Immigration Law's Internal Dimension

Jacob Hamburger*

Immigration law is typically conceived as a body of law governing when noncitizens may enter the United States from abroad. But as revealed by recent controversies over migrants bused from Texas to cities like New York and Chicago, immigration law is not only concerned with who may cross the country's borders, but also where people go within those borders. Immigration law, broadly understood, is not limited to questions of admission and deportation. It also shapes the geographic dispersal of refugees and immigrant workers throughout the United States.

This Article contends that a complete account of immigration law requires understanding the ways in which it regulates the internal migration of noncitizens. This account involves grappling with immigration law both within the federal statutory scheme, and across numerous state and local regulations of undocumented immigrants. Recognizing this internal dimension of immigration law today also reveals a much longer history, stretching back to the country's earliest controls over entry from abroad. Exploring this history reveals a wealth of alternative conceptions of how state and federal agencies might approach questions of internal migration. In particular, this Article provides an original analysis of a Progressive-era experiment with a federal immigrant labor "distribution" agency: the Division of Information, created within the Bureau of Immigration in 1907.

Recovering this largely forgotten history suggests how federal immigration law might be reformed to address challenges of internal migration more directly. Cooperative initiatives between federal and state agencies can increase federal capacity to respond to humanitarian emergencies. Such cooperation may also serve to align federal immigration law more closely with local economic, industrial, and labor policy needs. In contrast, failure to recognize and respond to immigration law's internal dimension risks inviting a repetition of the "migrant crisis" of the Biden years.

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* Assistant Professor of Law, Marquette University Law School. My sincere thanks to Greg Ablavsky, Alex Aleinikoff, Jonathon Booth, Jennifer Chacón, Emily Chertoff, Zach Clopton, Debbie Dinner, Mike Dorf, Bridget Fahey, Amanda Frost, Deep Gulasekaram, Hiba Hafiz, Brian Highsmith, William Hubbard, Randy Johnson, Jakki Kelly-Widmer, Ian Kysel, Alison LaCroix, Alexi Lahav, Beth Lyon, Chan Tov McNamarah, Gali Racabi, Sabeel Rahman, Conor Reynolds, Sarang Shah, Rick Su, Leah Vosko, Steve Yale-Loehr, and Yiran Zhang for their comments and suggestions, as well as to those who provided feedback at the Cornell Law School 2024 Winter Faculty Retreat and Academic Professionals Workshop, the New York City Law and Political Economy Junior Scholars Workshop, the 2024 Northeastern Junior Scholars Conference, and the 2025 State Democracy Research Initiative Federalism Scholarship Roundtable. I am also grateful to the archival staff at the Cornell University School of Industrial and Labor Relations Catherwood Library and the National Archives in Washington, D.C. for their assistance. All errors are mine.

INTRODUCTION

"That is what we must have—a domestic immigration policy."[1]

After an arduous journey through the jungles of Colombia and Panama, avoiding corrupt police and violent cartels in Mexico, a twenty-year-old Venezuelan named Jhopsef arrived in Texas in September 2022. At that point, state officials gave him a choice: get on a bus bound either for Chicago, or for New York City. "I'd never heard of Chicago before that day. But I loved the name 'Chicago,'" he later told reporters in his adopted city, "I figured, yeah, I'll go to Chicago."[2] Jhopsef's bus trip seemed to have paid off. After a few weeks of living in YMCA shelters, he found work at a corner store, bought himself a bicycle, joined a pick-up soccer league, and began saving up to rent an apartment.[3] The travel arrangements states offered to migrants at the border did not always pan out so well. Notoriously,

1. DEP'T OF COMMERCE & LABOR, DISTRIBUTION OF ADMITTED ALIENS AND OTHER RESIDENTS: PROCEEDINGS OF THE CONFERENCE OF STATE IMMIGRATION, LAND, AND LABOR OFFICIALS WITH REPRESENTATIVES OF THE DIVISION OF INFORMATION, BUREAU OF IMMIGRATION AND NATURALIZATION, DEPARTMENT OF COMMERCE AND LABOR 105 (1912) [hereinafter 1911 Conference] (Statement of J.B. Haynes, Special Representative of Omaha, Nebraska).

2. Alex V. Hernandez, *A Young Venezuelan Had Never Heard of Chicago. Now, He's Starting a Life Here*, BORDERLESS (Dec. 4, 2022), https://borderlessmag.org/2022/12/04/a-young-venezuelan-had-never-heard-of-chicago-now-hes-starting-a-life-here/ [perma.cc/AV48-VEL7].

3. *Id.*

Florida agents operating in San Antonio that same fall lured a group of forty-eight asylum seekers onto a charter plane, falsely promising them homes and jobs in Massachusetts. The plane dropped them off on the resort island of Martha's Vineyard, causing major distress to both the disoriented travelers and the unexpecting local officials scrambling to find them lodging.[4]

Since then, mayors and governors far from the border began enacting their own schemes to move migrants around. For a time, Governor Jared Polis's Colorado joined Texas in paying for bus trips to faraway cities like Chicago and New York.[5] Citing concerns about the availability of shelter, New York City experimented with initiatives to house migrants upstate, or provide free air travel elsewhere.[6] These relocation efforts led to numerous legal battles, after local governments sought to block New York City from sheltering migrants in hotels within their jurisdictions.[7] As migrants dispersed throughout the country, it was not only the largest cities—and not only those in blue states—that faced questions of whether and how to welcome them. The State of Utah, for example, passed out leaflets in 2024 warning that "there is no room in shelters" in Salt Lake City, urging travelers to "consider another state."[8]

As states and cities grappled with the logistical and organizational challenge of transporting migrants throughout the country and providing them with shelter, federal immigration agencies were conspicuously absent. There is no such agency responsible for coordinating where migrants end up once they cross the country's borders, and the Biden administration opted largely to subsidize scattered efforts at the sub-federal level levels rather than mount a comprehensive coordinated response.[9] The perception that President Joe Biden and Vice President Kamala

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4. Edgar Sandoval, Miriam Jordan, Patricia Mazzei & J. David Goodman, *The Story Behind DeSantis's Migrant Flights to Martha's Vineyard*, N.Y. TIMES (Oct. 2, 2022), https://www.nytimes.com/2022/10/02/us/migrants-marthas-vineyard-desantis-texas.html [perma.cc/H53L-2WX5].

5. Deon J. Hampton, *Colorado Ends Short-Lived Program to Bus Migrants to Chicago and NYC*, NBC NEWS (Jan. 9, 2023), https://www.nbcnews.com/news/us-news/colorado-ends-short-lived-program-bus-migrants-chicago-nyc-rcna64922 [perma.cc/2VZ8-UPGH].

6. *See* Joshua Solomon, *NYC, State Agency Hope to Resettle the Migrants in Upstate Hotels*, ALBANY TIMES UNION (July 14, 2024), https://www.timesunion.com/state/article/nyc-state-agency-hope-resettle-migrants-upstate-19563154.php [perma.cc/2RG3-VWHP]; Emily Ngo, *One-Way Plane Tickets: NYC Offers Migrants Free Travel Anywhere to Move*, POLITICO (Oct. 26, 2023), https://www.politico.com/news/2023/10/26/migrants-nyc-plane-rides-00123778 [web.archive.org/web/20250401105616/https://www.politico.com/news/2023/10/26/migrants-nyc-plane-rides-00123778].

7. *See* Complaint, City of New York v. County of Rockland, No. 451361/2023 (N.Y. Sup. Ct., June 7, 2023) (lawsuit on behalf of New York City challenging county executive orders purporting to block migrant shelter in hotels); Complaint, Palisades Estates EOM v. County of Rockland, No. 7:23-cv-04125 (S.D.N.Y. May 22, 2023) (New York hotels alleging that several upstate counties unlawfully sought to bar them from providing accommodations to migrants); *see also* Estelle McKee & Jaclyn Kelly-Widmer, *Why Upstate NY Counties Should Welcome, Not Ban, Migrants*, SYRACUSE POST STANDARD (June 7, 2023), https://www.syracuse.com/opinion/2023/06/why-upstate-ny-counties-should-welcome-not-ban-migrants-guest-opinion-by-estelle-mckee-jaclyn-kelley-widmer.html [perma.cc/MG5E-EGYB]. New York City also unsuccessfully sued the bus companies transporting migrants from border states. *See* Comm'r of the N.Y. City Dep't of Soc. Servs. v. Buckeye Coach LLC, Index No. 150122/2024, 2024 BL 408117 (Sup. Ct. Nov. 7, 2024) (dismissing suit by New York City seeking damages from bus companies for violating state law).

8. Miriam Jordan, *More Cities Feel Strain as Migrants Move in Seeking Better Prospects*, N.Y. TIMES (June 17, 2024), https://www.nytimes.com/2024/06/17/us/migrants-border-aid.html [perma.cc/E226-GU3Q].

9. *See infra* Part I.C.

Harris had failed to contain this "migrant crisis" is often cited as an explanation for Harris's defeat in the 2024 presidential election to former President Donald Trump.[10]

This relatively limited federal response may seem strange given conventional understandings of U.S. immigration law. If immigration is, in the words of Justice Elena Kagan, the "zenith of federal power," then one would expect the federal government to take charge of responding to a crisis involving the arrival of foreigners and their dispersal throughout the country.[11] By the same token, abdicating responsibility over migrant mobility to state and local actors might be characterized as a fundamental failure of immigration law—or even law itself—abandoning vulnerable migrants to naked partisan politics.

This Article contends that there is nonetheless law at work here, a dimension of immigration law that often goes unnoticed. Its central descriptive claim is that immigration law cannot be fully understood without accounting for its intersection with what I call the law of internal migration: legal interventions that shape the conditions under which people choose where to live. Although this Article focuses on these features in the context of immigration law, the law of internal migration can be found across numerous policy areas, at all levels of government, ranging from local zoning and land use law, to federal climate and disaster programs, to labor and industrial policies.[12]

Immigration law regulates the movement of noncitizens not just across the United States' borders—as is commonly understood—but also within them. Building on the scholarly literature on immigration federalism, this Article identifies the ways in which interventions at the federal, state, and local levels create a unified legal framework for regulating the internal migration of noncitizens.[13] Various

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10. Descriptions of the uptick in humanitarian migration and its consequences as a "crisis" were ubiquitous in media coverage of the Biden presidency and the 2024 presidential election. *See, e.g.*, Paola Nagovitch, *How Immigration Shaped the U.S. Political Agenda in 2024*, EL PAÍS (Dec. 31, 2024), https://english.elpais.com/usa/2025-01-01/how-immigration-shaped-the-us-political-agenda-in-2024.html [perma.cc/L82Z-8URW] ("With the election just months away . . . Trump gained momentum by criticizing the Biden administration for not doing enough to address the migration crisis."). Critics of this language note that referring to the mere presence of human beings as a crisis dehumanizes migrants, particularly those from the global South. *See* Daniel I. Morales, *The U.S.-Mexico Border as a Crisis of Social Reproduction*, L.P.E. BLOG (Feb. 19, 2024), https://lpeproject.org/blog/the-border-as-a-crisis-of-social-reproduction/ [perma.cc/NHP5-B9XU]. I am nonetheless comfortable using the term, given the real administrative constraints these arrivals posed for state and local jurisdictions and the significant consequences of these events for national politics. *See* Jacob Hamburger, *How Should Democrats Respond to the 'Migrant Crisis'?*, L.P.E. BLOG (Nov. 13, 2024), https://lpeproject.org/blog/how-should-democrats-respond-to-the-migrant-crisis/ [perma.cc/948M-9KDP]. In any event, this sort of framing is a recurring feature of media narratives over immigration. *See* Linda S. Bosniak, *Membership, Equality, and the Difference that Alienage Makes*, 69 N.Y.U. L. REV. 1047, 1048 n. 2 (1994) (writing over thirty years ago that "[r]eports that the nation is experiencing an 'immigration crisis' have become a virtual axiom in the press and among policy experts.").

11. Transcript of Oral Argument at 90, United States v. Texas, 599 U.S. 670 (2023).

12. *See infra* Part I.A.

13. Several foundational articles in the field describe a unified regulatory structure stretching across federal, state, and local governments. *See* Cristina Rodríguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 571 (2008) ("The federal government, the states, and localities form part of an integrated regulatory structure that helps the country as a whole to absorb immigration flows and manage the social and cultural change that immigration inevitably engenders."); Rick Su, *Local Fragmentation as Immigration Regulation*, 47 HOUSTON L. REV. 367, 370 (2010) (noting that immigration controls and local government regulations of residency "can be understood as

provisions of the Immigration and Nationality Act (INA) have important effects on the geography of immigration. But beyond the federal statute itself, the legal framework for internal migration in this context also encompasses a patchwork of state and local laws that govern the lives of noncitizen residents, each exerting pressure on people to leave or stay.[14] The recent migrant crisis laid bare the ways in which internal migration is at the core of our most urgent immigration controversies.[15]

A complete account of this internal dimension, however, requires understanding its place in history—a history that encompasses both the emergence of immigration law in the early republic, and the creation of the federal immigration bureaucracy at the turn of the twentieth century. What we now think of as immigration law arose out of earlier legal regimes controlling the movement of people of color and the poor across state and municipal boundaries. But as the federal government began to assert greater control over the entry of foreigners, it left unresolved many important questions of how public authorities would manage the circulation and dispersal of immigrants throughout a country that was now far more economically and socially integrated.[16]

Early federal attempts to grapple with questions of internal migration reveal an alternative vision of what immigration law's internal dimension can look like. This Article examines an important but overlooked episode in this history, the first major attempt to incorporate internal migration policymaking into the federal immigration bureaucracy. In 1907, Congress created an agency within the Bureau of Immigration and Naturalization charged with overseeing the "distribution" of immigrants throughout the country's interior, which became known as the Bureau's Division of Information.[17] Launched during the Progressive era, when immigration

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interdependent counterparts in the same regulatory scheme"). Other scholars have introduced other analytical frames that encompass partial aspects of what I call "internal migration" in the immigration context. Some, for example, have distinguished between immigration laws that operate at the border from those that stretch "between borders." *See* Ming H. Chen, *Immigration and Cooperative Federalism: Towards a Doctrinal Framework*, 85 U. COLO. L. REV. 1087, 1091 (2014); *cf.* Adam Cox, *Immigration Law's Organizing Principles*, 157 U. PA. L. REV. 341, 345, 354 (2008) (discussing the related distinction between "rules that 'select' immigrants and rules that regulate immigrants outside of the 'selection' context"). Professor Ilya Somin's work incorporates some of these inward-facing elements of immigration law into his argument for how "foot voting" enhances political choice. *See* Ilya Somin, *Empowering Hispanics to Vote with Their Feet*, 61 HOUSTON L. REV. 777 (2024). Other scholars still have focused on how state and local laws seek to encourage "self-deportation" by making life difficult for undocumented residents. *See* K-Sue Park, *Self-Deportation Nation*, 132 HARV. L. REV. 1878 (2019); R. Linus Chan, *The Right to Travel: Breaking Down the Thousand Petty Fortresses of State Self-Deportation Laws*, 34 PACE L. REV. 814 (2014). My approach here is to survey the ways in which in which U.S. immigration law—understood holistically as encompassing federal, state, and local interventions—contributes to these kinds of internal migration pressures.

14. *See infra* Part I.B.

15. *See infra* Part I.C.

16. *See infra* Part II.

17. Immigration Act of 1907, Pub. L. No. 59-96-2, 34 Stat. 898, 909–10 (1907). One year earlier, Congress had expanded the responsibilities of the Bureau of Immigration, renaming it the Bureau of Immigration and Naturalization. *See* Act of June 29, 1906, Pub. L. No. 59-338, 34 Stat. L. 596 (1906). In 1913, Congress removed naturalization from the Bureau's mandate, and it became known once again as the Bureau of Immigration until it was replaced by the Immigration and Naturalization Service in 1933. *See* Act of March 3, 1913, Pub. L. No. 62-426, 37 Stat. L. 736, 737 (1913). Similarly, at the time the Division of Information was created, the Bureau of Information was housed within the Department

was at a historic peak and the federal immigration system was still relatively new, the Division of Information was an experiment with federal administrative infrastructure to encourage migration in line with both national and local policy priorities.

The Division of Information instantiated a markedly different approach to internal migration than we see in the corresponding legal framework today. On paper, the agency was given the modest task of providing information to arriving immigrants about various interior destinations. In practice, its leadership—particularly its chief officer Terence Powderly, who had once been the country's leading labor organizer—sought to achieve much more than this. For Powderly and his allies, the project of immigrant "distribution" was an opportunity for the federal government to intervene directly in labor markets throughout the country, and to align local and national industrial policy goals. However, the Division's experiment was cut short by World War I and its aftermath: The agency was disbanded in 1921, coinciding with the postwar passage of restrictive immigration quota legislation.

Having explored the past and present of the legal framework governing the internal migration of noncitizens, this Article considers how this framework might be improved to avoid reproducing the crisis of recent years. In certain respects, the law of internal migration today delegates too much power to state and local governments, which often have little incentive to coordinate with one another or account for nationwide interests—let alone the interests of immigrants themselves. But in other respects, federal immigration law provides too few opportunities for sub-federal governments to express and achieve their own internal migration objectives.

This Article contends that federal immigration law has a greater variety of internal migration interventions at its disposal than it might seem. In particular, the largely forgotten[18] history of the Division reveals an alternative model for an

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of Commerce and Labor. The 1913 legislation also split this Department into the separate cabinet-level Departments of Commerce and Labor that still exist today. *Id.*

18. Discussion of the Division of Information is practically nonexistent in contemporary legal scholarship. One notable exception is an unpublished manuscript by Professor Willy Forbath, which fills a major gap in the literature by tracing Terence Powderly's move from the labor movement into his "second career as a federal official . . . in the immigration bureaucracy," and placing this history within the broader evolution of American ideas about race, labor, and immigration. Willy E. Forbath, "The Borders of 'Our America': 'Race,' Liberalism, and National Identity in the Law and Politics of European Immigration, 1882-1924" at *23 (unpublished manuscript) (on file with author). The Immigration Act of 1907 is generally much better known for having created the United States Congressional Joint Immigration Commission, also known as the Dillingham Commission, which produced an influential 1911 report on immigration. *See e.g.*, ROGER DANIELS, GUARDING THE GOLDEN DOOR: AMERICAN IMMIGRATION POLICY AND IMMIGRANTS SINCE 1882 45 (2004) ("The act of 1907 . . . most significantly, authorized what became the United States Immigration Commission, sometimes known as the Dillingham Commission."); ARISTIDE R. ZOLBERG, A NATION BY DESIGN: IMMIGRATION POLICY IN THE FASHIONING OF AMERICA 230 (2006). More recent historical scholarship has called for a better understanding of the importance of "regional differences in attitudes about immigration policy" among lawmakers during this period, including immigrant "distribution" schemes. KATHERINE BENTON-COHEN, INVENTING THE IMMIGRATION PROBLEM: THE DILLINGHAM COMMISSION AND ITS LEGACY 11 (2018). I also draw on several social scientists' account of the Division's role in the history of immigration and labor policy and politics. *See* KITTY CALAVITA, U.S. IMMIGRATION LAW AND THE CONTROL OF LABOR: 1820-1924 (1984); GWENDOLYN MINK, OLD LABOR AND NEW IMMIGRANTS IN AMERICAN POLITICAL DEVELOPMENT: UNION, PARTY, AND STATE, 1875-1920 (1986); JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1924 (1955). The Division also figures prominently in some publicly commissioned

intergovernmental approach to internal migration. By creating the Division, Congress made clear that facilitating internal migration is an explicit goal of federal immigration law and policy, not just an accidental side effect. To promote this goal, during its brief existence the Division began constructing a cooperative framework for regulating internal migration. Rather than leaving state and local governments to their own devices, federal immigration officials sought to foster dialogue and coordinate logistically between them to align economic, labor, and industrial policy priorities at the national and local levels.

