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Illinois: a State-of-the-Art Model for State Immigration Rulemaking

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**ILLINOIS: A STATE-OF-THE-ART MODEL FOR STATE
IMMIGRATION RULEMAKING**

**Camilla Mroczkowski
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Introduction

Over the course of the last twenty years, the U.S. federal immigration system has faced great difficulty and strife in achieving positive, pro-immigrant reform. Time and time again, various impediments, including the media and impenetrable political division, have left federal immigration reform at a helpless standstill. However, is the federal system the *only* venue for immigration reform? Certainly, immigration law is federal and plenary power ultimately belongs to Congress and the Executive, but does this mean that efforts at the state and local levels are meaningless? Has “immigration federalism” completely disintegrated or, could it be, in a federal landscape filled with various obstacles, the future of immigration reform, at least to the degree that states may act under the Tenth Amendment?

This article argues, amidst the wearisome inaction of Congress and the Executive, that certain state and local actors have played a crucial role in creating inclusionary laws at the local level, which, overall, have had a meaningful impact on their local immigrant communities. One of these actors, in particular, has led the way in pro-immigrant rulemaking: the state of Illinois. To underscore this, this article will focus in on three pro-immigrant pieces of legislation that Illinois has passed within the course of the last five years (along with brief mentions of other legislation that helped form the arc of Illinois’s immigration infrastructure). Part I focuses on the evolution of the 2017 Illinois TRUST Act and the restrictions it placed on state and local law enforcement agencies in their ability to detain immigrants on the basis of an ICE detainer. Part II focuses on the Illinois VOICES Act and its impact on U-visa applicants. Part III briefly focuses on two interim pieces of legislation that were major achievements for inclusionary rulemaking: the Keep Illinois Families Together Act (KIFTA) and the Private Detention Facility Moratorium Act. Part IV highlights the groundbreaking Illinois Way Forward Act that brought an end to immigration

detention in the state of Illinois. Finally, Part V looks forward to the future of Illinois immigration legislation and how other states ought to follow in Illinois's footsteps to ensure that the needs of all immigrants are met and that immigrant fears may one day be permanently alleviated.

Part I: The Illinois TRUST Act

A. Background - The Cook County Ordinance

Just as the law of evidence recognizes the need to lay a legal foundation, so, too, must a foundation be laid for the Illinois TRUST Act. The road to TRUST began in 2011 with the Cook County Detainer Ordinance, a county level policy for responding to ICE detainers that would ultimately serve as a model for state level legislation.¹ United States Representative Jesus (Chuy) G. Garcia spearheaded the Cook County Detainer Ordinance in response to Cook County Jail holding inmates two business days beyond what their criminal cases required when requested by immigration officials to do so.² The ordinance effectively prohibits: 1) the Sheriff of Cook County from accepting ICE detainer requests absent a written agreement; 2) ICE agents from having access to Cook County facilities; and 3) expenditures of Cook County resources for the purpose of responding to ICE detainers.³ Moreover, any person who alleges a violation of the ordinance by local officials may file a written complaint for investigation with the Cook County Sheriff's Office of Professional Review.⁴

The Cook County Detainer Ordinance arose as a direct response to the federal legal authority that initially sanctioned ICE detainer requests. That federal authority comes from immigration regulation 8 C.F.R. 287.7, which defines an ICE detainer as “a request that such [local] agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either

¹ COOK, ILL., 11-O-73 (2011).;

[https://immigrantjustice.org/sites/default/files/Cook%20County%20Detainer%20Ordinance%20\(enacted\).pdf](https://immigrantjustice.org/sites/default/files/Cook%20County%20Detainer%20Ordinance%20(enacted).pdf)

² Illinois County Defies Feds On Immigrant Detentions, NPR, (Sept. 12, 2011),

<https://www.npr.org/2011/09/12/140407306/cook-county-ill-bucks-immigration-enforcement>

³ *Supra* note 1.

⁴ *Supra* note 1.

impracticable or impossible.”⁵ The permissive language contained in the regulation suggests that cooperation with ICE requests are optional, not mandatory, thereby allowing for local legislation that formally declines the requests to be passed.

Another key factor that prompted the passage of the Cook County Ordinance and, ultimately, the TRUST Act was the federal immigration landscape at the time of passage and, in particular, how the Presidential administration of that time had been navigating immigration enforcement. The Obama Administration not only had the highest level of recorded ICE activity, but also employed detainers as a cutting-edge strategy for recruiting local law enforcement to participate in immigration enforcement.⁶ This was largely due to the fact that federal enforcement agents simply did not have the requisite numbers for enforcement and heavily relied on local law enforcement to implement their strategies. As a frame of reference, “in 2016, there were about 100,000 full-time federal law enforcement officers in the United States and U.S. territories . . . compared to 701,000 full-time sworn officers in general-purpose state and local law-enforcement agencies nationwide.”⁷ As a result of having a significantly lower number of law enforcement officers of their own, ICE forced state and local law enforcement to be frontline immigration officers.

However, what was really “the straw that broke the camel’s back,” according to Mark Fleming, current associate director of the National Immigrant Justice Center’s Federal Litigation Project and co-author of the Illinois TRUST, VOICES, and Way Forward Acts, was the

⁵ 8 C.F.R. § 287.7; U.S. Immigration and Customs Enforcement, Policy No. 10074.2 "Issuance of Immigration Detainers by ICE Immigration Officers," (March 24, 2017), available at <http://bitly/2q0QEJW>.

⁶ *The Role of ICE Detainers Under Bush and Obama*, Transactional Records Access Clearinghouse (TRAC) - comprehensive, independent, and nonpartisan information on federal enforcement, staffing and funding (2016), <https://trac.syr.edu/immigration/reports/458/>

⁷ Connor, Brooks, *Federal Law Enforcement Officers, 2016 – Statistical Tables* - Bureau of Justice Statistics U.S. Department of Justice (2019), <https://bjs.ojp.gov/content/pub/pdf/fleo16st.pdf>

implementation of the Secure Communities Program.⁸ Originally piloted in 2008, the Secure Communities Program allows for an immigrant arrested by state and local law enforcement to have their fingerprints automatically and affirmatively shared with ICE in real time to do their own enforcement.⁹ To this day, the program is troublesome, particularly because it has led to the removal of individuals who ICE frivolously categorizes as “criminal aliens,” despite the fact that the majority of these individuals have only been convicted of minor offenses (e.g., traffic offenses) or had no criminal record at all.¹⁰ Altogether, these circumstances demanded action that would protect local immigrant communities and, indeed, one single action in a local Illinois county has served as a guide for two pro-immigrant states: Illinois and California.

