]

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[83] *Hines* 312 U.S. at 67.

[84] *E.g. Lozano*, 2010 WL 3504538 at *32-33 (discussing IRCA); *see also* Brief of Plaintiff United States of America, *United States v. Arizona*, D. Ariz. CV 10-1413-PHX-SRB. ¶¶ 14-17.

[85] *E.g. Lozano*, 2010 WL 3504538 at *32-33; *accord United States v. Arizona*, 703 F. Supp. 2d. 980, 995 (D. Ariz. 2010); *U.S. v. State of Arizona*, ____ F.3d_4805, 4813-14 (9th Cir. 2011).

[86] H.R. REP. NO. 104-725, at 261 (1996).

[87] PRWORA gave states discretion to expand state public benefits eligibility for non-qualified immigrants and also gave states discretion to limit state public benefits eligibility for many qualified immigrants, persons residing legally in the United States on immigrant visas, and certain immigration parolees. PRWORA § 412(a), 8 U.S.C. § 1622(a).

[88] Interim Guidance on Verification, 62 Fed. Reg. 61415 (Nov. 17, 1997).

[89] *Id*.

[90] 62 Fed. Reg. 61347 (Nov. 17, 1997). When verification is conducted the Interim Guidance on Verification encourages programs administering benefits to rely primarily on review of government issued documents that provide evidence of eligibility and if the document

PRWORA and the Immigration and Nationality Act are both the types of statutes in which Congress provides that a certain thing be done only insofar as another competing objective is not harmed.[91] When states and local jurisdictions enact laws or ordinances designed to restrict non-citizen access to services necessary to protect life and safety or other federally guaranteed benefits, assistance or services, these laws fail to take into account any other competing Congressional objectives and instead focus exclusively on deterring unlawful immigration. Congressional objectives include but are not limited to curbing violence against women, fighting crime, protecting public health, and offering services necessary to protect life and safety to all persons. Thus, when a state laws impose requirements that explicitly or effectively limit non-citizen access to programs and services deemed by the U.S. Attorney General to be necessary to protect life and safety or other programs or services (e.g. health care offered by federally qualified health centers) such laws undermine Congressional objectives and are federally preempted. This law "stands as an obstacle to the accomplishment and execution of the *full* purposes and objectives of Congress."[92]

provided "reasonably appears on its face to be genuine and to relate to the person presenting it … the provider should accept the document as conclusive evidence ... and should not verify status further." Interim Guidance on Verification, 62 Fed. Reg. 61348 (Nov. 17, 1997).

[91] *See* Henry M. Hart, Jr. & Albert M. Sacks, *The Legal Process: Basic Problems in the Making and Application of Law* 1377; *accord* Frank H. Easterbrook, *The Role of Original Intent in Statutory Construction*, 11 Harv. J.L. & Pub. Pol'y 59, 63 (1988) ("To use an algebraic metaphor, law is like a vector. It has length as well as direction. We must find both, or we know nothing of value. To find length we must take account of objectives, of means chosen, and of stopping places identified. All are important"); Catherine L. Fisk and Deborah C. Malamud, *The NLRB in Administrative Exile: Problems with its Structure and Function and Suggestions for Reform*, 58 Duke L. J. 2013, 2036 (2009). *Cf. United Steelworkers of America v. Weber*, 443 U.S. 193, 197 (1979) (holding that Title VII sought to end discrimination against minorities only insofar as it left management discretion to discriminate on their behalf).

[92] *Hines*, 312 U.S. at 67 (emphasis added).