Part I describes the law of internal migration, and explores the internal migration features of immigration law and immigration federalism today. Part II traces the long historical background of this law of internal migration. Drawing primarily on secondary historical literature, it shows how what we know as immigration law today emerged out of state and local government controls over movement within U.S. borders. Part III employs an original analysis of primary sources to explore the federal government's early experiment with a national-level administration for internal migration, charting the rise and fall of the Division of Information between 1907 and 1921. Finally, Part IV discusses the normative implications of this historical alternative for our understanding the legal interventions available for a federal approach to internal migration in immigration law today.

I. IMMIGRATION, FEDERALISM, AND INTERNAL MIGRATION

The law of internal migration structures the choice of where to live within the United States. Legal interventions by federal, state, and local governments exert a wide range of pressures to move or to remain in place. This is not the standard view of how immigration law operates. Immigration is most commonly seen as an area of law governing whether and how people can enter United States from abroad or be removed to their country of origin. But immigration law too is replete with legal interventions affecting the internal migration of noncitizens. This becomes apparent when we consider not only immigration law under the INA, but also the various actions by state and local governments to expand or restrict noncitizens' rights. Taking these interventions together, we can identify a nationwide legal framework governing internal migration in the immigration context. As the recent "migrant crisis" demonstrated, however, this framework is dysfunctional in many important respects, offering few opportunities for constructive intergovernmental cooperation.

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scholarship on public employment offices, since it was the first such office at the federal level. *See* Woong Lee, *Private Deception and the Rise of Public Employment Offices*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 13695, 2007); Henry P. Guzda, *The U.S. Employment Service at 50: It Too Had to Wait Its Turn*, 106 MONTHLY LAB. REV. 12, 14 (1983).

This Article also builds on a growing body of recent scholarship that has sought to recover Progressive-era experiments in governance and state-building to inspire new approaches to the evolution of U.S. legal and political institutions today. *See, e.g.*, WILLIAM J. NOVAK, NEW DEMOCRACY: THE CREATION OF THE MODERN AMERICAN STATE (2022); JOSEPH FISHKIN & WILLIAM E. FORBATH, THE ANTI-OLIGARCHY CONSTITUTION: RECONSTRUCTING THE ECONOMIC FOUNDATIONS OF AMERICAN DEMOCRACY 138–250 (2022); K. SABEEL RAHMAN, DEMOCRACY AGAINST DOMINATION (2017).

A. The Law of Internal Migration

Internal migration is a question for law and public policy. Of course, when people decide where to make their homes, they seek out places close to family and friends, where they can find a job, or where they prefer the climate and culture. But private and market relationships, and even personal preferences, do not exist in a vacuum separate from law and policy interventions.[19] This Section describes the key contours of internal migration law.

As an initial matter, the law of internal migration operates primarily by encouraging voluntary decisions about where to live. Clearly, law and legal institutions also allow for the *involuntary* movement of people. One need look no further than the practice of incarceration, which not only forces people from their homes into jails and prisons, but also in the process frequently moves them across jurisdictional lines.[20] Although perhaps not legal by today's standards, forced migrations have also occurred throughout the history of the United States, from the displacements of Indigenous peoples to the internment of Japanese Americans during the Second World War.[21] However, direct coercion is hardly the only legal tool governments have to affect internal migration. In many other instances, the law of internal migration operates by making it more or less attractive to move or remain in place. Some of these interventions aim directly to achieve a particular internal migration result, seeking to attract, retain, repel, or drive away certain residents. Others produce these results as indirect or inadvertent effects.

These sorts of internal migration interventions appear at all levels of government in the United States' legal system. Legal scholars and social scientists have long understood how public policy variation across state and local governments creates a geographic sorting effect, allowing individuals to move to the jurisdiction that best fits their needs and preferences.[22] In a fragmented political system—where sub-federal governments can each offer a different array of public services, taxation rates, business incentives, workplace protections, and the like—each political subdivision can craft policies that may attract certain kinds of potential residents. Local governments also can employ tools such as exclusionary zoning to

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19. *See* Su, *supra* note 13, at 372; GERALD E. FRUG, CITY MAKING 3 (1999).

20. *See* John M. Eason, Danielle Zucker & Christopher Wildeman, *Mass Imprisonment Across the Rural-Urban Interface*, 672 ANN. AM. ACAD. POL'Y & SOC. SCI. 202 (2017) (documenting the transfer of population between urban and rural centers through criminal incarceration). The Supreme Court has also recently upheld the constitutionality of local governments' practice of using criminal penalties to move people on the micro level, namely by forcing people experiencing homelessness to move from one part of a city to another. *See* City of Grants Pass v. Johnson, 603 U.S. 520, 569 (2024) (Sotomayor, J. dissenting) (citing surveys of homeless people indicating that they typically "'just mov[e] two to three blocks away' when they received a move-along order"); *see also* Jennifer M. Chacón, *Producing Liminal Legality*, 92 DENV. L. REV. 709, 750–51 (2015).

21. Notably, the Supreme Court belatedly clarified in *Trump v. Hawaii* that the "forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority." Trump v. Hawaii, 585 U.S. 667, 710 (2018).

22. *See* Charles M. Tiebout, *A Pure Theory of Local Expenditures*, 64 J. POL. ECON. 416, 417–20 (1956). *But see* Ganesh Sitaraman, Morgan Ricks & Christopher Serkin, *Regulation and the Geography of Inequality*, 70 DUKE L.J. 1763, 1821 (2021) ("Instability in community character coupled with high costs of moving makes sorting more difficult and undermines the central feedback mechanism of foot-voting."); David Schleicher, *The City as Law and Economic Subject*, 2010 ILL. L. REV. 1507, 1509 (2010) (explaining that "agglomeration economics" counteract the sorting tendency of fragmented government).

make it difficult for new residents to move to their communities, for example by restricting the supply of affordable housing.[23] Whether sub-federal variation facilitates some individuals' choice of where to live or creates barriers to the mobility of others, the law of internal migration is at work.

Federal law can also produce similar sorting effects on internal migration. A growing body of law and political economy literature has examined the ways in which federal law—including transportation, communications, trade, antitrust, and labor law—produces inequalities between geographic regions of the United States.[24] In other words, federal interventions make certain places more attractive or more livable than others.[25]

At the federal level, however, it is also possible to regulate internal migration on a much greater scale. Whereas state and local government action is primarily concerned with migration across their own boundaries, the federal government has no such limitation. In other words, federal internal migration law can express a more holistic range of policy priorities regarding where people should or should not move throughout the United States.[26] Federal interventions can have a variety of governance structures. In some cases the federal government can centralize its efforts, interacting directly with individuals considering a move.[27] In others, federal law can adopt a cooperative structure, inviting state or local governments to create their own proposals for administering internal migration programs. An increasingly salient example includes federal "managed retreat" programs, which buy out homeowners' properties in areas at risk of floods and other natural disasters.[28] These programs, run through both the Federal Emergency Management Agency

23. *See* John Infranca, *Differentiating Exclusionary Tendencies*, 72 FLA. L. REV. 1271, 1273 (2020); David Schleicher, *Stuck! The Law and Economics of Residential Stagnation*, 127 YALE L.J. 78, 114–16 (2017); Su, *Local Fragmentation*, *supra* note 13, at 380. The Supreme Court has recognized some constitutional limits on localities ability to exclude. *See* Village of Belle Terre v. Boraas, 416 U.S. 1, 7 (1974). Curiously, though, the Court's right to travel jurisprudence has arguably limited states' powers to exclude more sharply than those of their subdivisions. *See* Saenz v. Roe, 526 U.S. 489, 506–07 (1999).

24. *See* Sitaraman et al., *supra* note 22, at 1785–1810 (surveying the geographic inequality effects across federal law); Hiba Hafiz, *The Law of Geographic Labor Market Inequality*, 172 U. PA. L. REV. 1183 (2024) (focusing on federal labor law); *see also* Brian Highsmith, *Regulating Location Incentives*, 74 DUKE L.J. 741 (2024) (proposing federal antitrust reforms to counteract firms' dominance over local governments); Robert Manduca, *Antitrust Enforcement as Federal Policy to Reduce Regional Economic Disparities*, 685 ANNALS AM. AC. POL. & SOC. SCI. 156 (2019).

25. Both scholars in this law and political economy vein and their interlocutors in the law and economics tradition recognize that law creates barriers to the sorting effects predicted by the Tiebout model. *Compare* Sitaraman et al., *supra* note 22, at 1821 ("Instability in community character coupled with high costs of moving makes sorting more difficult and undermines the central feedback mechanism of foot-voting."), *with* Schleicher, *supra* note 23, at 84 ("State and local (and a few federal) laws and policies have created substantial barriers to interstate mobility.").

26. These interventions can include both "place-based" interventions, which aim to invest in places so as to reduce the need for internal migration, and "people-based" interventions which seek to empower individuals to move if they so choose. *Compare id.* at 152 (proposing federal subsidies aimed at lowering the cost of moving), *with* Hafiz, *supra* note 24, at 1281–85 (advocating for federal employment placements and industrial policy investments). *See also* Elizabeth Martia Alvarez Minoff, Free to Move?: The Law and Politics of Internal Migration in Twentieth-Century America 393 (2013) (Ph.D. dissertation, Harvard University) (describing the emergence of the "people" vs. "place" debate in federal policy the late 1960s).

27. *See, e.g.* Schleicher, *supra* note 23, at 152 (proposing direct federal subsidies to individuals to encourage labor mobility).

28. *See* Stephanie Stern, *Climate Transition Relief: Federal Buyouts for Underwater Homes*, 72 DUKE L.J. 161, 173–77 (2022); Ruhan Sidhu Nagra, *Relocating Justice*, 74 DUKE L.J. 441 (2024).

(FEMA) and the Department of Housing and Urban Development, allow states and localities to seek funds provided that their proposals adhere to federal environmental guidelines and satisfy a cost-benefit analysis.[29]

B. Internal Migration Interventions in the Immigration Context

At first glance, the connection between immigration and the law of internal migration as described above may not be immediately obvious. The conventional view is that immigration law is concerned with determining who may enter or be removed from the United States as a whole.[30] This conception of immigration law aligns with the "plenary power" tradition in Supreme Court case law, which, among other things, deems immigration to be a matter of foreign relations—therefore assigning it as an exclusive responsibility of the federal government.[31]

Although legal scholars have long criticized plenary power,[32] academic literature has also frequently understood the core purpose of immigration law to be allocating membership rights in the national community as a whole. In no small part, immigration law scholarship has followed the philosopher Michael Walzer's view that decisions over who counts as a member must be made at the national level, in order to prevent each sub-national community from enacting its own restrictions—in the process erecting "a thousand petty fortresses," to use his memorable phrase.[33] Following this view, federal immigration law can be understood as a set of "membership rules" which reflect "national self-determination and self-definition."[34]

While this view of immigration law is accurate, it is also incomplete. The INA does, of course, determine when a noncitizen may come to the United States as a visitor or a potential long-term member, but a larger body of law also shapes how noncitizens move throughout the country once they are here. Noncitizens are subject both to the same legal frameworks that affect the internal migration of all

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29. Stern, *supra* note 28, at 176.

30. *See, e.g.*, Pereida v. Wilkinson, 592 U.S. 224, 229 (2021) ("The INA governs how persons are admitted to, and removed from, the United States."); 3 CHARLES GORDON, STANLEY MAILMAN, STEPHEN YALE-LOEHR & RONALD Y. WADA, IMMIGRATION LAW & PROCEDURE § 5.03[4][a] (Matthew Bender & Co. rev. ed. 2023) ("The U.S. government regards its functions as completed, generally speaking, when the noncitizen's eligibility for admission is determined. Where he goes, how he gets there, and what happens when he arrives have normally not been regarded as the government's official concern."). Professor Adam Cox describes a core feature of this conventional view: the task of distinguishing between "selection," screening for who may or may not enter the country, and "regulation" of noncitizens' behavior within the country's borders. Although this view treats only "selection" as the proper task of immigration law, Cox explains that immigration law in practice involves many forms of "regulation." *See* Cox, *supra* note 13, at 345.

31. *See* Chae Chan Ping v. United States, 130 U.S. 581, 609 (1889); Chy Lung v. Freeman, 92 U.S. 275, 279 (1875).

32. As Professor David Martin writes, "It almost seems an obligatory rite of passage for scholars embarking on the study of immigration law to provide their own critique of plenary power. . . ." David A. Martin, *Why Immigration's Plenary Power Doctrine Endures*, 68 OKLA. L. REV. 29, 30 (2015).

33. MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 39 (1983); *see also* Cox, *supra* note 13, at 370–76 (discussing Walzer's influence on immigration scholarship).

34. T. Alexander Aleinikoff, *Citizens, Aliens, Membership and the Constitution*, 7 CONST. COMMENTARY 9, 10 (1990); *see also* Hiroshi Motomura, *Immigration Law After a Century of Plenary Power: Phantom Constitutional Norms and Statutory Interpretation*, 100 YALE L.J. 545, 566 (1990); Bosniak, *supra* note 10, at 1068–87.

people present within the United States, and to immigration-specific interventions that affect them in particular. For this reason, as Professor Rick Su has written, Walzer was wrong to suggest that there is a binary choice between immigration controls at the national level and sub-federal controls over internal movement—international borders have long coexisted with "a thousand petty fortresses."[35] Following the brief sketch of internal migration law above, this section offers a typology of the internal migration interventions in the immigration context, identifying four key mechanisms across levels of government.

1. Internal Migration by Coercion: Immigration Detention

Immigration law allows federal agencies to move people throughout the country by force, namely through the immigration detention and removal systems. Immigration and Customs Enforcement (ICE) maintains a vast network of detention centers, incarcerating tens of thousands of noncitizens in facilities mostly operated by private contractors or state and local governments.[36] Many more individuals must limit their movements while subject to electronic monitoring as they await immigration hearings.[37] ICE also transfers detainees from one facility to another, often crossing state lines in the process.[38] Immigrants in removal proceedings who are not in a cell or wearing an ankle monitor can also see their movements constrained, as they must appear in immigration courts found only in a fixed number of locations nationwide.[39]

Far from simply holding people temporarily before they can be expelled from the United States, the detention and removal systems play a role in shaping the geographic distribution of noncitizens throughout the country. Removal proceedings can take years to complete.[40] During this time, both non-detained immigrants and those released from detention integrate into local communities

35. Su, *supra* note 13, at 409 ("[The] choice that Walzer presents . . . is a false one. It is never as simple as whether we want national control or local control, or whether we would rather have open borders or open neighborhoods. The choice lies in the multitude of configurations that controls on the local and national can be deployed.").

36. *See* CÉSAR CUAUHTÉMOC GARCÍA HERNÁNDEZ, MIGRATING TO PRISON: AMERICA'S OBSESSION WITH LOCKING UP IMMIGRANTS (2021). As of July 27, 2025, there were approximately 57,000 immigrants in detention across the United States. *See Immigration Detention Quick Facts*, TRAC IMMIGRATION, https://tracreports.org/immigration/quickfacts/detention.html [perma.cc/7XZJ-CJQR] (last visited August 4, 2025).

37. According to TRAC, the number of immigrants monitored via ICE's "Alternatives to Detention" programs as of July 26, 2025 was approximately 183,000, nearly four times as many as those in detention. *Id.*

38. *See* Jessica Rofé, *Peripheral Detention, Transfer, and Access to the Courts*, 122 MICH. L. REV. 867, 890–905 (2024). The stakes of these detainee transfers became starkly apparent in the early weeks of Donald Trump's second term, as ICE sought to move student protestors to faraway states, while their lawyers rushed to prepare habeas petitions. *See* Opinion and Order, Khalil v. Joyce, No. 1:25-cv-01935-JMF (S.D.N.Y. March 19, 2025) (transferring venue in student protest leader Mahmoud Khalil's habeas case to the District of New Jersey, where Khalil was detained at the time the petition was filed, rather than the Western District of Louisiana where ICE later transferred him).

39. *See* Valeria Gomez, *Geography as Due Process in Immigration Court*, 2023 WIS. L. REV. 1, 17–19 (2023).

40. As of 2023, the average immigration court case was pending for 762 days, well over two years. *See Average Time Pending Cases Have Been Waiting in Immigration Courts as of Jan. 2023*, TRAC IMMIGRATION, https://tracreports.org/phptools/immigration/court_backlog/apprep_backlog_avgdays.php [perma.cc/43NE-R9SV] (last visited August 4, 2025).

while their immigration court proceedings are pending. When detainees are released, ICE sometimes coordinates with local nonprofits to ensure that people leaving immigration detention have a place to live and can access basic services.[41] Overall, in these systems, federal immigration law uses its coercive power to determine directly where noncitizens live on a medium- or even long-term basis.

2. Internal Migration by Inducement: Employment Visas

Federal immigration law is not limited to this coercive power in shaping the ways in which noncitizens disperse throughout the United States. Through the allocation of employment visas, the federal government has a hand in determining where both permanent immigrants and temporary visa-holders live and work. In some respects, employment-based (EB) immigration resembles family-based immigration, which admits noncitizens with family connections to the United States without requiring them to live near their relatives.[42] Namely, in the EB context, the main criterion for selection is a private employment relationship or a set of professional skills, regardless of where that relationship might require the potential immigrant to live.[43] Unlike family-based immigration, however, much of EB immigration does tie immigrants to their geographic place of employment.

In large part, internal migration policy through EB immigration accomplishes this internal migration task indirectly. Both permanent and temporary EB immigration categories account for specific geographic factors within the United States, notably by requiring a Department of Labor certification that the employer will offer the "prevailing wage" available to citizens and permanent residents in the local area.[44] Additionally, existing temporary worker programs for agricultural and other seasonal work implicitly favor the particular geographic areas where these kinds of work tend to take place (e.g., rural areas or places amenable to seasonal tourism).[45] Student visas, which require students to live near their place of study,

41. *See* Complaint, Tennessee v. Mayorkas, No. 1:23-cv-00068 (M.D. Tenn. Oct. 2, 2023) (discussing ICE's coordination of such services in the Nashville metro area).