B. The California TRUST Act - A “Predecessor”

Once the Cook County Detainer Ordinance was passed, a legislative chain reaction was effectively set into motion, as the local ordinance inspired the creation of both the Illinois TRUST Act and the California TRUST Act.¹¹ The latter, passed in 2013 as Assembly Bill No. 4, prohibited state and local law enforcement officials from keeping an individual in custody on the basis of an ICE detainer for more than forty-eight hours unless the individual was convicted of a serious or violent felony or convicted within the past five years of a misdemeanor for a crime that is punishable as either a misdemeanor or a felony.¹² It is no coincidence that the California TRUST Act, or at least, its nature and character, resembles that of the Cook County Detainer Ordinance,

⁸ Interview with Mark Fleming, Assoc. Dir., Nat'l Immigrant Just. Ctr. (2022).

⁹ Michele Waslin, Ph.D., *The Secure Communities Program: Unanswered Questions and Continuing Concerns*, American Immigration Council (2011), <https://www.americanimmigrationco bhuncil.org/research/secure-communities-fact-sheet>.

¹⁰ Brief for National Immigrant Justice Center As Brief for National Immigrant Justice Center As Amici Curiae Supporting Respondents, *City of Chicago v. Sessions*, (No. 1:17-cv-5720), 2017 U.S. Dist. LEXIS 169518. Curiae Supporting Respondents, *City of Chicago v. Sessions*, (No. 1:17-cv-5720), 2017 U.S. Dist. LEXIS 169518.

¹¹ *Supra* note 8.

¹² Cal. Gov. Code § 7282.5(a)(West 2013).

as Mark Fleming worked closely with California officials to draft the legislation. In fact, Illinois was trying to pass its own TRUST Act around that same time¹³; however, because California had greater and quicker support for its Act than Illinois, it functionally preceded the Illinois TRUST Act.¹⁴ A years-long journey would ensue before Illinois would come to have a TRUST Act of its own.

C. Codifying the Original IL TRUST Act

Rarely, if ever, is the first draft of legislation the draft that actually passes. This was especially true for the Illinois TRUST Act. The first draft of the TRUST Act was an ambitious, sixty-page “Christmas tree bill” containing several moving parts that the drafters knew would likely end up being stripped down.¹⁵ Nevertheless, the drafters recognized the urgency and need to ensure that some foundation (even if not the one they had initially hoped for) was laid at the state level to act as a marker for future state legislation.¹⁶ Equally pivotal to the drafters was understanding the facts on the ground. The drafters refused to “copy and paste” from the California TRUST Act because immigrant communities in Illinois and those in California were facing their own distinct struggles and had their own unique set of needs that required attention.¹⁷

According to Fred Tsao, Senior Policy Counsel at the Illinois Coalition for Immigrant and Refugee Rights and co-author of the Illinois TRUST, VOICES, and Way Forward Acts, Illinois had been seeing a tremendous increase in local law enforcement holding onto people that would ordinarily be released, including those out on bond, those who had their charges dropped, and those

¹³ *Supra* note 8.

¹⁴ *Supra* note 8.

¹⁵ 5 Ill. Comp. Stat. 805 (West 2017).

¹⁶ Interview with Mark Fleming, Assoc. Dir., Nat'l Immigrant Just. Ctr. (2022).

¹⁷ *Supra* note 16.

who had already served their time.¹⁸ Both advocates and legislators vigorously opposed this entire process, as it was unconstitutional and a violation of the Fourth Amendment of the U.S. Constitution to continue holding individuals for no reason.¹⁹ In response, the first draft of the TRUST Act was written and filed in 2013 with various elements, including not only what eventually passed as the final TRUST Act in 2017, but also language that ended up in the Illinois Voices of Immigrant Communities Empowering Survivors (VOICES) Act of 2018 as well as many of the provisions that landed in the 2021 Illinois Way Forward Act.²⁰

Several factors contributed to the standstill of the 2014 TRUST Act draft. First, the progressive bill had tried to address a multitude of issues beyond ICE detainers that local politicians were not yet willing to address.²¹ Additionally, there was a very narrow margin with respect to Senate Democrats, leaving the bill's sponsors (including Senator John J. Cullerton) with the difficult decision not to move forward with the bill that year and to, instead, try again in 2015.²² Regrettably, the bill would reach the same result as the previous year. In 2015, while Illinois Senate Democrats had gained more seats, they had simultaneously lost a key ally in the executive branch: former Illinois Governor, Patrick Joseph Quinn, who lost his reelection to Republican Governor Bruce Rauner.²³ Still, this was just the beginning for the TRUST Act.

The 2016 federal election was both a turning point and a wakeup call to pro-immigrant states to legislatively combat an anti-immigrant administration. In the wake of the Trump Administration, more and more people grew concerned about the possibility of deportation and

¹⁸ Camilla Mroczkowski, Interview with Fred Tsao (2022)

¹⁹ U.S. Const. amend. IV.

²⁰ Camilla Mroczkowski, Interview with Fred Tsao (2022)

²¹ *Supra* note 20.

²² *Supra* note 20.

²³ Aamer Madhani, *Ill. Governor Quinn Finally Concedes Race to Rauner*, USA Today (2014),

<https://www.usatoday.com/story/news/politics/2014/11/05/illinois-quinn-concedes-rauner-governor/18551491/>

the federal government trying to compel local police into immigration enforcement.²⁴ Even so, these growing concerns did not translate into the TRUST Act being passed in its entirety. Instead, the bill continued to face tremendous opposition from law enforcement.²⁵ Consequently, what originally consisted of sixty pages would be passed and signed into law as legislation containing a mere three and a half pages. On August 28, 2017, Governor Rauner had finally agreed to sign the legislation, and it has been the law in Illinois ever since.²⁶

It is important to highlight the underlying infrastructure that was needed to get the TRUST Act passed. Certainly, the Trust Act's passage would not have been made possible without its key drafters, Mark Fleming and Fred Tsao, or its legislative sponsors, Senate President John Cullerton in the Illinois Senate and Representatives Emanuel Chris Welch and Lisa Hernandez in the Illinois House, both of whom would also end up sponsoring the Illinois Way Forward Act four years later.²⁷ Especially key to the infrastructure, however, was the coalition that spent a great deal of time advocating for it.