42. A prospective family-based immigrant can secure admission and long-term status as long as they can demonstrate that this family relationship and that they are not inadmissible (i.e., they are not barred from entry based on general health, criminal, national security, and other grounds) and pay the required fees. *See* 3 GORDON ET AL., *supra* note 30, §§ 36, 38. While an immigrant's sponsoring family member is generally required to sign an affidavit of support, this commitment does not require the immigrant to live at the sponsor's place of residence. *See* INA § 213A; 8 U.S.C. § 1183a; U.S. CITIZENSHIP & IMMIGR. SERVS., DEP'T OF HOMELAND SEC., OMB NO. 1615-0075, AFFIDAVIT OF SUPPORT UNDER SECTION 213A OF THE INA FORM I-864, https://www.uscis.gov/sites/default/files/document/forms/i-864.pdf [perma.cc/8NCX-2VXG].

43. Permanent immigrant employment-based visas require applicants to demonstrate that they have the requisite qualifications and skills; some categories allow for self-sponsorship, while others require an offer from a U.S. employer. *See* INA § 203(b); 8 U.S.C. § 1153(b). Many temporary work visa programs, including the H-1B program which often functions as a springboard to permanent employment-based visas, also require applicants to show a preexisting employment relationship. *See* 3 GORDON ET AL., *supra* note 30, § 20.08; JULIA GELATT & MUZAFFAR CHISHTI, A NEW WAY FORWARD FOR EMPLOYMENT-BASED IMMIGRATION: THE BRIDGE VISA 1 (2024), https://www.migrationpolicy.org/research/employment-immigration-bridge-visa [perma.cc/Q9CJ-GJHG] ("[E]mployers frequently use temporary visa pathways to bring in needed workers.").

44. *See* 3 GORDON ET AL., *supra* note 30, §§ 20.08[1][D], 39.02.

45. The H-2A program, for example, most obviously allocates an uncapped number of temporary work visas based on the worker's commitment to working in an agricultural area. The caps for seasonal work visas through the H-2B program also favor areas where seasonal industries require

share this feature with temporary employment visas.[46] These features of immigration law may not have been designed to incentivize noncitizens to move to particular areas, but they nonetheless shape and respond to heterogeneous geographic conditions throughout the country.

In contrast, some EB programs directly encourage immigrants to take their labor (or capital) to specific places. For example, the Conrad 30 J-1 Visa Waiver program eases the ability of international medical residents to remain in the United States after completing residencies in U.S. hospitals provided they relocate to designated rural areas with acute medical needs.[47] The EB-5 investor visa program has a similar purpose, incentivizing foreign investors to create jobs in "targeted employment areas."[48] Together, these interventions in the employment visa system result in both indirect effects on the distribution of immigrant labor, and direct efforts to encourage migration to priority areas.

3. Cooperative Internal Migration Placements: Refugee Resettlement

The most robust internal migration program within modern immigration law is the refugee resettlement system. For refugees processed overseas by international humanitarian organizations, the federal government takes a strong interest in where they settle internally. Federal immigration law not only charges the Office of Refugee Resettlement (ORR) with assisting these refugees in securing housing, employment training and job placement, and other key services; it also expresses clear policy preferences as to where they should be resettled.[49] Through consultations with state and local governments as well as nonprofit "Voluntary Agencies" (VOLAG), ORR must account for refugees' family connections while also working to "insure that a refugee is not initially placed or resettled in an area highly impacted . . . by the presence of refugees."[50] In other words, the refugee resettlement system actively directs refugees to specific places throughout the country based on a variety of policy priorities, while also accounting for refugees' personal preferences.

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workers earlier in the fiscal year. *See id.* §§ 20.09–10. I am grateful to Beth Lyon for pointing out this geographic effect of the fiscal calendar.

46. *See id.* § 18.01.

47. 8 U.S.C. § 1184(l)(l); INA § 214. *See also* Kit Johnson, *An Immigration Solution for Improving Rural Healthcare*, 124 W. VA. L. REV. 741, 751–56 (2022) (discussing and proposing reforms to attract immigrant healthcare professionals to rural areas).

48. *See* 8 U.S.C. §§ 1153(a)(5)(B)(i)(I)(aa)–(bb) (designating 20 percent of EB-5 visas for immigrants who invest in "a rural area," and 10 percent for those who invest in "a high unemployment area"); U.S. CITIZENSHIP & IMMIGR. SERVS., DEP'T OF HOMELAND SEC., ABOUT THE EB-5 VISA CLASSIFICATION, CAPITAL INVESTMENT REQUIREMENTS, https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fifth-preference-eb-5/about-the-eb-5-visa-classification [perma.cc/XC5S-BAF7].

49. *See* 8 U.S.C. § 1522.

50. *Id.* § 1522 (a)(2)(C)(i); *see also id.* § 1522 (a)(2)(C)(iii) (explaining that ORR must take into account "(I) the proportion of refugees and comparable entrants in the population in the area, (II) the availability of employment opportunities, affordable housing, and public and private resources . . . (III) the likelihood of refugees placed in the area becoming self-sufficient and free from long-term dependence on public assistance, and (IV) the secondary migration of refugees to and from the area that is likely to occur."). There are currently ten VOLAGs operating as resettlement agencies in partnership with ORR. *See* OFF. OF REFUGEE RESETTLEMENT, RESETTLEMENT AGENCIES, https://www.acf.hhs.gov/orr/grant-funding/resettlement-agencies [perma.cc/8XJU-JFN9] (last visited August 4, 2025).

ORR resettlement is a nationwide scheme for determining the placement of refugees throughout the United States. In states that choose to participate in the resettlement process, it is a fully cooperative scheme, granting state governments the opportunity both to consult on refugee admission policy more broadly, and to adopt their own plans for administering funds for refugee services.[51] This cooperative scheme also allows for state opt-outs: In states that forgo direct participation, the federal government works with VOLAG nonprofits to oversee refugee resettlement.[52] While there is room for state governments to play a more active role in the resettlement process than they do at present, the ORR resettlement structure outlines a role for sub-federal governments in both making and executing refugee placement decisions.[53]

4. Fragmented Internal Migration: Immigration Federalism

Immigration law and institutions at the federal level do not capture the full scope of the legal framework shaping the internal migration choices of noncitizens within the United States' borders. State and local governments have adopted a wide range of policy schemes that tend to either encourage or discourage noncitizen residents—in particular, undocumented noncitizen residents—to live within their jurisdictions. The split between these inclusive and restrictive policy approaches at the sub-federal level has largely taken place along partisan lines.[54] Restrictive policies seek to discourage undocumented immigrants from residing within their borders, while inclusive policies seek to either encourage undocumented migration, or at the very least accommodate undocumented residents who are already there.[55]

State and local governments have a number of tools at their disposal to accomplish either goal. Restrictive policies may seek to deny undocumented immigrants access to important rights, benefits, and services—including driver's licenses and identification,[56] professional licenses,[57] public higher education and in-

51. On the structure of cooperative federalism programs, *see* Bridget A. Fahey, *Coordinated Rulemaking and Cooperative Federalism's Administrative Law*, 132 YALE L.J. 1320 (2023); Jessica Bulman-Pozen & Heather Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256 (2009); Roderick M. Hills, Jr., *The Political Economy of Cooperative Federalism: Why State Autonomy Makes Sense and 'Dual Sovereignty' Doesn't*, 96 MICH. L. REV. 813 (1998).

52. *See* Stella Burch Elias, *The Perils and Possibilities of Refugee Federalism*, 66 AM. U. L. REV. 353, 374–75 (2016) (describing relationship between ORR and VOLAGs in the states that have withdrawn from refugee resettlement, as well as the lack of any refugee resettlement whatsoever in Wyoming).

53. *See id. at* 409 ("States have yet to fully exploit the opportunity within the existing consultative process to make recommendations to the federal government about refugee admission, selection, and integration.").

54. PRATHEEPAN GULASEKARAM & S. KARTHICK RAMAKRISHNAN, THE NEW IMMIGRATION FEDERALISM 74 (2015).

55. *See* ALLAN COLBERN & S. KARTHICK RAMAKRISHNAN, CITIZENSHIP REIMAGINED: A NEW FRAMEWORK FOR STATE RIGHTS IN THE UNITED STATES (2020).

56. *See* National Conference of State Legislatures, *States Offering Driver's License to Immigrants*, NCSL (Mar. 13, 2023), https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants [web.archive.org/web/20251011203558/https://www.ncsl.org/immigration/states-offering-drivers-licenses-to-immigrants] (last visited Apr. 13, 2023) (listing state bills granting access to identification to undocumented residents).

57. *See* Bobby W. Chung, *Effects of Occupational License Access on Undocumented Immigrants: Evidence from the California Reform*, 65 J. OF REGUL. ECON. 64, 78 (2024) (manuscript published online) (table collecting legislation in thirteen states authorizing undocumented immigrants to access various

state tuition,[58] public benefits,[59] and rental housing[60]—while inclusive policies seek to reduce the salience of undocumented status wherever possible. Similarly, state and local law enforcement agencies may choose, through both formal and informal partnerships, to assist ICE with civil immigration arrests and detention; or, they may choose to keep federal immigration agents at arm's length.[61]

These state and local policies shape immigrants' internal migration decisions, signaling to immigrants that they will be welcome in some sub-federal jurisdictions, but not in others. Restrictionist state and local lawmakers tend to declare their intent to exclude undocumented residents more directly.[62] On the inclusive side, some state and local governments actively announce an intent to "welcome" or provide "sanctuary" to immigrants; others adopt similar policies for more prosaic reasons, for example to encourage current undocumented residents to cooperate with law enforcement or avail themselves of public services.[63] Although the messaging and political motivations around state and local immigration laws may vary, there is evidence that these laws create significant incentives to move to favorable jurisdictions, and to avoid hostile ones.[64] For undocumented immigrants, variation

professional licenses); Kit Johnson, *Lawful Work While Undocumented: Business Entity Solutions*, 64 ARIZ. L. REV. 89 (2022) (discussing options for undocumented immigrants without work authorization to work in various independent work arrangements).

58. *See* Shayak Sarkar, *Financial Immigration Federalism*, 107 GEO. L.J. 1561, 1583 (2019).

59. *See* 8 U.S.C. § 1612(b)(1) ("Notwithstanding any other provision of law . . . a State is authorized to determine the eligibility of an alien . . . for any designated Federal program [including TANF, Social services block grants, and Medicaid].").

60. There is currently a split among federal Courts of Appeals as to whether or not making proof of lawful immigration status a condition for accessing rental housing is preempted by federal immigration law. *Compare* Lozano v. City of Hazleton, 724 F.3d 297, 317, 322 (3d Cir. 2013) (holding that a city ordinance that enacts such a scheme is preempted by federal immigration law), *with* Keller v. City of Fremont, 719 F.3d 931, 942, 945 (8th Cir. 2013) (holding that a similar ordinance is not preempted).

61. *See* Jacob Hamburger, *State Standing After* United States v. Texas, 65 B.C. L. REV. 1, 48–50 (2025).

62. Kris Kobach, a former law professor currently serving as Kansas's Attorney General, has been influential among restrictionist state lawmakers in his advocacy for enacting state laws that "encourage [undocumented immigrants] to depart the United States on their own, through a concerted strategy of attrition through enforcement." Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 TULSA J. COMP. & INT'L L. 155, 156 (2008). For examples of laws adopting this approach *see, e.g.*, S.B. 1070 § 1, 49th Leg., 2d Reg. Sess. (Ariz. 2010) ("The legislature declares that the intent of this act [Arizona's 2010 'omnibus' immigration restriction bill] is to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States."); Villas at Parkside v. City of Farmer's Branch, 675 F. 3d 802, 805 n. 4 (5th Cir. 2012), *aff'd on reh'g*, 726 F.3d 524 (5th Cir. 2013) (quoting a Texas city councilman who declared that a local restrictive bill "sent a message to people who aren't in the country legally [that] Farmer's Branch is not for you"); Chan, *supra* note 13, at 887–88 ("[Alabama State Senator] Scott Beason openly declared that [2011 omnibus immigration bill] H.B. 56 was designed to 'fix' the undocumented problem, and to do so by driving them out of the state.").

63. *See* Rick Su, *Designing Sanctuary*, 122 MICH. L. REV. 809, 825–52 (2024) (distinguishing between "political" sanctuary policies, which explicitly signal a welcoming disposition towards immigrants and an opposition to restrictive federal policies, and "administrative" and "silent" sanctuary policies, which typically do not proclaim such motivations).

64. *See* Isabel J. Anadón, *The Role of States in U.S. Immigration: A Study of Population Dynamics and Subnational Immigration Laws*, SOC. SCI. RESEARCH, Aug. 2023, at 1, 12 (finding a statistically significant decrease in the undocumented and foreign-born populations in states that enacted omnibus

between inclusive and restrictive laws across sub-federal jurisdiction adds an additional layer of internal migration pressures to the broader range of sorting effects described above.[65]

State and local immigration interventions are an integral component of the larger framework for regulating the internal migration of noncitizens within the United States' borders.[66] In particular, although this Section has described a number of legal mechanisms for overseeing the internal migration of noncitizens through federal immigration law itself, these interventions only partially account for the presence of undocumented immigrants. Both the federal government and private litigants have regularly brought preemption challenges against these laws, arguing that state and local restrictions on immigrants' rights conflict with the federal scheme for regulating immigration.[67] However, these preemption cases only address a small number of the areas in which state and local governments define the scope of noncitizens' rights within their borders—areas in which the federal government is often minimally involved.[68] This fragmented landscape of sub-federal interventions therefore fills a gap in the overall regulation of the internal migration of noncitizens.

C. A Crisis of Internal Migration

The recent logistical and political challenges around immigration have revealed a deeper crisis in this internal migration framework. Starting with the wind-down of the Title 42 border controls which began in the spring of 2022, the Biden administration found itself with a limited set of tools to oversee the internal migration of asylum seekers and other humanitarian migrants.[69] Having crossed the

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restrictive immigration laws between 2005 and 2017); Mark Ellis, Richard Wright & Matthew Townley, *State-Scale Immigration Enforcement and Latino Interstate Migration in the United States*, 106 ANNALS AMER. ASSOC. GEOGRAPHERS 891, 905 (2016) (finding that hostile state immigration legislation had a significant effect on reducing the Latino population relative to prior trends); *see also* Su, *supra* note 13, at 395 (quoting a Guatemalan immigrant in southern California remarking that the patchwork of different immigration policies across local jurisdictions means that "A visa or a green card is required to leave the Los Angeles area. . . . If you are illegal, you don't have freedom of movement.").

65. *See supra* Part I.A.; Su, *supra* note 13, at 407.

66. *See* Su, *supra* note 13, at 370; Rodríguez, *supra* note 13, at 571. For a contrary view, see Matthew J. Lindsay, *Disaggregating "Immigration Law"*, 68 FLA. L. REV. 181, 188, 224–25 (2016) (arguing that reviewing courts should "disaggregate" immigration-related state or local law based on their function rather than treat them as part of a single corpus of "immigration law").

67. The leading immigration preemption case is Arizona v. United States, 567 U.S. 387 (2012); *see also* Lozano v. City of Hazleton, 724 F.3d 297, 317 (3d Cir. 2013); United States v. Alabama, 691 F.3d 1269 (11th Cir. 2012).

68. *See supra* notes 56–61 and accompanying text.

69. In April 2022, President Biden announced his intention to end the Title 42 border restrictions put in place by Donald Trump at the outset of the COVID-19 pandemic. CDC PUBLIC HEALTH DETERMINATION AND TERMINATION OF TITLE 42 ORDER, CENTERS FOR DISEASE CONTROL AND PREVENTION (April 1, 2022). Due to intervening litigation in federal court, the official end of the Title 42 policies did not come until over a year later, when Biden officially terminated the COVID-19 emergency, effective in May 2023. *See* H.J. Res. 7, Joint Resolution Relating to a National Emergency Declared by the President on March 13, 2020, Pub. Law No. 118-3 (April 10, 2023). Nevertheless, Texas began busing migrants out of state soon after Biden made his 2022 announcement, declaring a "border crisis." Press Release, Off. of the Tex. Governor, Governor Abbott Announces Arrival of First Bus of Unlawful Migrants at U.S. Capitol (Apr. 13, 2022), https://gov.texas.gov/news/post/governor-abbott-announces-arrival-of-first-bus-of-unlawful-migrants-at-u.s-capitol [perma.cc/732E-E6AX].

U.S. border on their own rather than being processed by international humanitarian agencies, and without having successfully been granted asylum, these migrants were ineligible for ORR refugee resettlement.[70] Initially, the Biden administration had hoped to create its own logistical infrastructure to assist migrants in reaching destinations within the U.S. interior.[71] However, these plans ultimately never materialized, leading several prominent state and local leaders to express frustration with the lack of federal leadership—most notably New York City Mayor Eric Adams, who declared in September 2023 that without federal assistance, the issue of migrant arrivals would "destroy this city."[72]

This is not to say that the Biden administration's response to humanitarian arrivals entirely ignored internal migration. In some cases, it devised ad hoc solutions to ensure that migrants would end up in places where they could be provided for. In particular, the administration launched several programs to grant parole to Ukrainians and Afghans, as well as migrants from Cuba, Haiti, Nicaragua, and Venezuela (CHNV), enabling them to travel to the United States and seek asylum or other forms of protection.[73] In broad strokes, these ad hoc programs sought to approximate some of the benefits of the ORR resettlement model by requiring migrants to secure a private sponsor.[74] While these programs did not make placement decisions about where migrants will live, they did allow migrants to fly directly to destinations where a sponsor could ensure that they have adequate housing and support. The Biden administration's willingness to craft new ad hoc arrangements to meet these internal migration needs accounts for the relative

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70. *See* 45 C.F.R. § 400.43(a). While adult asylum seekers do not qualify for ORR services upon crossing the border, the agency is responsible for providing care to and taking custody of unaccompanied minors who cross the border to seek protection. *See ORR Unaccompanied Alien Children Bureau Policy Guide*, OFF. OF REFUGEE RESETTLEMENT (Mar. 17, 2025), https://acf.gov/orr/policy-guidance/unaccompanied-children-bureau-policy-guide [perma.cc/CCF5-DTYW].

71. *See* Julia Ainsley, *Amid Border Surge, Biden Admin Plans to Send Migrants to Cities Deeper Inside U.S., Starting with L.A., Say Internal Documents*, NBC NEWS (June 8, 2022), https://www.nbcnews.com/politics/immigration/border-surge-biden-admin-plans-send-migrants-cities-deeper-us-starting-rcna32530 [perma.cc/AQ73-9AC4].

72. Emma G. Fitzsimmons, *In Escalation, Adams Says Migrant Crisis 'Will Destroy New York City*,' N.Y. TIMES (Sept. 7, 2023), https://www.nytimes.com/2023/09/07/nyregion/adams-migrants-destroy-nyc.html [perma.cc/SZ2K-DEJM].

73. *See Uniting for Ukraine*, U.S. CITIZENSHIP & IMMIGR. SERVS., DEP'T OF HOMELAND SEC. https://www.uscis.gov/ukraine (last visited Aug. 5, 2024); Lindsay M. Harris & Yalda Royan, *Afghan Allies in Limbo: Discrimination in the U.S. Immigration Response*, 61 SAN DIEGO L. REV. 863 (2024) (describing various efforts to provide humanitarian protection to Afghans after the Taliban takeover in 2021, some but not all involving parole); *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans*, U.S. CITIZENSHIP & IMMIGR. SERVS., DEP'T OF HOMELAND SEC., https://www.uscis.gov/CHNV (last visited Aug. 5, 2024); *see also* Texas v. Dep't Homeland Sec., 22 F.Supp.3d 688 (S.D. Tex. 2024) (dismissing Texas's challenge to CHNV parole on for lack of standing). In March 2025, the Trump administration announced that it would end the CHNV parole program and paused processing applications through Uniting for Ukraine. *See* Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans, 90 Fed. Reg. 13611, 13611–22 (published March 25, 2025); *Update on Form I-134A*, U.S. CITIZENSHIP & IMMIGR. SERVS., DEP'T OF HOMELAND SEC. (Jan. 28, 2025), https://www.uscis.gov/newsroom/alerts/update-on-form-i-134a [perma.cc/QCF4-GDW2].

74. On private refugee sponsorship models, *see generally* Janine Prantl, *Community Sponsorships for Refugees and Other Forced Migrants: Learning from Outside and Inside the United States*, 37 GEO. IMMIGR. L.J. 401 (2023).

success of programs like Uniting for Ukraine in welcoming those in need without causing acute resource constraints in receiving cities.[75]

However, in the vast majority of cases, state and local governments took the lead in directly facilitating migrants' transport throughout the country and providing shelter services upon arrival. Starting in 2023, a joint initiative between FEMA and the U.S. Customs and Border Patrol (CBP) known as the Shelter and Services Program (SSP) has made federal grants available to reimburse state, local, and nonprofit entities' costs of providing transport, shelter, and emergency services.[76] The SSP program may appear to resemble ORR resettlement's cooperative approach—namely, by inviting state and local government participation in a national enterprise of migrant transportation.[77] But if SSP is a cooperative internal migration scheme, it is in only the barest sense. The program provides some criteria used to assess proposals for funding, mostly involving agencies' capacity to provide direct food, shelter, and medical services.[78] But beyond an ill-defined reference to the need to "balance . . . border and interior service providers," SSP provides little guidance as to where migrants should or should not be sent.[79] SSP is therefore best understood as a federal choice simply to underwrite (incompletely)[80] a fragmented landscape of state and local government initiatives to bus or otherwise move migrants along to their intermediate or final destinations.

Bearing the bulk of the responsibility for new arrivals, sub-federal governments have in some cases gone far beyond busing in seeking to shape these internal migration dynamics. Notably, states have invoked the "migrant crisis" while asserting expansive authority to intervene in the administration of immigration more broadly. Leading this charge, Texas enacted a law purporting to create a state-level scheme for punishing unlawful border crossing and carrying out deportations.[81] But it is not just Texas. A number of states—including many that do not sit along an international border—have taken the position in litigation against

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75. *See* Harris & Royan, *supra* note 73, at 906–07 (noting the contrast between parole and private sponsorship under Uniting for Ukraine, largely considered a success, and the plight of Afghan migrants ineligible for similar services).

76. *See Shelter and Services Program*, FED. EMER. MGMT. PROGRAM (on file with the U.C. Irvine Law Review).

77. *See Notice of Funding Opportunity; Fiscal Year 2024, Shelter and Services Program – Competitive*, U.S. DEPT. OF HOMELAND SEC. (Apr. 12, 2024) (on file with the U.C. Irvine Law Review).

78. *Id.*

79. *Id.*

80. SSP has covered only a fraction of what sub-federal governments have spent on migrant services. Out of New York's total budget of over $12 billion budget for "Asylum Seeker Funding" between FY 2023 and FY 2026, the city lists only $237 million in federally allocated funds. ASYLUM SEEKER FUNDING TRACKER, NEW YORK CITY OFFICE OF MGMT. & BUDGET, https://www.nyc.gov/site/omb/as-fund-tracker.page [perma.cc/A3E2-UTVW]. In February 2025, the Trump administration took the extraordinary step of seizing over $80 million of funds the federal government had previously allocated to New York via SSP. *See* Complaint at *2, City of New York v. Trump, No. 1:25-cv-01510 (S.D.N.Y. Feb. 21, 2021).

81. *See* United States v. Texas, 2025 WL 1836640 (5th Cir. 2025) (affirming the grant of a preliminary injunction enjoining enforcement of the Texas law, known as S.B. 4). Texas officials have explicitly framed S.B. 4 as an attempt to ask a more conservative Supreme Court to reconsider its preemption precedent in *Arizona v. United States*, 567 U.S. 387 (2012). *See* Michael Adkison, *Texas AG Urges Lawmakers to 'Test' Supreme Court Precedent on Border Security*, ABC15 NEWS (March 19, 2023), https://wpde.com/news/nation-world/texas-ag-urges-lawmakers-to-test-supreme-court-precedent-on-border-security-arizona-v-united-states-ken-paxton-greg-abbott-national-guard-immigration-migrants-obama-president-joe-biden [perma.cc/2CHK-U4UT].

the federal government that they are entitled to control entry into their territory.[82] Some have put this theory into practice by passing legislation that directly criminalizes undocumented immigrants' entry into, or presence within, their boundaries.[83] By all appearances, these restrictionist states are no longer content simply to discourage migration by denying noncitizens access to public services; nor even to encourage them to leave by offering them free bus tickets. Instead, they aim to keep out unwanted newcomers by threat of punitive force.

Although the most striking escalations have taken place in states seeking to restrict the internal migration of immigrants, more inclusive states have also considered relatively radical measures as well. In New York and California, for example, lawmakers took seriously a number of proposals to offer job opportunities to noncitizens without federal work authorization—before ultimately rejecting them.[84] Illinois took a more conciliatory but nonetheless novel approach, briefly calling on the Biden administration to grant parole and work permits to migrants who can fill key employment needs identified by state officials.[85]

Questions of internal migration have been at the heart of recent immigration controversies. Donald Trump returned to power in 2025 appealing to many Americans' fears that a "migrant crisis" had come to their doors.[86] Under Trump's second administration, it appears that the federal government's response to this crisis will not involve efforts to solve the internal distributional challenges of receiving humanitarian migrants, but rather to carry out "mass deportations."[87]

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82. *See* Hamburger, *supra* note 61, at 18–20.

83. *See* Iowa Code § 718C.1(1) (2024) (criminalizing entry into the state by a person who has been denied admission to, excluded from, deported, or removed from the United States); H.B. 4156, 59th Leg., 2d Reg. Sess. (Okla. 2024) (similar); FLA. STAT. §§ 811.101-.103 (2025) (similar); FLA. STAT. 787.07 (2023) (criminalizing the act of "transport[ing] into this state an individual whom the person knows, or reasonably should know, has entered the United States in violation of law and has not been inspected by the Federal Government since his or her unlawful entry"). As of May 2025, federal courts have enjoined the enforcement of criminal entry laws in all three states. *See* Order Granting Motion for Preliminary Injunction, United States v. Iowa, No. 4:24-cv-00162-SHL-SBJ (S.D. Iowa, June 17, 2024); United States v. Oklahoma, No. CIV-24-511-J (W.D. Okla. 2024); Order Granting Motion for Preliminary Injunction, Farmworker Association of Florida v. Moody, No. 1:23-cv-22655 (S.D. Fla. May 22, 2024); Omnibus Order, Florida Immigrant Coalition v. Uthmeier, No. 1:25-cv-21524 (S.D. Fla. April 29, 2025).

84. *See* Mikhail Zinshteyn, *UC Rejects Proposal to Allow Campuses to Hire Undocumented Students*, CAL MATTERS (Jan. 25, 2024), https://calmatters.org/education/higher-education/2024/01/undocumented-students-2/ [perma.cc/5DGQ-EK9W]; Tim Balk, *Governor Says NY Will Not Give State Work Permits to Migrants: 'I'm Constrained by the Law*,*'* N.Y. DAILY NEWS (Nov. 13, 2023), https://www.nydailynews.com/2023/11/13/hochul-says-ny-will-not-give-state-work-permits-to-migrants-im-constrained-by-the-law/ [perma.cc/GB4Z-DP9L].

85. *See* Press Release, City of Chicago Mayor's Press Off., Joint Letter from Mayor Brandon Johnson and Governor JB Pritzker Calling Upon the Federal Government to Streamline Work Authorization for Non-Citizens When States Demonstrate a Public Benefit and Critical Workforce Shortages (Aug. 28, 2023), https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2023/august/JointLetterFromMayorBrandonJohnsonAndGovernorJBPritzkerStreamlineWorkAuthorization.html [perma.cc/95JC-8QLE] [hereinafter Joint Letter from Mayor Brandon Johnson and Governor JB Pritzker].

86. *See* Exec. Order No. 14159, Fed. Reg. 2025-02006, at § 1 (Jan. 20, 2025) ("Over the last four years, the prior administration invited, administered, and oversaw an unprecedented flood of illegal immigration into the United States.").

87. *See* Nicolae Viorel Butler, *House Republicans Steamroll Democrats in Race to Fund Mass Deportations*, MIGRANT INSIDER (May 5, 2025), https://migrantinsider.com/p/house-republicans-steamroll-democrats [perma.cc/GV3N-6MMJ].

However, even if federal agencies were more interested in addressing these challenges, their legal tools for overseeing internal migration are largely ill-suited for the task. On the one hand, the fragmented patchwork of sub-federal regulation has given state and local governments an outsized role in shaping where noncitizens move throughout the country. But on the other hand, federal law and institutions also offer too few opportunities for sub-federal governments to express their policy priorities through cooperative frameworks—encouraging states to take aggressive measures on their own. This mismatch goes a long way in explaining the immigration "crisis" of recent years: the lack of a working framework across levels of government to manage the internal migration of immigrants.

II. INTERNAL MIGRATION CONTROLS IN THE EARLY UNITED STATES

Challenges of managing internal migration are hardly novel in the history of U.S. immigration law. In fact, they date back to its earliest origins. Until the late nineteenth century, the primary legal framework for regulating human mobility was a decentralized system grounded in local and later state authority to control the movement of marginalized groups. This system governed internal migration within national and state borders before it eventually extended its reach to cover immigration from abroad. But although immigration law has long grappled with problems of internal migration, the legal structures it has used to do so have changed over time. Part II describes the deep historical connection between immigration and internal migration law. In so doing, it both highlights historical continuities with the present crisis, and it also lays the groundwork for understanding the range of alternative institutional responses to challenges that have remained a persistent feature of our immigration system.

A. The Nineteenth Century's Fragmented Internal Migration Controls

In the earliest decades of its history, the United States was home to a patchwork of state and local restrictions on internal migration. These restrictions arose out of the traditional legal regime in which sub-federal governments possessed broad police powers to protect their residents against the entry of marginalized groups, deemed to pose various threats to the public order.[88] Officials invoked this police power to justify controls over the movement of enslaved people and people of color more generally.[89] Not only did slavery keep people in bondage in whichever place their enslavers chose; state laws also sought to limit the entry of free Black people—whether sailors arriving at Southern ports or internal migrants from other states and territories—thought to be vectors of the abolitionist "contagion."[90]

88. On the various dimensions of police power in the nineteenth century, *see generally* WILLIAM J. NOVAK, THE PEOPLE'S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA (1996).

89. *See* New York v. Miln, 36 U.S. 102, 139 (1837); KEVIN KENNY, THE PROBLEM OF IMMIGRATION IN A SLAVEHOLDING REPUBLIC: POLICING MOBILITY IN THE 19TH-CENTURY UNITED STATES 47 (2023).

90. On nineteenth-century Southern regulations of Black sailors, see *id.*; MICHAEL A. SCHOEPPNER, MORAL CONTAGION: BLACK ATLANTIC SAILORS, CITIZENSHIP, AND DIPLOMACY IN ANTEBELLUM AMERICA (2019). On nineteenth-century restrictions on free Black migration between states, see KENNY, *supra* note 89, at 42, 69–71. *See also* Park, *supra* note 13, at 1895 (describing so-called Black Codes which constrained the ability of nonwhite persons to travel freely in both the North and the South).

These restrictions on Black mobility were central to maintaining the racial hierarchies of the early United States, in both free and slave states.

At the same time, the power of nineteenth-century state and local governments to regulate internal migration stretched even further, creating a complex system for controlling the movements of poor people of all races. The American colonies inherited a legal framework from the English Poor Laws, according to which towns and cities were responsible for supporting their needy residents.[91] Under this framework, every person was deemed to have a place of "settlement," a legally binding attachment to a local community, which also obligated that community to support its own "pauper" residents.[92] In turn, local governments had the power to turn away poor people who lacked settlement: whether with a notice that they would not be eligible for relief, a written demand to leave, or even by forcible expulsion.[93] This system relied on internal migration controls at the local level to distribute responsibility for public assistance, ensuring that the poor could not seek relief in places where they did not belong.[94]

While state and local governments maintained this patchwork throughout the early and mid-nineteenth century, the federal government had limited tools to intervene. Although Supreme Court acknowledged a federal constitutional right to travel after the Civil War, it would take until the 1940s to extend this right to poor people.[95] Meanwhile, during the decades-long sectional conflict, supporters of slavery consistently defended states' police power to control or exclude disfavored groups—including laws restricting the movement of free and enslaved people of color as well as poor immigrants—against federal interference.[96] Chief Justice Roger

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91. *See* KRISTIN O'BRASSILL-KULFAN, VAGRANTS AND VAGABONDS: POVERTY AND MOBILITY IN THE EARLY AMERICAN REPUBLIC 14–15 (2019); MICHAEL B. KATZ, IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA 14 (1986); Gerald L. Neuman, *The Lost Century of American Immigration Law (1776-1875)*, 93 COLUM. L. REV. 1833, 1846 (1993); William P. Quigley, *Reluctant Charity, Poor Laws in the Original Thirteen States*, 31 U. RICH. L. REV. 111, 114 (1997); RUTH WALLIS HERNDON, UNWELCOME AMERICANS: LIVING ON THE MARGIN IN EARLY NEW ENGLAND 4–5 (2001).

92. KATZ, *supra* note 91, at 14.

93. Neuman, *supra* note 91, at 1853; HERNDON, *supra* note 91, at 10; HIDETAKA HIROTA, EXPELLING THE POOR: ATLANTIC SEABOARD STATES AND THE NINETEENTH-CENTURY ORIGINS OF AMERICAN IMMIGRATION POLICY 43 (2017). Forcible expulsions were not always common, notably because it was often even more costly to physically remove a poor person than to provide relief. *See id.* at 45; KATZ, *supra* note 91, at 21.

94. *See* Brief for Professors William P. Quigley, Jeffrey Adler, Erwin Chemerinsky, Martha Davis, Helen Hershkoff, Stephen Loffredo, Nantiya Ruan, and Laurence H. Tribe as Amici Curiae Supporting Respondents, City of Grants Pass v. Johnson, 603 U.S. 520 (2024) (No. 23-175), at *5 (explaining that the Poor Laws "reflected a cohesive approach to poor relief and labor economics").

95. *See* Crandall v. Nevada, 73 U.S. 35, 49 (1867) ("We are all citizens of the United States, and as members of the same community must have the right to pass and repass through every part of it without interruption, as freely as in our own States."); Edwards v. California, 314 U.S. 160, 174–75 (1941) (rejecting "the theory of the Elizabethan poor laws"). Although the 1789 Constitution did not follow the Articles of Confederation in explicitly denying the "privileges and immunities" of citizens—including a travel right—to "paupers, vagabonds and fugitives from justice," courts continued to assume that poverty was a legitimate basis for state and local governments to constrain a person's movement, citizenship notwithstanding. *See* Neuman, *supra* note 91, at 1846–47; *compare* ARTICLES OF CONFEDERATION of 1781, art. IV, para. 1, *with* U.S. CONST. art. IV, § 2.

96. *See* KENNY, *supra* note 89, at 81–109; Anna O. Law, *The Historical Amnesia of Contemporary Immigration Federalism Debates*, 47 POLITY 302, 303 (2015).

Taney drew this connection explicitly in his 1849 dissent in the *Passenger Cases*.[97] For Taney, the federal Commerce Clause did not invalidate New York's taxation of immigrant passengers—which aimed to fund local relief and protect New Yorkers from an excess of paupers—any more than it granted "the emancipated slaves of the West Indies" a right to move "throughout the Southern States, in spite of any State law to the contrary."[98] Federal authority to regulate internal migration along these lines remained fiercely contested until the Reconstruction period.

B. Immigration Law in the States

Meanwhile, nineteenth-century state and local internal migration law laid the foundation for the emergence of immigration laws controlling the entry of foreigners across international borders. The old Poor Law settlement system governed the movement and residence of citizens and noncitizens alike.[99] Up until the middle of the nineteenth century, evidence suggests that most poor people who were "warned out" of towns and cities were citizens born in the United States.[100] As early as the late eighteenth century, however, this Poor Law regime began to exhibit some features of what we might recognize as immigration law today. Notably, in Massachusetts—the only state where citizenship was required to obtain settlement—state law allowed local governments to remove paupers to their place of original settlement both in other states and "beyond sea," effectively creating a power of deportation.[101]

During the middle of the nineteenth century, responsibility for both poor relief and restrictions on mobility shifted gradually upwards to the state level.[102] In part, this shift reflected a recognition that many paupers could not demonstrate legal settlement in any municipality, creating a category of "state poor" whose relief was the responsibility of the state government.[103] But even more importantly, the large influx of poor immigrants in the middle of the nineteenth century—particularly from Ireland—created a need for more sophisticated and comprehensive legal regimes to control the arrival of foreigners. Although New York and Massachusetts had already enacted legislation authorizing the exclusion of immigrants deemed to be paupers or dangers to public health, by the late 1840s, each had become

97. Smith v. Turner, 48 U.S. 283 (1849) [hereinafter *Passenger Cases*].

98. *Id.* at 474 (Taney, C.J. dissenting).

99. *See* KUNAL PARKER, MAKING FOREIGNERS: IMMIGRATION AND CITIZENSHIP LAW IN AMERICA, 1600-2000 73 (2015) (describing how the Poor Law system affected "citizens *and* aliens, insiders *and* outsiders, the native-born *and* the foreign-born").

100. Out of the 1,039 people warned out of Boston in 1791, for example, 740 were settled in other Massachusetts towns, while only 237 were foreign-born. HIROTA, *supra* note 93, at 45–46; *see also* HERNDON, *supra* note 91, at 14 (noting how across New England in the 1780s and 1790s, "transience and poverty were homegrown—not imported—problems").

101. Act of Feb. 26, 1794, ch. 32 §§ 9, 13, 1794 Mass. Acts & Laws 375, 379, 383; *see also* Neuman, *supra* note 91, at 1848–49; HIROTA, *supra* note 93, at 45.

102. This shift is consistent with Professor William Novak's broader account of the transformation of the police power from a traditional power of communal self-regulation to a power of state administrative control over the course of the nineteenth century. *See* NOVAK, *supra* note 88, at 203, 229.