Advocacy for state legislation had begun years before the TRUST Act was ever introduced. Yet, a great deal of frontline advocacy was done by the Campaign for a Welcoming Illinois, a broad coalition largely led by immigrant community members, engaged over 85 organizations and 14,000 individuals throughout the state in education and advocacy events from trips to Springfield, rallies, press conferences, meetings with elected officials, and more to advocate for the TRUST Act for about eight months.²⁸ More centralized advocacy and engagement was done by members

²⁴ Marwa Eltagouri, *Little Village streets, restaurants quiet as deportation fears rise*, *Chicago Tribune*, (Feb. 19, 2017), <https://www.chicagotribune.com/news/ct-little-village-immigrants-met-20170216-story.html>

²⁵ Camilla Mroczkowski, Interview with Fred Tsao (2022)

²⁶ *Trust Act Signed into Law in Illinois*, National Immigrant Justice Center: A Heartland Alliance Program, (August 28, 2017), <https://immigrantjustice.org/press-releases/trust-act-signed-law-illinois>

²⁷ *Supra* note 25.

²⁸ *TRUST Act Signed into Law in Illinois*, *Asian Americans Advancing Justice – Chicago*, (August 28, 2017), <https://www.advancingjustice-chicago.org/trust-act-signed-into-law-in-illinois/>

of the United Congress of Community and Religious Organizations (UCCRO), who spent months engaging members of the Black Caucus in support of the bill as well as Itedal Shalabi, co-founder of the Arab American Family Services, who engaged leaders and fearful undocumented members of her community.²⁹ The overall efforts of all the aforementioned groups and individuals shows just how powerful persistence can be and how victory is achievable; all it takes is a bit of hope and a great deal of trust.

D. Key Elements of TRUST and its Immediate Aftermath

Although all of the drafter's ambitions did not end up being codified, the Illinois TRUST Act was a victory insofar as it would legally prohibit state and local police from stopping, arresting, searching, and detaining an individual solely on the basis of their suspected immigration status.³⁰ In addition, jails and prisons in Illinois would not be allowed to keep someone in jail longer than they would otherwise be held just because of an immigration detainer.³¹ Jails and prisons could continue to communicate with ICE; however, they could not delay a person's release to help ICE pick the person up.³²

Hena Mansori, former attorney at NIJC at the time the TRUST Act was passed, recalls seeing its immediate aftermath. She explained how the TRUST Act had “cut down on direct transfers from jails and prisons to ICE custody.”³³ Moreover, Mansori bore witness to seeing less

²⁹ *Trust Act Signed into Law in Illinois*, National Immigrant Justice Center: A Heartland Alliance Program, (August 28, 2017), <https://immigrantjustice.org/press-releases/trust-act-signed-law-illinois>

³⁰ 5 Ill. Comp. Stat. 805/15 (2017).

³¹ Rocio Velazquez Kato, Esq., *The Illinois Trust Act a Great Step Forward but Still Misunderstood by Some*, Latino Policy Forum, (May 2, 2018), <https://www.latinopolicyforum.org/blog/the-illinois-trust-act-a-great-step-forward-but-still-misunderstood-by-some>

³² *Supra* note 31.

³³ Camilla Mroczkowski, Interview with Hena Mansori (2022).

people come into ICE custody at local jails and the Illinois Department of Corrections based on detainers placed in Illinois.³⁴

Unfortunately, this does not mean that the Illinois TRUST Act was *never* violated. In 2019, the Illinois American Civil Liberties Union (ACLU) filed a lawsuit on behalf of detained immigrants against an Ogle County Sheriff who had detained them solely on the basis of an immigration detainer.³⁵ Mark Fleming worked closely with the ACLU on this action, as he held a unique perspective in his roles as both a litigator and a drafter. From a litigation standpoint, Fleming had critical insight on how other states and localities had defended legislation similar to the TRUST Act. Moreover, as a drafter, Fleming knew that local officials, either intentionally or negligently, would likely end up violating the TRUST Act.³⁶ Thus, Fleming has played a key consultative role in how to best frame the defense for the violation.³⁷ According to the Ogle County website, at the time of this writing, the litigation remains ongoing.³⁸

The TRUST Act also did eliminate ICE enforcement altogether. ICE is still able to monitor individual cases via the Secure Communities Program, which remains intact to this day.³⁹ Moreover, if ICE is made aware of an individual, they could proceed to pick those individuals up once they have been released or have gone back to their communities.⁴⁰ Still, the impact of the TRUST Act cannot be understated. The Illinois TRUST Act effectively made ICE's job of picking up individuals from facilities in Illinois significantly more difficult and led to a decrease in the

³⁴ *Supra* note 33.

³⁵ See Complaint at 1, *Rodriguez v. Hernandez*, 2019 CH 81 (2019), https://www.aclu-il.org/sites/default/files/field_documents/2019-1017_ogle_county_complaint_file_stamped_0.pdf

³⁶ Interview with Mark Fleming, Assoc. Dir., Nat'l Immigrant Just. Ctr. (2022).

³⁷ *Supra* note 36.

³⁸ *Ogle County, IL Case Search*,

https://www.judici.com/courts/cases/case_information.jsp?court=IL071015J&ocl=IL071015J,2019CH81,IL071015JL2019CH81P2

³⁹ *Secure Communities*, U.S. Immigration and Customs Enforcement, <https://www.ice.gov/secure-communities>

⁴⁰ Camilla Mroczkowski, Interview with Hena Mansori (2022).

number of individuals who are detained and/or incarcerated in Illinois.⁴¹ Most of all, the TRUST Act would come to serve as an important steppingstone for state legislation in years to come, including its successor legislation: the Illinois VOICES Act.

Part II: The Illinois VOICES Act

A. The Logical Next Step

Apart from the fact that it was one of the last pieces to get skimmed off the original TRUST Act, the Illinois Voices of Immigrant Communities Empowering Survivors (VOICES) Act was also the most promising portion of the original TRUST draft to receive bipartisan support. Thus, it was the logical next step in Illinois immigration legislation.

Several issues prompted a need for the VOICES Act. First, advocates in Illinois had long recognized an on-the-ground need to protect undocumented sexual assault survivors, especially undocumented women.⁴² Not only would the VOICES Act help facilitate a way for these survivors to come forward, but it was also viewed as a mechanism for assisting undocumented survivors and their potential pathways to lawful permanent residence.⁴³ Victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity are able to acquire a U-visa.⁴⁴ If granted, one can apply for lawful permanent residence after they have had their U-visa for three years.⁴⁵

The second major spark for the VOICES Act arose out of observations made by the U-Visa Working Group, a group dedicated to addressing U-Visa-related issues on the ground in Illinois,

⁴¹ *Supra* note 40.

⁴² Rachel Otwell, *Voices Act' Could Protect Undocumented Immigrants Who Are Sexual Assault Survivors*, NPR Illinois, (June 12, 2018), <https://www.nprillinois.org/equity-justice/2018-06-12/voices-act-could-protect-undocumented-immigrants-who-are-sexual-assault-survivors>

⁴³ *Supra* note 36.