103. *See* Quigley, *supra* note 91, at 133.

dissatisfied with local officials' ability to enforce these laws.[104] In response, both states created statewide agencies charged with enforcing exclusions against the poor and the infirm, and collecting taxes and bonds from arriving shipmasters.[105] New York's Board of the Commissioners of Emigration was also charged with protecting and providing social services to immigrants who were allowed to enter the state at New York City's Castle Garden landing depot.[106] Castle Garden provided new logistical infrastructure for promoting the internal migration of arriving immigrants, as it was home to both a state-run employment office and a state-subsidized railroad ticket office.[107]

The Supreme Court's evolving antebellum jurisprudence on state police power in the immigration context did little to hinder the development of this legal infrastructure. In the *Passenger Cases*, the Court broke with its earlier defense of state police power in *New York v. Miln*, holding that New York's head tax on passengers usurped Congress's power to regulate foreign and interstate commerce.[108] New York and Massachusetts—the largest immigrant destinations in absolute terms and relative to its population, respectively—easily adopted a technical workaround, imposing bonds and fees to collect revenue to fund immigration agencies, in place of the outlawed tax.[109] Between 1849 and 1851, New York expanded the categories of immigrants subject to exclusion; Massachusetts established a new State Board of Commissioners of Alien Passengers and Foreign Paupers with expanded authority.[110]

Before the Civil War and the enactment of comprehensive federal immigration legislation—during what Professor Gerald Neuman has termed the "lost century" of U.S. immigration law—states transformed what had once been a system of local control over the internal migration of the poor into an increasingly robust administrative regime of immigration control and protection.[111] The separation between poor relief and immigration control remained incomplete: as before, the rationale for exclusion and deportation laws was to protect communities from paupers, the sick and disabled, and other groups that threatened the local public fisc and moral fiber. But out of the traditional patchwork of Poor Law restraints on

104. HIROTA, *supra* note 93, at 55–56 (discussing Massachusetts's 1794 pauper removal law, Massachusetts's 1837 law authorizing exclusion of "any lunatic, idiot, maimed, aged, or infirm persons," and New York's 1824 law banning the arrival of unbonded alien paupers).

105. *Id.* at 66–67 (describing the creation of the Board of the Commissioners of Emigration of the State of New York in 1847 and the position of the Superintendent of Alien Passengers in Massachusetts in 1848).

106. *Id.*; ROBERT ERNST, IMMIGRANT LIFE IN NEW YORK CITY: 1825-1863 30–31 (1949).

107. *See* JOSHUA L. ROSENBLOOM, LOOKING FOR WORK, SEARCHING FOR WORKERS: AMERICAN LABOR MARKETS DURING INDUSTRIALIZATION 70 (2002) (describing the array of services available at Castle Garden as "[o]ne of the first public efforts to organize the labor market"); Benjamin J. Klebaner, *State and Local Immigration Regulation in the United States Before 1882*, 3 INTL. REV. SOC. HIST. 269–76 (1958); ERNST, *supra* note 106, at 30–31. The need for these services at Castle Garden became apparent after decades of widespread exploitation of newly arrived immigrants by private actors falsely promising jobs in unfamiliar locations, or selling overpriced or phony rail and steamboat tickets. *Id.* at 26–31.

108. *See Passenger Cases*, 48 U.S. at 408–09 (opinion of McLean, J.); *cf.* New York v. Miln, 36 U.S. 102, 130–32 (1837).

109. *See* HIROTA, *supra* note 93, at 75; *Passenger Cases*, 48 U.S. at 410 (opinion of McLean, J.).

110. HIROTA, *supra* note 93, at 76–79.

111. Neuman, *supra* note 91.

internal mobility arose the foundations of modern, federally controlled immigration law.

C. Migration Becomes Federal Policy

During this period, federal law on both internal and external migration was sparse. Before the Page Act of 1875, there was no generally applicable federal law defining who was eligible to enter the United States from abroad.[112] The notion that Congress could regulate the entry of foreigners at all remained controversial.[113] Congress only occasionally expressed interest in promoting internal migration within the new nation's borders, for example, when it considered petitions from immigrant aid societies and other groups asking for land allocations for immigrants in western states and territories.[114]

Of course, the federal government in the early and mid-nineteenth century was heavily invested in where people moved and settled across the North American continent. Expanding the nation's western frontier, controlling and encouraging westward White settlement, managing relations with Indian nations—including orchestrating forced removals—and policing the mobility of both enslaved and free African Americans were all central to the federal government's role during this period.[115] This federal role, however, was understood as a matter of "external" affairs, in the process incorporating foreign territory and people into the expanding nation.[116]

In this process, European immigration helped bridge the gap between the external and the internal. Federal officials routinely sought to encourage immigration, at least rhetorically, in order to facilitate the nation's expansion. In 1841, for example, President John Tyler called on Congress to promote European immigration to help settle the west: "We hold out to the people of other countries an invitation to come and settle among us. . . . to reclaim our almost illimitable

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112. *See* Kerry Abrams, *Polygamy, Prostitution, and the Federalization of Immigration Law*, 105 COLUM. L. REV. 641, 643 (2005). The Alien Friends Act of 1798 was the first federal law authorizing immigrant deportations, applicable to "all such aliens as [the President] shall judge dangerous to the peace and safety of the United States," but did not impose any conditions on immigrant entry. Alien Friends Act ("An Act Concerning Aliens"), ch. 58, § 1, 1 Stat. 571 (1798). Some historians have posited that an 1803 law prohibiting the "importation" of Black people to states that had banned the slave trade was the first federal immigration law, as it applied to free immigration as well as the slave trade. *See* KENNY, *supra* note 89, at 38–39; Act of Feb. 28, 1803, ch. 10, 2 Stat. 205 (1803) ("To prevent the importation of certain persons into certain States, where, by the laws thereof, their admission is prohibited."). The Page Act was nonetheless the first of a series of statutes in the final decades of the nineteenth century that marked a major expansion of federal power over the control of immigration.

113. *See* KENNY, *supra* note 89 at 31.

114. *See* EDWARD P. HUTCHINSON, LEGISLATIVE HISTORY OF AMERICAN IMMIGRATION POLICY, 1798-1965 20–26 (1981). In 1834, for example, Congress approved the grant of lands in the states of Michigan and Illinois to Polish exiles in the wake of the unsuccessful Revolution of 1830 against the Russian Empire. *Id.*; *see also* Eric Willey, *The Squatters and the Polish Exiles: Frontier and Whig Definitions of Republicanism in Jacksonian Illinois*, 13 J. ILL. HIST. 129, 130–33 (2010).

115. *See* Park, *supra* note 13, at 1887–1904.

116. *See* AZIZ RANA, THE TWO FACES OF AMERICAN FREEDOM 103–04 (2010) (describing the emerging understanding of "federal activity" as "synonymous with the internal application of a coercive authority properly applied only to those outside the bounds of social inclusion, such as natives and blacks"); PARKER, *supra* note 99, at 99 ("To the extent that being white was a prerequisite for naturalization and ownership of federal lands, the federal government obviously played a significant part in facilitating white immigration and settlement.") (emphasis omitted).

wilderness, and to introduce into their depths the lights of civilization."[117] Congress did little in response to such calls until the 1860s, prompted by demand for labor during the Civil War.[118] Most importantly, the Homestead Act of 1862 allowed White Europeans to claim western lands provided they declared their intent to become United States citizens, and the 1864 Act to Encourage Immigration briefly sought to facilitate the entry of foreign workers with pre-arranged employment contracts.[119]

During the Civil War and its immediate aftermath, however, the federal government shied away from adopting a robust, coordinated scheme facilitate the westward settlement of immigrants. Although members of Congress proposed creating new federal programs to identify the labor needs of the various states and territories, Congress ultimately balked at the cost and logistical challenge of a new immigrant "importation" scheme.[120] Instead, Secretary of State William H. Seward led an effort to create a private corporation, the American Emigrant Company, to serve as a broker between employers and their prospective contract workers in Europe.[121] Meanwhile, states, territories, and municipalities took it upon themselves to incentivize immigration, both by advertising the availability of land and employment, and by offering intending citizens the rights to vote and own property.[122]

The Union victory and the legal revolution of Reconstruction nonetheless paved the way for federal control over immigration from abroad. The end of the Civil War broke the political and constitutional logjam over slavery, led to an increasingly integrated national economy and society, and fundamentally reshaped the relationship between state and federal governments.[123] The Fourteenth

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117. H.R. Doc. No. 2, 27th Cong., 1st Sess. at 4 (1841) (The President of the United States, to the Two Houses of Congress, at the Commencement of the First Session of the Twenty-Seventh Congress). Tyler repeated his calls for new immigration in subsequent addresses to Congress throughout his presidency. *See* HUTCHINSON, *supra* note 114, at 31.

118. ZOLBERG, *supra* note 18, at 166 (noting President Lincoln's desire to increase the supply of wartime industrial labor through encouraged immigration); CALAVITA, *supra* note 18, at 34–38.

119. On the significance of the Homestead Act and the earlier Donation Land Act of 1850 for immigration law, *see* Kerry Abrams, *The Hidden Dimension of Nineteenth-Century Immigration Law*, 62 VAND. L. REV. 1353, 1405 (2009); RANA, *supra* note 116, at 116. On the concept of "intending citizens," *see generally* HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES (2006). The Act to Encourage Emigration was repealed only four years after its passage in 1868, and in the following decades organized labor led a successful campaign to ban "contract labor." *See* CALAVITA, *supra* note 18, at 41–66.

120. ZOLBERG, *supra* note 18, at 169–70.

121. *Id.* at 167. A circular published by the American Emigrant Company, distributed upon its founding in 1864 affirms this view of the federal government's role: "Thus far the government employs its power for the promotion of this great object [the encouragement of immigration]—further it can not [sic] go legitimately or with advantage. . . . Any effort to organize or distribute the immigrants arriving here would be an interference with the proper functions of private enterprise, which would be neither practicable nor beneficial." AMERICAN EMIGRANT COMPANY, STATEMENT OF THE OBJECT AND MODE OF OPERATION OF THIS COMPANY, ADDRESSED TO THE EMPLOYERS OF LABOR IN THE UNITED STATES 10–11 (1864).

122. *See* PHILIP TAYLOR, THE DISTANT MAGNET: EUROPEAN IMMIGRATION TO THE U.S.A. 73 (1971) (describing state, territorial, municipal and private-sector advertisements featuring economic opportunities as well as political and social rights); Jamin B. Raskin, *Legal Aliens, Local Citizens: The Historical, Constitutional and Theoretical Meanings of Alien Suffrage*, 141 U. PA. L. REV. 1391, 1406–09 (1993) (describing efforts to attract immigrants via the franchise).

123. ZOLBERG, *supra* note 18, at 166; PARKER, *supra* note 99, at 118.

Amendment subordinated citizenship as defined by state law to an enhanced conception of national citizenship.[124] And no longer would federal constitutional law give way to assertions of state police power to exclude subordinate groups.[125]

The Supreme Court's immigration federalism decisions in the post-Civil War decades reflected this shift in power, undercutting states' ability to regulate the arrival of foreign passengers. In 1875, the Court in *Henderson v. New York* put an end to the immigrant bond system that states had used to circumvent the holding of the *Passenger Cases*.[126] The Court was no longer willing to entertain the notion that the states' police power to protect against a "flood of pauperism immigrating from Europe" justified interference with federal power over international commerce.[127] As a result, the justices stripped states of their most important mechanism for funding both their public relief systems and growing bureaucracies tasked with managing immigrant arrivals.[128]

Responsible for managing these arrivals and providing for poor immigrants they could not exclude, but unable to fund these efforts, states responded to the *Henderson* decision by lobbying for federal immigration legislation.[129] If states could no longer use taxes or bonds to bankroll their immigration activities—which had long served to distribute the burden of poor relief throughout their territories—the federal government would have to step in to either raise the necessary funds or restrict immigrant entries. These lobbying efforts culminated in the Immigration Act of 1882, Congress's first attempt at a comprehensive scheme to control immigrant entry.[130] The 1882 Act imposed a federal head tax per noncitizen passenger, and incorporated into federal law exclusion grounds similar to what had been in place in Northeastern Seaboard states.[131] Because the federal government lacked the infrastructure and personnel to implement this new immigration regime directly, the Act also allowed state and local port officials to continue overseeing immigrant entry, by entering into contracts with the Treasury Department.[132] This early attempt at cooperative immigration federalism lasted only around a decade before Congress revoked these contracts—in part due to suspicions that New York officials were incapable of or unwilling to adequately enforce the law—centralizing federal control under the Immigration Act of 1891.[133]

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124. *Id.* at 117; NOVAK, *supra* note 18, at 32; U.S. Const. amend. XIV, § 1.

125. PARKER, *supra* note 99, at 117–18 (*citing In re* Ah Fong, 1 F. Cas. 213, 216–17 (Cir. Ct. D. Cal. 1874) (No. 102) ("[M]uch of what was formerly said upon the power of the state . . . grew out of the necessity which the southern states, in which the institution of slavery existed, felt of excluding free negroes from their limits . . . . But at this day no such power would be asserted, or if asserted, allowed in any federal court.")).

126. Henderson v. New York, 92 U.S. 259, 275 (1875).

127. *Id.* at 269.

128. HIROTA, *supra* note 93, at 184.

129. *Id.* at 185.

130. Lobbying efforts for the Immigration Act coincided with calls to restrict Chinese immigration, leading to the passage of the Chinese Exclusion Act several months earlier. *Id.* at 189–91.

131. Immigration Act of 1882 ("An Act to Regulate Immigration"), ch. 376, 22 Stat. 214 §§ 1-2 (1882); HIROTA, *supra* note 93, at 191.

132. An Act to Regulate Immigration, ch. 376, 22 Stat. 214 § 2 (1882) (authorizing the Secretary of the Treasury to "to enter into contracts with state officials to take charge of the local affairs of immigration in the ports within said State, and to provide for the support and relief of such immigrants therein landing . . . .").

133. *See* Immigration Act of 1891, ch. 551, § 8, 26 Stat. 1084, 1085–86 (1891); THOMAS M. PITKIN, KEEPERS OF THE GATE: A HISTORY OF ELLIS ISLAND 10 (1975).

By the turn of the twentieth century, control over the entry of immigrants from abroad had become an exclusive federal responsibility. This shift was enshrined in Supreme Court case law recognizing immigration as an inherent "plenary power" of national sovereignty.[134] This new federal immigration regime drew heavily on state antecedents that were closely intertwined with the regulation of internal migration and the distribution of poor relief. However, the emerging federal immigration apparatus did not replace the fragmented state- and local-led internal migration regime.[135] Federal and state lawmakers, administrators, and social reformers were soon confronted with the question of whether and how federal law and legal institutions should adapt to the domestic migration challenges of the early twentieth century.

III. THE DIVISION OF INFORMATION: A FEDERAL BUREAUCRACY FOR INTERNAL MIGRATION

Not long after the federal government assumed responsibility over immigration control at the United States' ports, it discovered that it was now also responsible for the internal "distribution" of immigrants throughout the country's interior. Federal lawmakers and other reform advocates in the Progressive era soon came to believe that immigration law needed to solve a specific distributional problem: how to encourage migration out of the large cities—where new immigrant groups tended to cluster—and towards interior destinations in need of workers. With the Immigration Act of 1907, Congress enacted the first, and most comprehensive, effort to incorporate this kind of internal migration policy into the emerging federal immigration bureaucracy. Section 40 of the Act established the Division of Information, housed within the Bureau of Immigration and Naturalization, whose task was to "promote a beneficial distribution of aliens admitted into the United States."[136] Under the direction of former Knights of Labor leader Terence Powderly, the Division undertook not only to provide information about the economic opportunities available, but also to work directly with state officials, employers, and organized labor to directly place immigrant workers in different parts of the country.

The Division's experiment was relatively short-lived—the agency was abolished in 1921—but is nonetheless instructive for understanding the potential scope of internal migration within federal immigration law. As a federal immigration

134. The term "plenary power" does not appear in late nineteenth-century case law, but has been widely adopted to describe the notion introduced in the *Chinese Exclusion Case* that immigration is among the inherent powers of national sovereign governments. *See supra* notes 31–32 and accompanying text; Motomura, *supra* note 34, at 550–60. Ironically, at the time the *Chinese Exclusion Case* was decided, the federal immigration law did not mandate the federal exclusivity principle typically associated with the plenary power tradition, as the 1882 Act delegated enforcement authority to state officials.

135. This oversight was not lost on observers around the turn of the twentieth century. *See* FRANCES KELLOR, IMMIGRATION AND THE FUTURE 34–35 (1920) ("It was at this point [1882] that the blunder was made which later laid the foundations for the conditions which the war [World War I] revealed to Americans. The first Federal law provided for the exclusion of defectives, the insane, and those likely to become a public charge. It sought merely to remedy the evils of which the states had complained. *All of the features of the state laws which provided for the protection and assimilation of the immigrant were omitted*.") (emphasis in original).

136. Immigration Act of 1907, ch. 1134, 34 Stat. 898, 909–10 (1907).

agency with the explicit mission of facilitating internal migration, the Division sought to create a nationwide framework for achieving its "distribution" aims. A key component of this experimental framework was the agency's effort to promote cooperation between state and federal officials to achieve shared internal migration priorities. Although the Division itself did not survive the nativist surge in the years after the end of World War I, in the century since it was disbanded, the kinds of distributional problems it was created to solve have not gone away.

A. The Discovery of Immigrant "Distribution"

A rapidly industrializing and urbanizing U.S. economy, coupled with mass European immigration, led many influential figures around the turn of the century to believe that there was a major problem in the geographic distribution of immigrants. In the final decades of the nineteenth century, the growth of cities and the decline of rural and small-town communal life—long idealized in the American imagination—had become a major source of public anxiety.[137] This important socioeconomic transformation coincided with an unprecedented wave of immigration, including large numbers of so-called "new immigrants" from Southern and Eastern Europe.[138] For politicians and social reformers around the turn of the twentieth century, the immigration problem and the urban problem—encompassing fears over crime, corruption, and cultural homogeneity—appeared together as urgent, closely intertwined challenges of public policy.[139]

Closely linked as well was the labor question. The emergence of a militant labor movement during the Gilded Age had shattered American confidence in its ability to avoid class struggle.[140] Fear of working-class revolt often coincided with hostility to foreigners, often assumed to be socialists or anarchists, particularly following violent flashpoints such as the 1877 railroad strikes or the 1886 Haymarket Affair.[141] Meanwhile, the labor movement itself began to take a more xenophobic turn, stigmatizing new immigrants as pawns of capital brought in to lower wages and break strikes.[142] In the early 1880s, Powderly's Knights of Labor—the dominant union of the post-Civil War decades—threw its support behind bills to ban Chinese immigration as well as the importation of "contract labor."[143]

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137. *See* ROBERT H. WIEBE, THE SEARCH FOR ORDER: 1877-1920 12 (1967); NOVAK, *supra* note 18, at 92–93. As Powderly reflected in 1911, before the Division was established, "nothing had been done" about the combined problem of "congested centers" where immigrants clustered, and the depopulation of rural areas as "the boy on the farm" left for the city. 1911 Conference, *supra* note 1, at 10.

138. *See* Carolyn Moehling & Anne Morrison Piehl, *Immigration, Crime, and Incarceration in Early Twentieth-Century America*, 46 DEMOGRAPHY 739, 740 (2009). On the origins of the distinction between "old" and "new immigrants" during this period, *see* BENTON-COHEN, *supra* note 18, at 6–8.

139. HIGHAM, *supra* note 18, at 38–39.

140. *Id.* at 36.

141. *Id.* at 54; WIEBE, *supra* note 137, at 89.

142. CALAVITA, *supra* note 18, at 44–49; HIGHAM, *supra* note 18, at 45.

143. CALAVITA, *supra* note 18, at 51; *see also* ALEXANDER SAXTON, THE INDISPENSABLE ENEMY: LABOR AND THE ANTI-CHINESE MOVEMENT IN CALIFORNIA (1971). Labor's opposition to the immigration of groups perceived to be subservient to capital—whether Chinese "coolies" or European contract workers—resonated with a republican tradition suspicious of wage exploitation that risked reestablishing slavery. *See* KENNY, *supra* note 89, at 141–62; *see also* ERIC FONER, FREE SOIL, FREE LABOR, FREE MEN: THE IDEOLOGY OF THE REPUBLICAN PARTY BEFORE THE CIVIL WAR (1970).

Although labor resentment against immigration was widespread, union leaders resisted a full-throated endorsement of nativism.[144] For Powderly as well as his later rival, Samuel Gompers of the American Federation of Labor (AFL)—one the son of Irish immigrants, the other born in London—the contract labor issue helped distinguish between beneficial immigrants who could be brought into labor's ranks, and harmful immigrants who undermined the struggle against the bosses.[145]

Finally, Progressive-era reform advocates raised alarm bells about the potential for immigrant exploitation in large cities. Upon arrival in places like New York City, disoriented travelers were at the mercy of all sorts of unscrupulous actors, perhaps most notoriously the *padroni* (Italian for "bosses"), a term for labor subcontractors who supplied workers to employers for a fee, while often housing them in sordid conditions in the meantime.[146] Advocates such as Frances Kellor—an inspector for the New York State Bureau of Industries and Immigration, and an immigration advisor to Theodore Roosevelt's 1912 Progressive campaign—decried the *padroni*'s total control and exploitation over immigrant workers, typically their own countrymen.[147] Even more reputable private labor brokerage agencies were known to charge workers fees in exchange for tips about job openings in faraway cities, openings that were often no longer open once the workers showed up.[148] Here, Progressive reformers aligned with Powderly's views on labor, who had long opposed private employment agencies for their role in facilitating strikebreaking.[149]

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144. HIGHAM, *supra* note 18, at 49. Despite their embrace of anti-Chinese sentiment, Powderly's Knights were one of the few racially integrated labor organizations of the late nineteenth century, and also depended on fostering cooperation between ethnically divided European immigrant workers. *See* LEON FINK, WORKINGMEN'S DEMOCRACY: THE KNIGHTS OF LABOR AND AMERICAN POLITICS 169, 221 (1983).

145. HIGHAM, *supra* note 18, at 49; CALAVITA, *supra* note 18, at 59–66.

146. *See* FRANCES A. KELLOR, OUT OF WORK: A STUDY OF UNEMPLOYMENT 184–89 (2d ed. 1971).

147. KELLOR, *supra* note 146, at 168. Representing New York's Bureau, Kellor was also elected as the secretary of the organization of state immigration officials convened by the Division of Information, discussed below. *See* 1911 Conference, *supra* note 1, at 4, 111.

148. KELLOR, *supra* note 146, at 168; Guzda, *supra* note 18, at 13. Kellor objected not only to the exploitative features of private agencies, but also their inefficiency. Ignorant of nationwide employment conditions and in fierce competition with one another, private employment brokerage markets had little incentive to provide useful information in helping job seekers willing to travel to find corresponding employers. KELLOR, *supra* note 146, at 183.

149. Guzda, *supra* note 18, at 13; CALAVITA, *supra* note 18, at 51–54. Powderly's antipathy to private labor brokers dated back to his days as the Grand Master Workman of the Knights of Labor. In 1884, for example, Powderly testified before the U.S. Senate that many immigrant workers "are delivered by padrones and arrive with their tickets purchased by labor brokers down at the [Castle] Garden . . . . Forty-two slaves, plainly speaking, I saw taking the place of forty-two freemen." *Cited by* Willy E. Forbath, "The Borders of 'Our America': 'Race,' Liberalism, and National Identity in the Law and Politics of European Immigration, 1882-1924" at *19 (unpublished manuscript, on file with author). In 1909, as Chief of the Division of Information, Powderly met with famous Progressive-era immigrant advocates Jane Addams and Sophonisba Breckenridge in Chicago to discuss the creation of a Division branch office in that city. *See* Memorandum from Daniel Keefe, Commissioner-General of Immigration, to Charles Nagel, Secretary of Commerce & Labor (Apr. 3, 1909) (on file with National Archives). Powderly's correspondences as head of the Division suggest that he remained incensed by the abuses immigrant workers suffered at the hands of private labor brokers. On one occasion, an incensed Powderly mailed Secretary Nagel a news report of Polish immigrants sent to Georgia only to work for starvation wages and suffer beatings from armed guards, writing that "had our office [the Division] the directing of these men the above would not have been recorded." Letter from Terence Powderly to Charles Nagel (undated) (on file with National Archives).

For policymakers and philanthropists[150] during this period, these interrelated problems had a geographic solution: the "distribution" of immigration from congested urban centers to other regions of the country. Proponents of immigrant distribution held a variety of views about the desirability of immigration as such. Despite his advocacy for immigration restriction in other respects, Powderly—who after leaving the Knights served as Commissioner of Immigration under the McKinley administration—became a leading champion of distribution.[151] He saw no contradiction between his support for immigrant distribution and his identity as a "labor man."[152] As he later explained, the crux of the immigration problem for organized labor was that congestion in major cities created a "reservoir of strike breakers."[153] Encouraging immigrants to settle outside these cities would ensure that in labor disputes, they would not "take any man's place."[154] As Chief of the Division of Information, he later insisted that the agency's services would never be available to firms engaged in labor disputes.[155] Powderly's position clashed with those of other labor leaders, notably the AFL's Gompers, who after the creation of the Division of Information vehemently denounced "schemes to 'distribute' immigrants" as nothing more than government service to deliver scabs upon request.[156]

President Theodore Roosevelt also put his weight behind immigrant distribution. Roosevelt himself held some restrictionist views, favoring laws to prohibit the immigration of anarchists and criminals, people with "low moral tendency," and those unfit to work.[157] However, in a 1903 address to Congress, he also made the following remarks:

> We can not have too much immigration of the right kind, and we should have none at all of the wrong kind. The need is to devise some system by which undesirable immigrants shall be kept out entirely, while desirable

150. Although this Article focuses on public-sector initiatives to "distribute" immigration, private organizations also experimented with efforts to facilitate immigrants' settlement outside of New York and other major urban destinations. A prominent example was Jewish philanthropists' attempt to encourage Eastern European Jewish immigrants to move to rural areas and smaller cities, in particular by diverting migration flows through the port of Galveston, Texas. *See* BERNARD MARINBACH, GALVESTON: ELLIS ISLAND OF THE WEST 2–20 (1983). Marinbach notes that in the years leading up to the creation of the Division of Information, "[the] official United States government attitude was highly favorable to the removal [i.e., private philanthropic distribution] idea." *Id.* at 4.

151. *See* TERENCE V. POWDERLY, THE PATH I TROD: THE AUTOBIOGRAPHY OF TERENCE V. POWDERLY 303–05 (1940) (reproducing a 1906 letter Powderly wrote to President Theodore Roosevelt, suggesting that immigration law should select immigrants based on their capacity to work, and that immigration agents should provide information on where there is demand for work throughout the country); *see also* Patrick Weil, *Races at the Gate: A Century of Racial Distinctions in American Immigration Policy (1865-1965)*, 15 GEO. IMMIGR. L.J. 625, 628–29 (2001).

152. POWDERLY, *supra* note 151, at 305.

153. 1911 Conference, *supra* note 1, at 72.

154. *Id.*

155. Guzda, *supra* note 18, at 14.

156. *See* Samuel Gompers, *Schemes to 'Distribute' Immigrants*, 18 AM. FEDERATIONIST 513 (1911).

157. Remarks quoted in HUTCHINSON, *supra* note 114, at 127–28; *see also* MICHAEL WILLRICH, AMERICAN ANARCHY: THE EPIC STRUGGLE BETWEEN IMMIGRANT RADICALS AND THE US GOVERNMENT AT THE DAWN OF THE TWENTIETH CENTURY 99–101 (2023) (describing Roosevelt's support for the suppression of the anarchist movement through criminal and immigration law after the assassination of President William McKinley).

> immigrants are properly distributed throughout the country. At present some districts which need immigrants have none; and in others, where the population is already congested, immigrants come in such numbers as to depress the conditions of life for those already there.[158]

Two years later, he reiterated this proposal, suggesting that immigration laws should limit the number of immigrants who can come to "New York and other northern cities," while allowing unlimited immigration to the South.[159] Despite the nativist sympathies he shared with other Northeastern Republicans, Roosevelt understood the growing importance of the "new immigrants" as a voting bloc, as well as the widespread demand for immigrant labor across the United States.[160] And unlike some more conservative members of the Grand Old Party, the future Progressive presidential candidate was also amenable to state-led efforts to shape the direction of capitalist economic development.[161]

Congress began considering proposals for immigrant distribution programs in the early years of the twentieth century, with these proposals gaining steam by 1906.[162] Senate debates over what would become the Immigration Act of 1907 reflected concerns that too many recent immigrants were clustered in New York and the surrounding region.[163] Senators noted that despite a growing hostility towards Italians, many Italian immigrants were skilled agriculturalists and therefore highly desirable as farmers and farmworkers.[164] Whereas the immigrants who "huddle and gather together" in large cities remained poor and confined to their ethnic communities, argued Norwegian-born Senator Knute Nelson of Minnesota, the distribution of immigrants to central and western states enabled them to prosper economically and assimilate culturally.[165]

Some members of Congress who supported immigrant distribution viewed it as a tool to promote White supremacy. In his arguments for enabling states and territories to send recruiting agents to immigrant landing stations, Kentucky Senator James McCreary emphasized the perceived need in his state and throughout the South for the "best class" of immigrants—a common phrase in these debates—in order to increase the proportion of White laborers in the cotton production

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158. Remarks quoted in HUTCHINSON, *supra* note 114, at 134.

159. Theodore Roosevelt, President of the United States, Fifth Annual Message of the President Transmitted to Congress 47 (Dec. 5, 1905).

160. *See* HIGHAM, *supra* note 18, at 112–28.

161. *See* MINK, *supra* note 18, at 219. Opposition to state intervention in the economy was not limited to conservative Republicans. Committed to a "voluntarist" approach to economic relations, Gompers's AFL—eventually aligned with the Democratic Party—preferred direct negotiation between trade unions and employers to public welfare programs or labor law protections. *Id.* at 190.

162. The first major bill on this issue was introduced by Senator F.M. Simmons of North Carolina in 1904. A Bill Authorizing the Commissioner-General of Immigration, Under the Direction of the Secretary of Commerce and Labor, to Establish in Connection with the Immigrant Station at Ellis Island an Information and Display Bureau, for the Purpose of Aiding in the Distribution of Immigrants, and for Other Purposes, S. 4118, 58th Cong. (1904).

163. *See* 59 CONG. REC. S7216 (daily ed. May 22, 1906) (statement of Sen. Dillingham) ("Every effort is being made to keep immigrants out of the city of New York."); *id.* at S7223 (statement of Sen. McCreary) ("A very large number of immigrants who came to this country last year found places to locate in only six States out of the forty-five . . . over 300,000 of them went to the state of New York and 210,000 went to the State of Pennsylvania.").

164. *Id.* at S7219–20 (statements of Sens. Bacon & Perkins); *cf.* 1911 Conference, *supra* note 1, at 46.

165. 59 CONG. REC. S7284 (daily ed. May 23, 1906) (statement of Sen. Nelson).

industry.[166] Other Southerners dispensed with such euphemism. For example, South Carolina's "Pitchfork Ben" Tillman complained that some of his Senate colleagues seemed willing to "keep the Japs out of California," but not to "give us more White people with which to combat Negro domination."[167] These sentiments led some opponents of immigrant distribution to dismiss it as a Southern "sectional suggestion."[168]

At the same time, neither the explicitly racist elements of this political coalition nor the ambient prejudices of the Progressive era defined the project. In a climate of mounting nativism and xenophobia, restrictionists sought to prevent the immigration of Southern and Eastern Europeans, deemed to be racially inferior; in contrast, proponents of immigrant distribution believed that an effective internal migration policy could help these foreigners integrate into American society.[169] That few to none of these reformers could imagine such benefits applying to Chinese, Japanese, or other Asian immigrants is a tragic consequence of the Progressive era's "terribly limited . . . vision of inclusion."[170] But in this context, the creation of an agency tasked with helping a more diverse array of (European) immigrants find homes and economic opportunities throughout the country marked a victory for the "anti-restrictionists" who opposed further racialized immigration barriers.[171]

Finally, policymakers favoring immigrant distribution had to confront skeptics of the notion that the federal government—in overseeing the internal migration of immigrant workers—should be so deeply involved in the private employment market. For example, Republican Senator John Spooner of Wisconsin viewed the proposal as "another little piece of paternalism, with which . . . the [federal] Government has nothing to do."[172] Fearing the enormous cost of a new government program to promote migration throughout the country, Spooner

166. 59 CONG. REC. 7226 (daily ed. May 22, 1906) (statement of Sen. McCreary).

167. 59 CONG. REC. S3027–28 (daily ed. Feb. 15, 1907) (statement of Sen. Tillman).

168. 59 CONG. REC. S7282 (daily ed. May 23, 1906) (statement of Sen. Spooner). On Southern efforts to promote immigration to the region, including planter and U.S. Senator LeRoy Percy's efforts to "distribute" Italian workers to the Mississippi Delta, see BENTON-COHEN, *supra* note 18, at 200–33. At the same time, not all Southerners—nor all white supremacists—supported distribution schemes. In the House, Representative John Burnett of Alabama expressed concern that inviting southern and eastern Europeans would reproduce the "congestion of illiterate pauper immigrants in the great cities of the East," and exacerbate racial tensions: "[G]entlemen, we have suffered enough already from one race question, and now will we fly to a conflict with another?" 59 CONG. REC. H3227 (daily ed. Feb. 18, 1907) (statement of Rep. Burnett).

169. As Czech-born Representative Anthony Michalek of Illinois put it: "This so-called white immigration problem is, in my humble opinion, a question largely of proper distribution." 59 CONG. REC. H3229 (daily ed. Feb. 18, 1907) (statement of Rep. Michalek); *cf.* 59 CONG. REC. H9167 (daily ed. June 25, 1906) (statement of Rep. Bartholdt). On the fluid definitions of whiteness as applied to European immigrant groups during this period, *see* MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA 20–55 (2004); MATTHEW FRYE JACOBSON, WHITENESS OF A DIFFERENT COLOR: EUROPEAN IMMIGRANTS AND THE ALCHEMY OF RACE 43–90 (1999).

170. RAHMAN, *supra* note 18, at 12; *see also* SHELTON STROMQUIST, REINVENTING "THE PEOPLE": THE PROGRESSIVE MOVEMENT, THE CLASS PROBLEM, AND THE ORIGINS OF MODERN LIBERALISM 130 (2006); Forbath, *supra* note 18, at *47 (noting that while Powderly abandoned his "inclusive ethic" when it came to Chinese immigrants, he abandoned any "ambivalence" he had once had about "new" European immigrants' worthiness).

171. HIGHAM, *supra* note 18, at 130. On immigration policymakers' views of race during this period, see Weil, *supra* note 151.

172. 59 CONG. REC. S7282 (daily ed. May 23, 1906) (statement of Sen. Spooner).

favored simply allowing state officials to advertise opportunities in their states at immigrant landing sites.[173] For Kentucky's McCreary, this was naïve. Though both agreed that immigrant distribution would involve a role for state agencies, McCreary was convinced that a federal agency was required to coordinate.[174] These debates over the proper activities of the federal government and its role in the private market would continue throughout the Division's tenure.

B. The Division of Information: Administering Immigrant Distribution

Proponents of immigrant distribution carried the day, and the Immigration Act of 1907 authorized the creation of a new agency within the Department of Labor and Commerce fit for the task. Section 40 of the Act called for "a division of information in the Bureau of Immigration and Naturalization" whose duty would be "to promote a beneficial distribution of aliens admitted into the United States among the several States and Territories desiring immigration."[175] This was the first federal agency explicitly dedicated to facilitating internal migration within the United States' borders.

As its name suggested, the Division of Information's mission involved collecting information about the economies, climates, and cultures of various interior regions of the United States, and disseminating this information to arriving immigrants.[176] As fiscally-minded opponents of Section 40 had anticipated, gathering up-to-date information about which employers in which industries needed workers, and in which states and localities, was no small task. Powderly nonetheless believed the federal government had the capacity to obtain and communicate this information, pointing to the Department of Agriculture's success in providing daily updates on weather and crop conditions across the country.[177] By corresponding with officials in the states and territories and conducting studies throughout the private sector, he argued, the Division of Information could do the same for immigrant employment opportunities: "There is no good reason why every change in the industrial life of the nation should not be reported to the Division of Information and made available to every resident of the United States when necessary."[178] Though the Division itself lacked Agriculture's nationwide bureaucracy, Powderly proposed a collaboration with the Post Office, which could distribute surveys to employers, which would then be mailed back to the Division's headquarters.[179]

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173. *Id.*

174. *Id.* (statement of Sen. McCreary).

175. *Supra* note 136.

176. *Id.* at 910.

177. *See* DIVISION OF INFORMATION, ANNUAL REPORT OF THE CHIEF OF THE DIVISION OF INFORMATION TO THE COMMISSIONER-GENERAL OF IMMIGRATION FOR THE FISCAL YEAR ENDED JUNE 30, 1910 13 (1910) [hereinafter 1910 Annual Report] ("The Weather Bureau receives telegraphic reports concerning atmospheric conditions each day and at various times during the day from all parts of the United States and from many important places in other countries . . . . [It] performs a service that directly or indirectly benefits every inhabitant of the United States, and its influence for good is felt throughout the world.").

178. *Id.*

179. *Id.* at 14. Examples of such surveys produced by the Division can be found in the Immigration and Naturalization Service Records at the National Archives. *See* Memorandum from Roger Hammel, Special Inspector, to Daniel Keefe Exhs. A-H (May 8, 1909) (on file with the National Archives).