⁴⁴ INA § 101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(U); Victims of Trafficking and Violence Protection Act, Pub. L. No. 106–386, § 1513(b)(3), 114 Stat. 1535 (2000).

⁴⁵ *Supra* note 44.

along with Sarah Diaz, a former Clinical Instructor of the Immigration Advocacy Clinic at DePaul University College of Law. Both had identified as early as 2014 major disparities in U-visa certifications.⁴⁶ The U-visa certification is a key component of the U-visa application, as it attests to the fact that the applicant was a victim of a qualifying crime, possessed information relating to the crime, and was helpful in the investigation or prosecution of that crime.⁴⁷ It is conducted by law enforcement agencies, who are allotted great discretion for how and whether to certify in any given case under the current regulatory scheme.⁴⁸

To shed greater light on disparities in U-visa certifications in Illinois, Sarah Diaz, who drafted much of the language of the VOICES Act, and some of her students in the DePaul Immigration Advocacy Clinic conducted a study in counties that have large concentrations of undocumented immigrants, and therefore, possible candidates for U-visas, including: Cook, Lake, DuPage, Kane, McHenry, Winnebago, and Will Counties.⁴⁹ The Clinic's research, in sum, revealed that some counties would issue certifications; some refused to issue any at all; some would only issue the certifications if certain conditions were satisfied; and some had police departments that had never even heard of a U-visa at all.⁵⁰ What was most frustrating and even crossed the line for Diaz, however, was the fact that State's Attorney's Offices in counties like DuPage were refusing to certify clearly eligible certifications for children who had experienced

⁴⁶ Camilla Mroczkowski, Interview with Sarah Diaz (2022).

⁴⁷ *U Visa Law Enforcement Certification Resource Guide for Federal, State, Local, Tribal and Territorial Law Enforcement*, U.S. Dep't of Homeland Security, https://www.dhs.gov/xlibrary/assets/dhs_u_visas_certification_guide.pdf

⁴⁸ *Arizona v. United States*, 567 U.S. 387 (2012)

⁴⁹ Geraldine Arruela, et. al., *Unequal Protection: Disparate Treatment of Immigrant Crime Victims in Cook, the Collar Counties, & Beyond*, (2014), <https://law.depaul.edu/about/news/Documents/unequal-protection---disparate-treatment-of-immigrant-crime-victims-in-cook-the-collar-counties-and-beyond-pdf.pdf>

⁵⁰ *Supra* note 49.

sexual abuse.⁵¹ Altogether, these issues made legislation like the VOICES Act vital for the protection of child and adult immigrant survivors.

The above-mentioned research served as the blueprint for the Illinois VOICES Act. In particular, it made the VOICES Act largely data-driven legislation. Additionally, it was the basis for legislation that would require law enforcement agencies to respond to all certification requests, to do so within a timely manner, and to make information regarding the agency's procedures for certification requests publicly available for victims and their representatives.⁵² The DePaul Immigration Advocacy Clinic's role in the creation of the VOICES Act, as well as the continued advocacy role of the Campaign for a Welcoming Illinois for both the Illinois TRUST and VOICES Acts, only further illustrates that there are many actors behind the scenes who each contribute their own fragments to what eventually becomes a state's immigration infrastructure.

B. VOICES and Negotiations

In addition to establishing a solid infrastructure, the VOICES Act owed much of its success to effective negotiations with law enforcement and adverse politicians. Initially, police chiefs, sheriffs, and the Fraternal Order of Police, one of the most powerful and vocal unions in the city, were a key reason why VOICES was initially cut from the original TRUST Act, as they were not fond of legislation telling law enforcement what they could and could not do.⁵³ Still, a significant portion of the language of the VOICES Act had already been negotiated prior to removal, with only a few necessary changes needed to be made to placate law enforcement officials.⁵⁴ What

⁵¹ Camilla Mroczkowski, Interview with Sarah Diaz (2022).

⁵² Voices of Immigrant Communities Empowering Survivors (VOICES) Act, Pub. Act 101-0019, 2019 Ill. Laws, <https://ilga.gov/legislation/BillStatus.asp?DocNum=34&GAID=14&DocTypeID=SB&LegId=98877&SessionID=91&GA=100>

⁵³ Emanuella Evans, Timeline: Chicago FOP presidents' turbulent relationship with race and police reform, Injustice Watch, (Sept. 13, 2021), <https://www.injusticewatch.org/news/2021/chicago-police-union-president-fop-timeline/>

⁵⁴ Camilla Mroczkowski, Interview with Fred Tsao (2022).

equally helped boost bipartisan support was the help of a South suburban Republican legislator who was deeply concerned with human trafficking and made significant efforts towards her Republican colleagues to vote for the bill.⁵⁵ These additional efforts helped get the VOICES bill out of both chambers with veto-proof majorities, which was significant because then Illinois Republican Governor, Bruce Rauner, ended up vetoing the bill.⁵⁶ The bill was brought back during the veto session and actually ended up getting more votes during the session, leading to the Illinois VOICES Act becoming law on November 28, 2018.⁵⁷

C. VOICES: California Companion Legislation

Like the TRUST Act, the VOICES Act also had its own companion “predecessor” legislation in California. Both Illinoisans and Californians had observed issues surrounding U-visa certifications. Three years prior to the Illinois VOICES Act, California had passed SB 674, more formally known as the Immigrant Victims of Crime Equity Act (IVCEA).⁵⁸ The IVCEA:

creates a ‘rebuttable presumption’ that victim meets the helpful requirement; 2) requires certifying agencies. . . to sign U visa certifications when the individual is eligible; 3) mandates that agencies respond to certification requests within 90 days (or 14 days if the person is in removal proceedings); and 4) requires law enforcement agencies to report back to the legislature on the number of certification requests signed and denied.⁵⁹

⁵⁵ *Supra* note 54.

⁵⁶ Camilla Mroczkowski, Interview with Mark Fleming (2022).

⁵⁷ General Assembly overrides Governor’s veto to pass VOICES Act in a win for domestic violence and immigrant rights advocates, Illinois Coalition for Immigrant and Refugee Rights, (Nov. 28, 2018), <https://www.icirr.org/News/VICTORY%21-The-VOICES-Act-is-now-law%21>

⁵⁸ SB 674: Immigrant Victims of Crime Equity Act, Immigrant Legal Resource Center, <https://www.ilrc.org/sites/default/files/documents/sb-674-infographic.pdf>

⁵⁹ Cal. Senate. B. 674 (2015-2016), Chapter 721 (2015 Cal. Stat.)

Two key differences between the California and Illinois laws are worth highlighting. First, unlike Illinois's VOICES Act, California's IVCEA creates a "rebuttable presumption" in favor of victims and simultaneously shifts the burden onto law enforcement to prove that the victim was otherwise unhelpful. In addition, California's legislation holds an added layer of accountability through the inclusion of a reporting requirement to the legislature. In Illinois, it was advocates who were forced to do this on-the-ground work, and even with legislation like the VOICES Act, groups like the U-Visa Working Group must continue to be wary of whether law enforcement agencies actually continue to comply with the VOICES Act. The lack of similar provisions in the VOICES Act, however, is merely a product of cautious immigration law-making: there is always some caution and concession that must be had when significant changes in public policy occur.⁶⁰ The pioneers of the VOICES Act all recognized that there may often need to be compromise in the short term in order to establish a solid policy foundation for the long haul.⁶¹

Part III: KIFTA and the Private Detention Facility Moratorium Act

A. Keep Illinois Families Together Act (KIFTA)

It would serve an injustice to the carefully-crafted immigration infrastructure built by Illinois advocates to not mention, at least briefly, two key pieces of legislation passed between the VOICES Act and the Illinois Way Forward Act. Shortly after the passage of the VOICES Act in November 2018, Republican Governor Bruce Rauner had lost his re-election bid to his Democrat opponent, JB Pritzker.⁶² The election of a Democratic governor gave advocates the opportunity to pass other pieces of the original TRUST Act that had been scrapped early on.⁶³ The first of these

⁶⁰ Interview with Mark Fleming, Assoc. Dir., NIJC Fed. Litig. Project (2022).

⁶¹ *Supra* note 60.

⁶² About the Governor, Illinois.gov, <https://www2.illinois.gov/sites/gov/about/Pages/default.aspx> (last visited December 23, 2022).

⁶³ Interview with Fred Tsao, Senoir Pol'y Counsel, Ill. Coal. of Immigrant and Refugee Rts. (2022).

pieces is the Keep Illinois Families Together Act or “KIFTA.” KIFTA was an important forerunner to what would ultimately become the Illinois Way Forward Act. It created a ban on 287(g) agreements.⁶⁴ 287(g) agreements are rooted in section 287(g) of the federal Immigration and Nationality Act (INA), which authorizes the Director of ICE to enter into agreements with state and local law enforcement agencies and permit designated officers to perform limited immigration law enforcement functions.⁶⁵

Unlike the TRUST and VOICES Acts, which were crafted in response to on-the-ground issues that had already occurred, KIFTA was a pre-emptive policy. It was designed to fight against clearly identified threats, including a number of sheriffs who were looking to but had not yet signed 287(g) agreements.⁶⁶ Policy makers wanted to stop the problem before interests could begin vesting.⁶⁷ After all, it is easier to tackle the problem before it happens than it is to after the fact. In addition to timing being a tactical advantage, policy makers also employed strategic language in KIFTA by avoiding specific mention of 287(g).⁶⁸ Instead, KIFTA’s drafters addressed 287(g) agreements in the following manner: “to limit collection of information from individuals to that information *necessary to perform agency duties and to limit use or disclosure of information for any other purpose.*”⁶⁹ With the elements of time, language, and political support on their side, KIFTA advocates celebrated victory in September of 2019.⁷⁰

B. The Private Detention Facility Moratorium Act

⁶⁴ Keep Illinois Families Together Act, Pub. Act 101-0019, 2019 Ill. Laws.

⁶⁵ INA § 287(g), 8 U.S.C. § 1357(g)

⁶⁶ Interview with Fred Tsao, Senoir Pol’y Counsel, Ill. Coal. of Immigrant and Refugee Rts. (2022).

⁶⁷ *Supra* note 66.

⁶⁸ Keep Illinois Families Together Act, Pub. Act 101-0019, 2019 Ill. Laws.

⁶⁹ *Supra* note 68.

⁷⁰ Daniel Nichanian, *Illinois Ban Ice Program But This Reform is Not Yet Taking Off Elsewhere*, The Appeal (Sep. 5, 2019), <https://theappeal.org/politicalreport/illinois-bans-ice-program-287g/>

A second key piece of legislation forming the state immigration arc from the TRUST Act to the Illinois Way Forward Act was HB2040, otherwise known as the Private Detention Facility Moratorium Act. The purpose of this bill was to pre-emptively block a buildup of private immigration prisons in Illinois.⁷¹ The bill was first proposed in 2012 but ended up failing by a single vote on the very last day of the voting session.⁷² One particular battle, however, prompted its resurrection.

Since 2011, immigration advocates had periodically engaged in various battles, coined as “sight fights,” to stop new ICE facilities from being built.⁷³ In March 2019, a village board in Dwight, Illinois, had approved a proposal for a private prison company to build a new ICE detention facility.⁷⁴ In response, advocates rushed to construct legislation that would bar any such agreements from being signed and implemented. Two key legislative actors, State Representative Kelly Cassidy and Senator Robert Peters, enthusiastically supported the proposal.⁷⁵ The end result was the Private Detention Facility Moratorium Act, which passed with bipartisan support and was signed into law by Governor Pritzker on June 21, 2019.⁷⁶ Under the newly enacted law, private prison operators could not build any for-profit civil detention facility.⁷⁷ This was significant, as there had already been a ban on private correctional facilities via the Private Correctional Facility Moratorium Act.⁷⁸ However, that Act was amended through the Private Detention Facility Moratorium Act to bar civil detention that would include immigration, since immigration law is civil, not criminal.⁷⁹

⁷¹ Interview with Fred Tsao, Senoir Pol’y Counsel, Ill. Coal. of Immigrant and Refugee Rts. (2022).

⁷² *Supra* note 71.

⁷³ *Supra* note 71.

⁷⁴ *Supra* note 71.

⁷⁵ *Supra* note 71.

⁷⁶ Private Detention Facility Moratorium Act, Pub. Act 101-0020, 2019 Ill. Laws.

⁷⁷ *Supra* note 76.

⁷⁸ Private Correctional Facility Moratorium Act, 730 Ill. Comp. Stat. 140/3 (2012).

⁷⁹ Private Detention Facility Moratorium Act, Pub. Act 101-0020, 2019 Ill. Laws.

Interestingly enough, the Private Detention Facility Moratorium Act was one of the few instances where Illinois was actually better positioned to pass pro-immigrant legislation than its California counterpart. California ended up being bombarded with litigation when it tried to pass its own private prison ban legislation, known as Assembly Bill No. 32.⁸⁰ The reason California was not as successful as Illinois was largely due to the fact that the facts on the ground were vastly different in both states. In California, there were pre-existing ICE facilities that had already been built as a result of private prison contracts, making litigation virtually inevitable since private interests had already vested.⁸¹ In Illinois, however, there was no such facilities constructed yet, allowing for pro-immigrant rule makers to block the construction of such facilities in ways that were no longer available to California.⁸² Through careful and strategic policy making and timing, Illinois had successfully thwarted, at least in part, the rapid expansion of the ICE detention system.