Almost immediately from the Division's inception, however, it sought to do more than simply pass out travel pamphlets. Instead, Powderly and his allies wanted the Division to serve as an immigrant employment agency—in fact, the first public employment agency at the federal level—finding specific job placements for individuals and helping them reach their destinations.[180] This decision immediately proved controversial, prompting legal opinions within the Department of Commerce and Labor arguing that this "paternalism" of securing "active" placements was not authorized under the 1907 Act.[181] Secretary Charles Nagel ultimately overruled his legal advisors and subordinate officials—including Commissioner-General of Immigration Daniel Keefe—concluding that the placements were within the Division's authority and expressing a desire for Powderly's "experiment" to continue.[182]

Given the agency's limited resources, however, this experiment operated on a relatively small scale in the years leading up to World War I.[183] In response to tens of thousands of requests for workers by employers, it reported securing work for only between three thousand and six thousand people per year.[184] Alongside Progressive immigrant advocates such as Frances Kellor, Jane Addams, and Sophonisba Breckinridge, Powderly hoped to expand the Division's ability to provide additional services to immigrants as they traveled to and established themselves in new cities—such as home loans and protections for women and girls against exploitation—but these plans ultimately failed to materialize as the Division failed to secure support for new branch offices in interior cities such as Chicago.[185]

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180. Guzda, *supra* note 18, at 14. On the historical origins of public employment agencies at the municipal and state level beginning in the 1890s, *see* ROSENBLOOM, *supra* note 107, at 70–79. Powderly as well as others in the labor movement had long supported government efforts to provide accurate information about employment opportunities and active assistance in finding jobs to circumvent private labor brokers. *See* Forbath, *supra* note 18, at *21, *29. These efforts coincided with what the historian Michael Katz referred to as the broader "discovery of unemployment" as an issue of public policy in the latter decades of the nineteenth century. *See* MICHAEL B. KATZ, IN THE SHADOW OF THE POORHOUSE: A SOCIAL HISTORY OF WELFARE IN AMERICA 149 (1986).

181. Memorandum from Charles Earl, Acting Solicitor, Department of Commerce & Labor (Dec. 14, 1907) (on file with National Archives); *see also* Letter from Daniel Keefe to Terence Powderly, Chief of the Division of Information (May 22, 1909) (instructing Powderly to cease facilitating direct placements) (on file with National Archives).

182. Memorandum from Charles Nagel to Daniel Keefe (Sept. 9, 1909) (on file with National Archives); Memorandum from Charles Nagel (June 18, 1909) (on file with National Archives). As a former AFL organizer, Keefe may have subscribed to its *laissez-faire* theory of "voluntarism" in economic relations. *See* Mink, *supra* note 18, at 190.

183. The Division itself only employed a handful of staff out of its sole branch office in New York City, where representatives of a small number of states also maintained a presence. *See* Memorandum from Roger Hammel, *supra* note 179. It briefly maintained a second branch office in Baltimore, but despite years of effort, Powderly never succeeded in securing approval for additional offices in Boston and Chicago. *See* Letter from Terence Powderly to Charles Nagel (Feb. 7, 1910) (on file with National Archives) (confirming closure of the Baltimore office); Memorandum from Charles Earl, *supra* note 181 (discussing Boston and Chicago proposals). It also relied heavily on outside actors as well as immigration inspectors collecting and disseminating information on its behalf in addition to their regular duties. *See* 1910 Annual Report, *supra* note 177.

184. *See id.*; DIVISION OF INFORMATION, ANNUAL REPORT OF THE CHIEF OF THE DIVISION OF INFORMATION TO THE COMMISSIONER-GENERAL OF IMMIGRATION FOR THE FISCAL YEAR ENDED JUNE 30, 1912 (1912) [hereinafter 1912 Annual Report]; Memorandum from Charles Earl (June 21, 1909) (on file with National Archives).

185. *See* FRANCES A. KELLOR & JOSEPH MAYPER, RECOMMENDATIONS FOR A FEDERAL BUREAU OF DISTRIBUTION: DEPARTMENT OF LABOR (1913) (proposing loans to facilitate land

While these experiments remained modest, in the Division's early years, it most significant innovation was its effort to foster intergovernmental cooperation around a national internal migration policy. As noted above, the agency relied in large part on state governments to collect the information it sought about economic conditions throughout the country. Powderly and his rivals may have sparred over whether the Division should intervene in private employment relations, but all agreed that dialogue with state officials was a core part of the agency's mission.[186] To begin building capacity for this collaboration, Powderly organized in November 1911 a conference in Washington, D.C., inviting state representatives as well as representatives from private industry, and creating an organization called the National Conference of Immigration, Land, and Labor Officials (NCILLO).[187] Many states at the time had created their own immigration agencies, or regularly dealt with questions of immigration policy through labor, industrial, and agricultural agencies. One of the Division's goals was to encourage more states to create similar bodies, allowing it to play a coordinating role in a nationwide network of internal migration policymaking bodies.[188]

In large part, what the Division and its state partners imagined was a cooperative effort to achieve industrial policy goals through the distribution of immigration. The NCILLO conference, for example, allowed state officials to express their most pressing economic development priorities: from Iowa's concern that urbanization was draining its rural population, to California and Ohio's demands for new sources of farmworkers, to Louisiana's desire for White industrial labor, to West Virginia's goal of preventing the introduction of immigrant strikebreakers.[189]

Participants debated the relationship between government and market actors in seeking to achieve these goals. For some, echoing earlier debates, the agency and its state partners' task was simply to provide immigrant workers with information to allow them to participate in private labor markets throughout the country.[190] To

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purchases); Memorandum from Keefe to Nagel, *supra* note 149 (describing Powderly's meetings with Addams and Breckenridge).

186. *See supra* note 136; 1910 Annual Report, *supra* note 177, at 15 (describing writings by Powderly that "[t]here exist in most of the States boards of immigration or bureaus of agriculture and immigration. It has been the aim of the Division to induce these to collect such information as is indicated in section 40 of the act of February 20, 1907, with a view to future cooperation."); *accord* Memorandum from Daniel Keefe, Commissioner-General of Immigration (May 26, 1910) ("[State cooperation] is so obviously in exact accord with the intent of the statute that there can be no question concerning its legality.").

187. Conference participants included officials from Arkansas, California, Colorado, Delaware, Hawaii Territory, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, North Dakota, Ohio, Oregon, Tennessee, Texas, Utah, Washington, West Virginia, and Wyoming, as well as the Southern Commercial Congress and three railroad companies. *See* 1911 Conference, *supra* note 1, at 3–10.

188. *Id.* at 7. In this respect, the Division engaged in what Professor Adam Zimmerman has termed "ghostwriting federalism," federal agencies' practice of shaping states' legislative choices in line with federal aims. *See* Adam S. Zimmerman, *Ghostwriting Federalism*, 133 YALE L.J. 1802 (2024).

189. 1911 Conference, *supra* note 1. *See also* TODD N. TUCKER, INDUSTRIAL POLICY AND PLANNING: WHAT IT IS AND HOW TO DO IT BETTER 6 (2019) (defining "industrial policy as any government policy that encourages resources to shift from one industry or sector into another") (original emphases omitted); Hafiz, *supra* note 24, at 1281–85.

190. *See* 1911 Conference, *supra* note 1, at 56 (statement of Raymond A. Pearson, New York Commissioner of Agriculture) (arguing that the Division and the NCILLO's task was "to devise a

that end, the NCILLO invited some corporate actors to attend the meeting—notably representatives of railroad companies, which had created their own in-house immigration departments, and effectively functioned as critical infrastructure for "distributing" human beings throughout the North American continent.[191] Other state officials came in with a narrow conception of their industrial policy goals (e.g., supplying needed immigrant workers to key private-sector employers).[192] However, several state representatives articulated a more capacious vision of the public's interest in industrial policy, distinct from that of private capitalists.[193] For Powderly, the aim was for public agencies at both the federal and state levels to mediate between various constituencies interested in the geographic dispersal of immigrant workers—for example, between organized labor's interest in rejecting strikebreaking and employers' interest in securing a pool of laborers.[194]

In short, the Division of Information was an experiment not only with immigrant distribution, but also more broadly with creating cooperative structures aimed at channeling both local and national industrial policy. The Division sought state input as to both what local constituencies demanded of the federal immigration system, and how the agency itself could best work to meet these demands.[195] In his remarks at the 1911 conference, Secretary of Commerce and Labor Charles Nagel grasped the novelty of this kind of intergovernmental cooperation:

> Now, this meeting is . . . one of the few instances in which representatives of the several political organizations . . . of this country have come together to bring about an intelligent, patient, and successful cooperation of the

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practical working scheme which, when adopted, will at once place information where it is needed, and when the information is needed will not these conditions [the law of supply and demand] to a very large extent adjust themselves?").

191. *See id.* at 87–88.

192. *See id.* at 28 (statement of A.P. Sandles, Ohio Secretary of Agriculture) ("I want to say to you that the State of Ohio needs farm laborers.").

193. *See id.* at 90 (statement of Charles Harris, Kansas State Free Employment Bureau) ("As I understand it, we are here in the interest of seeing the workingman get work and employers get employees. The commercial interests, to a certain extent, work along that line, but they are doing it from a financial standpoint. We are doing it for the State and for the good of humanity, expecting nothing out of it."). Ultimately the NCILLO voted not to include corporate representatives as active members. *Id.* at 8.

194. *See id.* at 72 (statement of Terence Powderly); *see also* DIVISION OF INFORMATION, ANNUAL REPORT OF THE CHIEF OF THE DIVISION OF INFORMATION TO THE COMMISSIONER-GENERAL OF IMMIGRATION FOR THE FISCAL YEAR ENDED JUNE 30, 1920 4 (1920) [hereinafter 1920 Annual Report] ("Congress, when enacting the statute under which the Division of Information operates, believed that the care of admitted aliens should not be intrusted to private interests, societies, or individuals. It was the evident intent of the law to have everything connected with the admitting, informing, and directing of aliens done by a Government agency and Congress intended that that agency should be the Division of Information.").

195. NCILLO conference participants discussed various proposals for where Division of Information branch offices should be located and how they should operate. *Id.* at 62–81. One particularly colorful suggestion imagined the Division's offices as simple, inviting buildings, evocative of local customs—for example "'dobe [sic] huts out west." Patek described a Division office in a central location, such as State Street in Chicago, offering a "large storeroom . . . arranged so that each State might have a booth in which possibly it might show some of its products . . . . The main point is to get in touch with them personally, individually . . . . You must remember that they were born in a different country, in a different atmosphere, which makes it a quite difficult thing for them to come here and grasp the atmosphere of any of our States." *Id.* at 63–64 (Statement of Alfred Patek, Colorado Commissioner of Immigration).

> Federal Government with the individual States. . . . We have spent nearly a hundred years in discussing the conflict between State rights and national power. . . . But, in my judgment, the time is ripe for a clear recognition of the fact that the real solution of the dual system of government lies, not in an attempt to find out just how much a State may do, or how far the National Government may encroach upon a State, but to find out how that undefined zone between Federal and State authority can best be solved by intelligent cooperation between the two.[196]

In the early years of the Division's existence before the outbreak of World War I, it had only just begun to explore the possibilities of how to craft an internal migration policy within this "undefined zone."

C. A Path Not Taken

At the height of the Progressive era—a time of rapid experimentation with new forms of administration and state-building more broadly—the Division of Information put forward a vision of how the fledgling federal immigration bureaucracy could respond to pressing challenges of internal migration.[197] The Division's model involved efforts to promote immigrant "distribution" both by inducement, offering information about faraway destinations, and by direct placement through its employment agency service. Both of these efforts depended on a cooperative approach to intergovernmental relations, inviting state agencies to provide information about opportunities within their borders and requests for needed immigrant labor. As a result, the Division developed a framework to promote economic, industrial, and labor policy goals at both the local and the national level: drawing on state knowledge to assist federal priorities and deploying federal infrastructure to achieve state priorities. The agency's approach also created a novel approach within the immigration law and politics of the time, adopting a non-coercive legal intervention that had something to offer to both pro-immigrant and moderate restrictionist camps.

While the Division was in existence, the Supreme Court provided a brief glimpse into how the courts were beginning to understand the relationship between immigration law's internal and external dimensions. In his short opinion for the Court in *Gegiow v. Uhl*, Justice Oliver Wendell Holmes articulated a distinction between the federal government's tasks of immigration law enforcement and internal geographic distribution.[198] *Gegiow* involved a group of Russian laborers denied admission to the United States after they indicated that they intended to reach Portland, Oregon, where "reports of industrial conditions show[ed] that it would be impossible for these aliens to obtain employment."[199] Asking whether an immigrant can "be declared likely to become a public charge on the ground that the labor market in the city of his immediate destination is overstocked," Holmes answered in the negative.[200] The Immigration Act of 1907 called for excluding

196. *Id.* at 21.

197. *See* NOVAK, *supra* note 18; RAHMAN, *supra* note 18; STROMQUIST, *supra* note 170.

198. Gegiow v. Uhl, 239 U.S. 3 (1915).

199. *Id.* at 8.

200. *Id.* at 9–10; *see also* Forbath, *supra* note 18, at *30 ("Beginning in the late [1890s], one finds the Commissioner-General and Immigration Commissioners of the main ports like New York beginning to interpret this ["likely to become a public charge"] language to entail scrutiny of labor

"persons likely to become a public charge," along with numerous other categories of people that, in Holmes's gloss, suffered from "permanent" deficiencies, including "paupers and professional beggars, . . . idiots, persons dangerously diseased . . . convicted felons, prostitutes, and so forth."[201] These exclusion grounds could only apply nationwide, "irrespective of local conditions."[202]

In contrast, Justice Holmes noted that a separate provision of the 1907 Act "contemplate[d] a distribution of immigrants after they arrive": namely, section 40.[203] Whereas the Division was charged with facilitating internal migration, immigration enforcement agencies could not properly distinguish between geographic regions within the country's borders. The portion of the immigration statute enumerating the grounds of exclusion "deals with admission to the United States, not to Portland."[204] Holmes's opinion suggested the beginnings of a possible relationship between immigration law's external dimension, selecting which foreigners may enter from abroad, and the internal dimension represented by the Division's "distribution" work.[205] While insisting on a conceptual and logistical separation between these two tasks, he also understood that they stood for two complementary aims of immigration law as a whole.[206]

Ironically, Holmes invoked the Division of Information to support this evolving understanding of immigration law just as that agency was beginning to decline in prominence. Even in the years leading up to World War I, some had already expressed disappointment in Division's experiment with immigrant distribution—including even Frances Kellor, who wrote in 1915 that "[as] a vocational service bureau upon any adequate scale it has been a failure."[207] Powderly also lost substantial credibility with organized labor after evidence emerged that his agency had provided information to foreign workers recruited as strikebreakers, breaking a key promise to this constituency.[208]

The Great War nonetheless dealt the Division's fatal blow.[209] After the war sharply reduced emigration to the United States, the Division's mandate to manage European immigration eroded.[210] As the United States prepared to enter the war in 1917, the federal government was suddenly faced with vast and urgent new challenges of distribution and coordination: namely, managing wartime industrial

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market conditions in the area where the would-be immigrant was bound," including by relying on Bureau of Labor Statistics data.).

201. *Id.* at 10; Act of Feb. 20, 1907, ch. 1134, § 2, 34 Stat. 898, *amended by* the act of Mar. 26, 1910, ch. 128, § 1, 36 Stat. 263, Comp. Stat. 1913, § 4244.

202. *Gegiow*, 239 U.S. at 10.

203. *Id.*

204. *Id.*

205. *See* Cox, *supra* note 13, at 345.

206. In a 1913 paper, Frances Kellor and Joseph Mayper endorsed a similar separation, suggesting that the agency tasked with assisting immigrants as they find their internal destinations should not confuse its role with that of policing the border by force. *See* KELLOR & MAYPER, *supra* note 185.

207. KELLOR, *supra* note 146, at 116.

208. *See* Guzda, *supra* note 18, at 14–15.

209. In this respect, the story of the Division of Information fits within the conventional narrative—though one that historians have long sought to complicate—that "World War I killed the progressive movement." Allen F. Davis, *Welfare, Reform and World War I*, 19 AM. Q. 516 (1967).

210. *See* DANIELS, *supra* note 18, at 45 (describing how by 1916, total net immigration had dropped to approximately 150,000, down from 900,000 before the war).

and agricultural production.[211] Since the Division had developed experience with securing job placements, its staff were placed under the control of the Department of Labor's war efforts, creating the first iteration of the United States Employment Service (USES).[212] European immigrants seeking long-term residence in the United States were increasingly marginal to meeting the country's most urgent needs of labor distribution. While the urban industrial workforce saw a large infusion of native-born Americans, including women and African American migrants from the South, federal immigration officials began to prioritize managing the entry of temporary Mexican agricultural workers.[213] As the Wilson administration wound down much of its wartime economic planning infrastructure, the Division as well as the early USES suffered a similar fate.[214]

After the war, there was little enthusiasm for reviving the project of immigrant distribution as conceived at the turn of the century. The intensified postwar xenophobia marked an implicit rejection of the notion that internal migration policy could help integrate foreigners and serve national policy interests—despite the continued efforts of advocates such as Kellor and Powderly to promote the benefits of "Americanization."[215] In the postwar climate, restrictionists in Congress succeeded in creating legal barriers to immigration that had failed in earlier efforts.[216] The Division of Information was formally abolished in 1921, coinciding with the first national origin quota laws enacted that same year.[217] Following

211. *See* Memorandum from Louis F. Post, Assistant and Acting Secretary, Department of Labor, to the Commissioner-General of Immigration, the Chief of the Division of Information, and all officers, clerks and employees of the Bureau of Immigration and the Immigration Service (Dec. 13, 1917) (on file with National Archives); RUTH M. KELLOGG, THE UNITED STATES EMPLOYMENT SERVICE 2–7 (1933).

212. As Powderly wrote in 1920, "With the breaking out of the war in Europe, and even before the United States entered the war, the operations of the Division of Information were necessarily so interfered with that its duty of informing aliens and others, as provided by the statute, was largely laid aside in order that it could be utilized as the nucleus of the U.S. Employment Service." 1920 Annual Report, *supra* note 194, at 4.

213. *See* CALAVITA, *supra* note 18, at 151.

214. *See* KELLOGG, *supra* note 211, at 8. The USES was revived during the New Deal period and exists to this day. *See* Minoff, *supra* note 26, at 69.

215. *See* EDWARD GEORGE HARTMANN, THE MOVEMENT TO AMERICANIZE THE IMMIGRANT 38–63 (1944). Kellor was active in the New York chapter of the North American Civic League for Immigrants, representing its relatively liberal wing concerned primarily with immigrants' welfare as they integrated into their new communities, while other chapters emphasized "Americanization" as a means to quell labor unrest and root out foreign espionage. *See* HIGHAM, *supra* note 18, at 240–41; *see also* CALAVITA, *supra* note 18, at 135–53.

216. *See* HIGHAM, *supra* note 18, at 194–233.