Part IV: The Illinois Way Forward Act - A “Cleanup Bill”

A. Setting the Stage: Why Illinois Detention Needed to End

After successfully passing two extra pieces of state immigration legislation, the time had finally arrived for all the other elements of the original Illinois TRUST Act drafted back in 2014, amongst other needs that had arisen over the years, to be fought for. The most dire need to be addressed was the end of ICE detention in Illinois once and for all. Advocates like Fred Tsao knew this would not happen overnight. However, with the successful elimination of private detention contracts, and only public county jail contracts left to abolish, advocates knew it was the right moment and opportunity to come to the legislature and say, “If it is not this facility, it will be the next. We need to end this.”⁸³

⁸⁰ Cal. Assemb. B. 32 (2019-2020), Chapter 739 (2019 Cal. Stat.)

⁸¹ Camilla Mroczkowski, Interview with Mark Fleming (2022).

⁸² *Supra* note 81.

⁸³ Interview with Fred Tsao, Senoir Pol’y Counsel, Ill. Coal. of Immigrant and Refugee Rts. (2022).

Bringing an end to immigrant detention was no small feat. Not only have immigrants in detention all across the nation been treated as “non-persons” under the Fourteenth Amendment, but they have also been subject to conditions that can, quite literally, shake the conscience.⁸⁴ Their sufferings include having to dress like criminals, despite the fact that they are not. The vast majority of detainees are subjects of “paper crimes,” i.e., being detained merely for not having the proper paperwork with them when they arrived to the United States. Detained migrants have also been helpless victims of rape, violence, and disease, and have experienced severe ignorance of their background trauma.⁸⁵ Medical care was also nonexistent in many Illinois centers. Sister JoAnn Persch of the Sisters of Mercy recalls visiting some detention centers to administer pastoral care and hearing migrants, after having expressed feelings of illness, be told by detention agents, “Just drink more water.”⁸⁶

County jails had simultaneously been profiting off the abuse and suffering of immigrants.⁸⁷ In McHenry County, ICE was giving the county approximately \$100 per day per immigrant for the purpose of “custody and care of its federal detainees.” However, instead of directing funds towards this intended purpose, McHenry County used between 45% to 73% of the funds to pay for roads, salaries, and other county services.⁸⁸ Incidentally, this misuse of funds only perpetuated poor conditions in detention facilities.⁸⁹

⁸⁴ Monica W. Varsanyi, *Rescaling the 'Alien,' Rescaling Personhood: Neoliberalism, Immigration, and the State*, The Center for Comparative Immigration Studies: University of California (January 2009),

https://escholarship.org/content/qt5kj387vk/qt5kj387vk_noSplash_c450623a1132daa97650ef5595f92fb.pdf

⁸⁵ Kathleen Arnold, Dir., Refugee and Force Migration Stud., DePaul University, Speaker at DePaul Migration Collaborative Inaugural Immigration Summit: Strategies for a Migrant Planet (Apr. 29, 2022).

⁸⁶ Sister JoAnn Persch, RSM, Sisters of Mercy, Speaker at DePaul Migration Collaborative Inaugural Immigration Summit: Strategies for a Migrant Planet (Apr. 29, 2022).

⁸⁷ Fred Tsao, Senoir Pol'y Counsel, Ill. Coal. of Immigrant and Refugee Rts., Speaker at DePaul Migration Collaborative Inaugural Immigration Summit: Strategies for a Migrant Planet (Apr. 29, 2022).

⁸⁸ *McHenry County, et. al. v. Raoul*. Brief of Amicus Curiae in Support of Defendant Illinois Attorney General. 20 Oct 2021.

⁸⁹ *Supra* note 83.

B. A Near Perfect Political Alliance

Bringing an end to immigrant detention would require a perfect alignment of support from politicians in every division. Coalitions intentionally worked with various actors in ensuring Governor Pritzker would sign off before it was even introduced into the legislature to confirm executive support.⁹⁰ After gauging a promising backing from the executive level, the next major task was securing legislative support. Even though Illinois had a supermajority of Democrats in 2021, it did not necessarily guarantee victory, as not all Democrats view immigration and bold policies in the same way.

On the surface, it would appear that Illinois was in the luxury of affording to lose a few votes, but advocates knew there was still a balancing act to be made. As Mark Fleming wisely stated: “you must always balance how many votes you can lose against what you might have to concede in order to get votes.”⁹¹ Advocates *wanted* to try to get as progressive of a policy passed as possible, but they could not risk falling even one vote short.⁹² There was simply too much at stake.

In addition to outstanding tactical planning, drafting, and rallying of support from political actors, what categorically helped lock in support from the legislature and did not require as much combatting as it did for the TRUST and VOICES Acts was the fact that law enforcement officials did not organize as much as they had in the past.⁹³ Part of this may be attributable to the recent racial justice movement following the death of George Floyd.⁹⁴ The result was that the coalition did not have to vehemently push back and engage in strenuous negotiations with law enforcement,

⁹⁰ Interview with Mark Fleming, Assoc. Dir., NIJC Fed. Litig. Project (2022).

⁹¹ *Supra* note 90.

⁹² *Supra* note 90.

⁹³ Interview with Fred Tsao, Senoir Pol’y Counsel, Ill. Coal. of Immigrant and Refugee Rts. (2022).

⁹⁴ *Supra* note 93.

making the end goal that much more achievable. Achievement became final when the Illinois Way Forward Act was signed into law on August 2, 2021, allowing Illinois to faithfully lead the way forward and make history by ending immigration detention all across the state.⁹⁵

C. The Act and its Immediate Aftermath

The implementation of the Illinois Way Forward Act, to some degree, occurred at a much quicker pace than advocates had anticipated. It only took Pulaski County, one of three prior detention center locations, three weeks before it announced the end of its ICE contract.⁹⁶ While this was excellent news for the end of detention being made a reality, it also placed pressure on advocacy groups to reach out to individuals in detention as soon as possible to secure their release rather than simply being transferred to an out-of-state facility.⁹⁷ During Labor Day weekend of 2021, Fred Tsao recalls waiting for detainees in hope of their release, yet they never arrived.⁹⁸ Only three individuals were released from the Pulaski County Jail outright and about a dozen additional people were released later on. The rest had, unfortunately, been transferred out-of-state.⁹⁹ These out-of-state transfers illustrate the unfortunate limitations of individual states attempting to restrict the actions of the federal government.

Two other counties that had previously detained immigrants in Illinois, McHenry and Kankakee counties, went on to file a complaint challenging the constitutionality of the Act.¹⁰⁰ In

⁹⁵ Illinois Way Forward Act, Pub. Act 102-0234, 2021 Ill. Laws.

⁹⁶ *Illinois Communities Welcome Home Three Men Released As Pulaski County Jail Ends Its Contract With ICE, Decry ICE's Decision To Transfer Many Others*, National Immigrant Justice Center: A Heartland Alliance Program, (September 4, 2021), <https://immigrantjustice.org/press-releases/illinois-communities-welcome-home-three-men-released-pulaski-county-jail-ends-its#:~:text=In%20August%2C%20Pulaski%20County%20informed,the%20state%20in%20early%202022.>

⁹⁷ Fred Tsao, Senior Pol'y Counsel, Ill. Coal. of Immigrant and Refugee Rts., Speaker at DePaul Migration Collaborative Inaugural Immigration Summit: Strategies for a Migrant Planet (Apr. 29, 2022).

⁹⁸ *Supra* note 97.

⁹⁹ *Supra* note 97.

¹⁰⁰ Complaint for Injunctive and Declaratory Relief, *McHenry County v. Raoul*, No. 3:21-cv-50341, 2021 WL 3923927 (N.D. Ill.).

[https://1.next.westlaw.com/Document/Ia7dab3100c1f11ec8cc1ca5e79b1b862/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=\(sc.Default\)](https://1.next.westlaw.com/Document/Ia7dab3100c1f11ec8cc1ca5e79b1b862/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=(sc.Default)).

their complaint, the counties sought injunctive and declaratory relief on the grounds that the proposed state law was in direct conflict with the Supremacy Clause contained within the U.S. Constitution.¹⁰¹ However, U.S. District Judge Philip G. Reinhard of the Northern District of Illinois in Rockford, Illinois ended up siding with advocates and agreed that the legislation was an appropriate use of the state's constitutional power to prohibit counties from participating in federal regulatory programs, such as immigration detention.¹⁰² The counties were relentless, however, and appealed Reinhard's decision.¹⁰³ Shortly thereafter, the 7th U.S. Circuit Court of Appeals issued an initial two-week stay that carried the date of implementation beyond the initial January 1, 2022 date to January 13, 2022, but it ultimately forced the counties to end their contracts, as the counties had failed to demonstrate . . . that "the district court erred in holding that the Illinois Act is not preempted by federal law because the Act does not attempt to prevent or govern existing contracts between the federal government and private entities."¹⁰⁴

As of March 2022, seventy-five individuals and their immediate family members were directly impacted by the Illinois Way Forward Act.¹⁰⁵ Approximately forty-one individuals (more than half) did end up getting released and were reunited with their families.¹⁰⁶ People who were released described excited reunions with their families and relief at the thought of not having to

¹⁰¹ *Supra* note 100.

¹⁰² Carlos Ballesteros, *Judge upholds Illinois Way Forward Act, sealing an end to ICE detention in the state*, Injustice Watch, (December 7, 2021), <https://www.injusticewatch.org/news/immigration/2021/illinois-immigration-detention-ban-upheld/#:~:text=Illinois%20to%20end%20immigrant%20detention.expand%20protections%20for%20immigrant%20communities>.

¹⁰³ Appellant Br., *McHenry County v. Raoul*, No. 21-3334, 2022 WL 519076 (7th Cir.). <https://1.next.westlaw.com/Document/Ie417aba8940b11ec91ad825f65050b7e/View/FullText.html?navigationPath=%2FRelatedInfo%2Fv4%2Fkeycite%2Fnav%2F%3Fguid%3DIe417aba8940b11ec91ad825f65050b7e%26srh%3D%26kw%3Dt&listSource=RelatedInfo&list=Filings&rank=4&docFamilyGuid=Ie417aba9940b11ec91ad825f65050b7e&ppcid=fdd719b4b3c047e6b630cf3d96b3d520&originationContext=filings&transitionType=FilingsItem&contxtData=%28sc.Default%29>.

¹⁰⁴ *McHenry County v. Raoul*, 2022 WL 636643 (7th Cir. 2022).

¹⁰⁵ Interview with Fred Tsao, Senoir Pol'y Counsel, Ill. Coal. of Immigrant and Refugee Rts. (2022).

¹⁰⁶ *Supra* note 105.

spend another night in jail.¹⁰⁷ Unfortunately, thirty other immigrants were transferred out of Illinois to other ICE detention facilities located in Indiana, Oklahoma, and Kentucky.¹⁰⁸ One individual was even deported.¹⁰⁹ Local advocate groups like NIJC continue to vouch for the release of those transferred and for any newly arrested individuals in Illinois to free them from any arbitrary jailing outside the state.¹¹⁰

It is worth stressing that even the individuals released from detention were still subject to another milder form of arbitrary jailing, coined by the NIJC and the Detention Watch Network as “E-carceration,” or Electronic Incarceration.¹¹¹ Electronic incarceration involves “the use of surveillance technology, like ankle monitors, cameras, and GPS, by law enforcement (such as, police, ICE, CBP) to track and monitor people in their own communities, deprive them of their liberty, and restrict their movement.”¹¹² Although some would find this preferable to remaining in a physical jail cell, as this, at least, enables immigrants to be in their homes, e-carceration is just as debilitating as physical detention, both psychologically and physically.¹¹³

D. Other Notable Aspects of Illinois Way Forward

Certainly, the most noticeable portion of the Illinois Way Forward Act was its greatest victory: bringing an end to ICE detention in Illinois. Still, this was not all the Illinois Way Forward Act accomplished. In addition to proscribing immigrant detention county contracts, both old and new, the Illinois Way Forward Act also empowered the Illinois Attorney General to

¹⁰⁷ Carlos Ballesteros, Illinois just ended ICE detention. *What happened to the people detained here?*, Injustice Watch, (February 16, 2022), <https://www.injusticewatch.org/news/immigration/2022/illinois-ice-detention-ended/>

¹⁰⁸ Interview with Fred Tsao, Senoir Pol’y Counsel, Ill. Coal. of Immigrant and Refugee Rts. (2022).

¹⁰⁹ *Supra* note 108.

¹¹⁰ *Supra* note 108.

¹¹¹ *Government Alternatives to Detention*, Detention Watch Network, <https://www.detentionwatchnetwork.org/issues/alternatives>

¹¹² *Supra* note 111.

¹¹³ Interview with Fred Tsao, Senoir Pol’y Counsel, Ill. Coal. of Immigrant and Refugee Rts. (2022).

reprimand any entity that violated the Act.¹¹⁴ Specifically, the Illinois Attorney General may 1) require a law enforcement agency, law enforcement official, or any other person or entity to file a statement or report in writing under oath or otherwise, as to all information the Attorney General may consider necessary; 2) examine under oath any law enforcement official or any other person alleged to have participated in or with knowledge of the alleged violation; and 3) issue subpoenas, obtain records, conduct hearings, or take any other actions in aid of any investigation.¹¹⁵ Moreover, law enforcement agencies, under the new law, are required to submit annual reports of compliance.¹¹⁶ While neither the TRUST Act nor the VOICES Act as enacted had such provisions (in large part due to law enforcement opposition), the Illinois Way Forward Act successfully secured such provisions that will expectantly increase both transparency and accountability.

PART V: The Way Forward

A. What's Next?

Following the demise of Illinois immigrant detention, many pro-immigrant allies and advocates rightfully ponder what is next on the agenda for immigrants' rights. Some would argue that the logical next step should focus on access to counsel for immigrants. Hena Mansori, current Attorney Supervisor of the Immigration Unit at the Law Office of the Cook County Public Defender, has already played a key role in this area by offering what have come to be known as "Padilla trainings." Padilla trainings have become commonplace following the United States Supreme Court's decision in *Padilla v. Kentucky*, which imposed an obligation on criminal defense attorneys to inform their noncitizen clients about the potential deportation risks of guilty pleas.¹¹⁷

¹¹⁴ 5 Ill. Comp. Stat. 805/30 (2021)

¹¹⁵ 5 Ill. Comp. Stat. 805/30 (2021)

¹¹⁶ 5 Ill. Comp. Stat. 805/30 (2021)

¹¹⁷ *Padilla v. Kentucky*, 130 S.Ct. 1473, 1485 (2010)

Mansori worked with local public defenders to ensure they carried out their Sixth Amendment obligation and now supervises public defenders who, thanks to HB 2760 (in effect as of January 2022), are allowed to accept and represent noncitizens facing deportation in immigration court, regardless of their citizenship.¹¹⁸

Still, there is a long way to go for immigrant access to counsel, particularly when it comes to funding that access. The Illinois Access to Justice Act of 2013, which created the Access to Justice Fund, allows nonprofit organizations to take on some additional cases, but they are not limited to those representing immigrants facing the possibility of deportation.¹¹⁹ The result is insufficient funding to cover the significant need that is out there.¹²⁰ According to Mansori, the legislature was not ready to address the subject fully in the 2021 legislation but hopes that sometime down the line Cook County is finally able to acquire more funding to expand into a program that largely resembles the New York Immigrant Family Unity Project (NYIFUP).¹²¹ The NYIFUP receives funding from New York City to afford representation to *every* detained individual.¹²²

In addition to funding legal representation for immigrants facing the prospect of removal, there is a corresponding need for greater immigrant post-conviction relief. The state of California has already taken an important lead on this issue by passing its AB-1950 bill, which creates shorter time periods for probation and enables immigrants to more quickly become eligible . . . to vacate

¹¹⁸ Avani Kalra, *Public defenders can now defend noncitizens facing deportation in immigration court*, The Daily Northwestern, (February 10, 2022), <https://dailynorthwestern.com/2022/02/10/city/public-defenders-can-now-defend-cook-county-residents-facing-deportation/#:~:text=The%20Cook%20County%20Public%20Defender's%20Office%20can%20now%20represent%20noncitizens,this%20change%20in%20September%202021>

¹¹⁹ 705 Ill. Comp. Stat. 95/15 (2013)

¹²⁰ Camilla Mroczkowski, Interview with Hena Mansori (2022).

¹²¹ *Supra* Note 120.

¹²² Nicole Narea, *New York Gave Every Detained Immigrant a Lawyer. It Could Serve as a National Model*, Jun 9, 202, <https://www.vox.com/policy-and-politics/22463009/biden-new-york-immigrant-access-lawyer-court>

a conviction rather than having to file a habeas corpus petition.¹²³ Perhaps Illinois will follow suit, as currently, under the Illinois Post-Conviction Hearing Act, Illinois still requires immigrants to wait three years from the date of conviction before filing a habeas corpus petition.¹²⁴

At the time of this writing, advocacy groups are seeking to pass the Right to Counsel in Immigration Proceedings Act (SB 3144). The proposed legislation, in the absence of federal action to create a counsel program, would secure sufficient funding and resources for support, interpretation, and investigative staffs, as well as country conditions and forensic medical experts that can play a crucial role in defensive asylum cases. In addition, the legislation would create a state task force that will make recommendations on how Illinois can provide legal representation for all Illinoisians facing deportation or going through other immigration procedures. This would be a major achievement towards ensuring universal representation for all.

B. Conclusion: The Influence and Limits of States in Immigration

This article has sought to show that states and localities *can* and *have* achieved great successes for their local immigrant communities. They serve as representations for other areas wishing to manifest change based on the specific needs of their own immigrant communities. Illinois, in particular, has shown how other states and localities can limit their participation in immigration enforcement via the TRUST Act; how to assist immigrant survivors of crime via the VOICES Act; and has now provided a template for other communities in their own battles for just closure of ICE detention facilities through the passage of the Illinois Way Forward Act.

Undoubtedly, these state actions do not negate the need for comprehensive reform at the federal level, as states continue to have little to no voice when it comes to the all-encompassing

¹²³ Cal. Assemb. B. 1950 (2020), Chapter 328 (2020 Cal. Stat. 94); Kathy Brady, *2021 California Laws that Can Help Immigrants Charged with or Convicted of Crimes*, *Immigrant Legal Resource Center (ILRC)*, https://www.ilrc.org/sites/default/files/resources/2021_ca_laws_affecting_crimimm_final.pdf

¹²⁴ 725 ILCS 5/122-1

scheme of immigrant admissions and immigration enforcement. Moreover, state-based action is a mechanism that can be used for good, as it has in Illinois and California, but also maliciously, as demonstrated by the recent Title 42 battle by the states of Arizona, Louisiana, and Missouri, and their respective Attorney Generals claiming state interests and injuries by unlawful migration.¹²⁵ Harmful action on the part of states carrying anti-immigrant sentiment goes beyond any single border and will surely require something much deeper. It will require a change in the overall narrative and unlearning the ways we have previously discussed issues of immigration (e.g. viewing immigration as something “economic”) and, overall, breaking down destructive narratives towards immigration. In the words of Sarah Diaz, “If we built [the narratives] up that way, we can surely break [them] down.” Illinois is a clear case in point of accomplishing just that.

¹²⁵ Complaint at 3, *Arizona, et. al. v. Centers for Disease Control and Prevention, et. al.*, 2022 WL 1276141 (W.D. La., 2022).