217. *See* DARRELL HEVENOR SMITH & H. GUY HERRING, THE BUREAU OF IMMIGRATION: ITS HISTORY, ACTIVITIES, AND ORGANIZATION 29 (1924). The Emergency Quota Act of 1921, Pub. L. No. 67-5, 42 Stat. 5, established quotas that remained in place until June 30, 1924, prompting Congress to enact the more durable quotas of the Johnson-Reed Act. *See* HUTCHINSON, *supra* note 114, at 176–96. The economic historian Claudia Goldin has also observed that the immigration restriction of the early 1920s occurred after a substantial postwar decline in the foreign-born population of major U.S. urban areas. *See* Claudia Goldin, *The Political Economy of Immigration Restriction in the United States, 1890 to 1921*, *in* CLAUDIA GOLDIN & GARY D. LIBECAP, THE REGULATED ECONOMY: A HISTORICAL APPROACH TO POLITICAL ECONOMY 242 (1994). Goldin's analysis suggests that high concentrations of foreigners in cities before World War I strengthened political constituencies opposed to immigration restriction. To the extent that the principals of the Division of Information aimed to undermine restrictionism by distributing immigrants outside of large cities, then, their political calculus may have been misplaced.

wartime trends, after the restrictive laws of the 1920s cut off mass immigration from Europe, federal immigration agencies began to shift their priorities away from promoting long-term settlement and integration, and largely towards managing the flow temporary agricultural labor across the southern border with Mexico.[218] The shock of the war and the restrictionist victory that followed ultimately brought the Division's experiment in administering internal migration to an unexpected end.

IV. RECONSIDERING INTERNAL MIGRATION TODAY

The Division of Information briefly served as an internal migration agency within the emerging federal immigration apparatus, but after its dissolution over a century ago, no institution has since replaced it. However, the dismantling of this federal agency infrastructure did not resolve the challenges of internal migration that the Division of Information was created to address. Almost as soon as the Division was abolished, prominent voices began calling for new initiatives to fill its role. In 1925, for example, Franklin Roosevelt—apparently ignoring the reforms attempted during his cousin's presidency—lamented that the United States had no successful scheme for a "distribution of . . . immigrants."[219] "If . . . the United States had adopted a policy of this kind," Roosevelt continued, "we would not have the huge foreign sections which exist in so many of our cities."[220] In more recent decades, mayors, governors, and other prominent politicians have renewed calls for immigration reforms tailored to the needs of local communities to attract new residents.[221] While this institutional landscape has shifted over time, questions of internal migration have remained a constant feature of U.S. immigration law and politics from their earliest origins up until the present day.

In this shifting landscape, state and local action has remained a constant while federal interventions have been intermittent and incomplete. Despite the Supreme Court's abolition of the law of settlement in the first half of the twentieth century,[222] a fragmented patchwork of state and local laws continues to shape the movement of noncitizens throughout the country. Federal internal migration interventions—such as ORR refugee resettlement or geographic inducements in the employment-based immigration—account for a relatively small portion of the overall immigration system and provide few opportunities to express the migration needs of state and local communities. Sub-federal action attempts to fill these gaps, leading to intensifying intergovernmental conflict today.[223] In the present moment, as immigration remains one of the most divisive issues in U.S. politics, serious reform to the institutional structure of immigration law often seems far out of reach. Yet for this reason, it is all the more instructive to look to the Division of Information's Progressive-era experiment for an alternative conception of the federal role in

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218. On this shift within the Immigration and Naturalization Service, see KITTY CALAVITA, INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S. (1992).

219. Franklin D. Roosevelt, "We Lack a Sense of Humor If We Forget That Not So Very Long Ago We Were Immigrants Ourselves," MACON DAILY TELEGRAPH (Apr. 21, 1925), *reprinted in* F.D.R. COLUMNIST: THE UNCOLLECTED COLUMNS OF FRANKLIN D. ROOSEVELT 38 (Donald Scott Carmichael ed., 1947).

220. *Id.* On the internal migration experiments attempted during Roosevelt's presidency—outside of the immigration context, see Minoff, *supra* note 26, at 68–105.

221. *See infra* Part IV.A.

222. *See* Edwards v. California, 314 U.S. 160, 176–77 (1941).

223. *See supra* Part I.

coordinating and managing internal migration. Part IV outlines several avenues towards reconsidering the place of internal migration within the present institutions of U.S. immigration law.

A. A Cooperative Federalism of Internal Migration

The Division of Information was an experiment in cooperative federalism, inviting state participation in achieving national internal migration goals, and soliciting state input in how to use the federal agency's resources to promote their own policy priorities.[224] To achieve its task of promoting a "beneficial distribution" of immigrant labor, it relied in large part on information provided by state immigration, labor, agriculture, and industrial agencies. And because this distribution depended on identifying which areas of the United States had need of immigrants, the Division's mission depended on both aligning national- and local-level policy aims and coordinating between various sub-federal governments seeking increased migration.

In advancing this vision of internal migration cooperation, the Division did not understand itself as wielding an exclusive federal immigration power that preempted similar state action. Coordination between the federal internal migration agency and corresponding institutions at the sub-federal level was an explicit mandate of the Division's 1907 organic statute, as it had been under the federal immigration statute in 1882.[225] Although the Supreme Court increasingly described immigration as the sole domain of the federal sovereign, nowhere in Justice Holmes's opinion in *Gegiow* did he suggest that anything of the sort should apply to federal immigrant "distribution" interventions.[226] Although the Division's distribution efforts fell within an emerging national legal framework regulating immigrants within the United States, not every aspect of this framework fell under a unitary conception of federal "plenary power" as many understand it today.[227]

Taking seriously federal immigration law's role in responding to challenges of internal migration today would involve expanding upon existing cooperative programs. The ORR refugee resettlement system offers an example of cooperative internal migration under current immigration law. Federal refugee law invites state and local governments to consult on the suitability of particular locations for refugee placements, and to choose whether and to what extent to assist in administering refugee services. While states cannot prevent ORR from working directly with nonprofit agencies to provide these services, they can withhold participation in this scheme if they so choose.[228] The Biden administration's ad-hoc efforts to avoid a chaotic distribution of humanitarian migrants (i.e., those ineligible for ORR resettlement) largely bypassed state partnerships, using sponsorships to divert migrants to private support networks.[229] As policymakers seek to craft new internal migrations solutions to this internal migration challenge, however, there is potential

224. *See* Bulman-Pozen & Gerken, *supra* note 51, at 1262–63; Hills, *supra* note 51, at 816–15.

225. *See supra* notes 130–131, 183 and accompanying text.

226. *See* Gegiow v. Uhl, 239 U.S. 3 (1915).

227. For a critique of the anachronism of reading modern "plenary power" doctrine onto the cases of the late nineteenth and early twentieth century, see Adam B. Cox, *The Invention of Immigration Exceptionalism*, 134 YALE L.J. 329 (2024).

228. *See supra* notes 49–53 and accompanying text.

229. *See supra* notes 76–80 and accompanying text.

to more fully integrate sub-federal governments: for example, by creating opportunities for states to facilitate or directly offer migrant sponsorships, or by incorporating more robust placement guidelines into the FEMA Shelter and Services Program along the lines of federal refugee law.

Furthermore, cooperative internal migration programs can be extended beyond what one might conventionally think of as core immigration law aims of humanitarian relief or border security. The Division of Information offers instructive precedent for using internal migration as a part of a larger labor and industrial policy agenda. Through intergovernmental cooperation, the Division and its state-level partners sought both to distribute immigrant labor to key industries in various parts of the United States, while also securing core labor protections in the process.

Similar interventions could revive the turn towards both place-based industrial policy and immigrant worker protections that began during Joe Biden's presidency.[230] Once again, federal programs already exist to encourage immigrant workers to relocate to specific areas—for example, the Conrad 30 J-1 Visa Waiver, targeting rural healthcare needs.[231] A more holistic cooperative internal migration agenda could explore deploying these sorts of place-based immigration on a larger scale. Immigration reform advocates have repeatedly called for state governments to have a greater role in the operation of employment-based immigration, whether a consultative role in the allocation of EB visas, or the power to sponsor immigrant workers directly for admission.[232] Elected officials in recent decades, such as former Governors Tom Vilsack of Iowa and Rick Snyder of Michigan, have also proposed creating immigration law incentives to address depopulation in both rural areas and deindustrialized urban centers.[233]

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230. *See* Hafiz, *supra* note 24, at 1239–40; Memorandum from Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., to Tae D. Johnson, Acting Dir., U.S. Immigr. & Customs Enf't, Ur M. Jaddou, Dir., U.S. Citizenship & Immigr. Servs., & Troy A. Miller, Acting Comm'r, U.S. Customs & Border Prot., on Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual 1 (Oct. 12, 2021), https://www.dhs.gov/publication/memorandum-worksite-enforcement [web.archive.org/web/20251012120705/https://www.dhs.gov/archive/publication/memorandum-worksite-enforcement].

231. *See supra* notes 47–48 and accompanying text.

232. *See, e.g.*, STEPHEN YALE-LOEHR, RANDEL KEITH JOHNSON, THERESA CARDINAL BROWN & CHARLES KAMASAKI, IMMIGRATION REFORM: A PATH FORWARD 8–9 (Oct. 5, 2023), https://www.lawschool.cornell.edu/wp-content/uploads/2023/10/Cornell-immigration-white-paper10-5-23.pdf [web.archive.org/web/20250918071717/https://www.lawschool.cornell.edu/wp-content/uploads/2023/10/Cornell-immigration-white-paper-10-5-23.pdf]; MICHELE WASLIN, IMMIGRATION AT THE STATE LEVEL: AN EXAMINATION OF PROPOSED STATE-BASED VISA PROGRAMS IN THE U.S. (2020), https://bipartisanpolicy.org/wp-content/uploads/2020/05/BPC_Immigration_State-Based-Visa-Programs-Final4.pdf [perma.cc/E2EE-DPLB]; ADAM OZIMEK, KENAN FIKRI & JOHN LETTIERI, FROM MANAGING DECLINE TO BUILDING THE FUTURE: COULD A HEARTLAND VISA HELP STRUGGLING REGIONS? (2019), https://eig.org/wp-content/uploads/2019/04/Heartland-Visas-Report.pdf [perma.cc/68RB-MCKR]. In Canada, provincial governments have for many decades exercised this sort of delegated authority over employment-based immigration. *See* R. Reis Pagtakhan & Jessica Jensen, *Is the Future United States Immigration System Just North of the Border?: Why Canada's Economic Immigration System Should Be Adopted by the United States*, 9 BELMONT L. REV. 454, 461–68 (2022).

233. *See Snyder: Opening Detroit to the World Will Accelerate Comeback of Great City*, FORMER GOVERNORS MICH. (Jan. 23, 2014), https://www.michigan.gov/formergovernors/recent/snyder/press-releases/2014/01/23/snyder-opening-detroit-to-the-world-will-accelerate-comeback-of-great-city [web.archive.org/web/20250908181732/https://www.michigan.gov/formergovernors/recent/snyder/press-releases/2014/01/23/snyder-opening-detroit-to-the-world-will-accelerate-comeback-of-gre

Creating new categories of EB visas or new mechanisms for state participation would require acts of Congress that may be unlikely to succeed in the near-term future. However, ad-hoc experiments in cooperative internal migration may be available here as well through executive action. For example, as Illinois Governor J.B. Pritzker and Chicago Mayor Brandon Johnson outlined in a 2023 letter to the Biden administration, the president's power to parole noncitizens into the country to promote a "significant public benefit" could be applied to immigrants with skills in areas where states have identified key workforce shortages.[234] Many of the most consequential immigration reforms of recent decades have come through creative agency interpretations of existing law rather than comprehensive legislative action, such as the DACA program.[235] Similar interventions aimed at internal migration might have provided a more effective response to the "migrant crisis" of the Biden years.

In the absence of federal coordination, the relevant legal framework governing internal migration consists of state and local government efforts to either welcome or exclude immigrants. Federal law, of course, imposes some constraint on sub-federal action, namely through the doctrine of preemption. Applying the Supreme Court's 2012 holding in *Arizona v. United States*, federal courts have invalidated numerous restrictive measures: from efforts to deny access to rental housing or basic contract law rights to those without status, to recent state laws criminalizing the very act of crossing a state's borders.[236] But preemption suits cannot prevent every legal intervention by sub-federal governments seeking to restrict (or encourage) immigrants' internal migration. Many state laws aimed at creating a hostile or welcoming climate for noncitizens fall squarely within uncontroversial state powers.[237] Other actions, such as providing bus or plane fare to other cities or states, are most likely not preempted by any federal law. Preemption serves an

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at-city] (Michigan Governor Rick Snyder's 2014 call on the federal government to allocate 50,000 employment-based visas to Detroit to bolster the city's economy); Rodríguez, *supra* note 13, at 588–90 (discussing Iowa Governor Tom Vilsack's "Iowa 2010" plan to address the state's depopulation, including securing "exemptions from federal quotas on immigration in order to attract immigrants to the state").

234. *See* Joint Letter from Mayor Brandon Johnson and Governor JB Pritzker, *supra* note 85; 8 U.S.C. § 1182(d)(5)(A); INA § 212(d)(5)(A); *see also* Jacob Hamburger & Stephen Yale-Loehr, *Blue States' Plans for Migrant Workers Can Include or Exclude Biden*, THE HILL (Oct. 8, 2023), https://thehill.com/opinion/immigration/4242094-blue-states-plans-for-migrant-workers-can-include-or-exclude-biden/ [web.archive.org/web/20231218152010/https://thehill.com/opinion/immigration/4242094-blue-states-plans-for-migrant-workers-can-include-or-exclude-biden/].

235. *See* Maryam T. Stevenson, *Explaining the Comprehensive Immigration Reform Stalemate in Congress*, 73 CATH. U. L. REV. 400 (2024); CHARLES KAMASAKI, IMMIGRATION REFORM: THE CORPSE THAT WILL NOT DIE 380–91 (2019).

236. *See* Lozano v. City of Hazleton, 724 F.3d 297, 317, 322 (3d Cir. 2013) (Hazleton, Pennsylvania's ordinance requiring proof of immigration status for renters is preempted by federal immigration law); United States v. Alabama, 691 F.3d 1269, 1292–97 (11th Cir. 2013) (Alabama law invalidating contracts made with undocumented immigrants preempted); Order Granting Motion for Preliminary Injunction, United States v. Iowa, No. 4:24-cv-00162-SHL-SBJ (S.D. Iowa, June 17, 2024) (enjoining enforcement of Iowa law criminalizing entry into or presence within the state by a person without proper immigration status); Order, United States v. Oklahoma, No. CIV-24-511-J (W.D. Okla., June 28, 2024) (enjoining similar Oklahoma law).

237. State laws granting or denying access to public services such as driver's licenses are a common example. *See* Ariz. Dream Act Coal. v. Brewer, 757 F.3d 1053, 1063 (9th Cir. 2014) (declining to hold that challengers to an Arizona law denying licenses to DACA holders were likely to succeed on the merits of their preemption claim).

important role in correcting sub-federal behavior that conflicts with federal immigration enforcement schemes. But preemption cannot on its own eliminate the broad range of state and local laws that shape noncitizen movement.

In contrast, more robust federal action, and in particular cooperative internal migration interventions, can provide an alternative outlet for states to express their immigration agendas. Relying on the common assumption that immigration is the federal government's responsibility, state and local officials frequently justify their immigration actions as begrudging responses to Washington's failure to secure the border or conduct deportations to their satisfaction.[238] This makes immigration a particularly attractive issue for restrictionist politicians at the sub-federal level seeking to make a name for themselves in national politics.[239] Cooperative internal migration programs offer a possible means to challenge this understanding of intergovernmental accountability. These programs would offer state and local elected officials clearly defined opportunities to signal to the federal government how migration to their jurisdiction could benefit—or harm—their constituents, and by extension, offer those electorates a more meaningful choice regarding what immigration means for their communities.

B. Alternatives to Coercion and Restriction

A cooperative internal migration scheme also offers an alternative vision to the dominant trend toward restriction in twenty-first-century immigration politics. Since Donald Trump's 2016 presidential campaign, calls to prevent certain immigrant groups from entering, to build walls along the United States' borders, and to ramp up deportations have become mainstream.[240] Despite following through in some respects on his 2020 campaign promises to offer a more welcoming agenda, Joe Biden's administration also carried forward some of his predecessor's restrictive policies, notably by seeking to limit access to asylum.[241] Ahead of the 2024 elections, restrictionist attitudes even gained momentum in otherwise immigrant-friendly cities facing the immense challenge of providing shelter to destitute migrants.[242] Federal action that acknowledges the importance of internal migration to immigration law and policy may have the potential to shift the terms of this increasingly restrictionist debate.

Here again, the emergence of the Division of Information out of early twentieth-century debates over immigrant "distribution" offer a useful historical

238. *See* GULASEKARAM & RAMAKRISHNAN, *supra* note 54, at 88.

239. *See* JACOB M. GRUMBACH, LABORATORIES AGAINST DEMOCRACY: HOW NATIONAL PARTIES TRANSFORMED STATE POLITICS 54 (2022).

240. *See generally* JULIE HIRSCHFELD DAVIS & MICHAEL D. SHEAR, BORDER WARS: INSIDE TRUMP'S ASSAULT ON IMMIGRATION (2019); PROJECT 2025 PRESIDENTIAL TRANSITION PROJECT, MANDATE FOR LEADERSHIP: THE CONSERVATIVE PROMISE, 133–53 (2024), https://static.heritage.org/project2025/2025_MandateForLeadership_FULL.pdf [perma.cc/E5PF-8GG8].

241. *See* Complaint, Las Americas Immigrant Advocacy Ctr. v. U.S. Dep't of Homeland Sec., No. 1:24-cv-01702 (D.D.C., June 12, 2024) (challenging the Biden rule restricting asylum access).

242. In Chicago, for example, city council members introduced a referendum to repeal the city's 2012 "Welcoming City" ordinance in late 2023, which was kept off the ballot by allies of Mayor Brandon Johnson who feared that it would pass. *See* Heather Cherone, *City Council Votes 16-31 to Reject Push to Ask Voters Whether Chicago Should Stay a Sanctuary City*, WTTW NEWS (Dec. 14, 2023), https://news.wttw.com/2023/12/14/city-council-votes-16-31-reject-push-ask-voters-whether-chicago-should-stay-sanctuary [web.archive.org/web/20231214215952/https://news.wttw.com/2023/12/14/city-council-votes-16-31-reject-push-ask-voters-whether-chicago-should-stay-sanctuary].

parallel. Then, as now, there was mounting pressure on Congress to restrict immigration, in the face of large numbers of arrivals clustering in major cities. One did not have to favor greater immigration into the United States as a whole in order to support promoting immigrant distribution. In fact, many of the most enthusiastic champions of distribution—including Terence Powderly and Theodore Roosevelt—could have been fairly characterized as restrictionists at various points in their careers. These figures nonetheless recognized that local communities had need for new workers and new residents.[243] Although in many ways limited by the impoverished racial imagination of their time, they were nonetheless able to recognize that there were such benefits to be gained. Shifting the focus towards matters of internal migration created a significant space for dialogue and compromise, leading to a relative victory for opponents of restriction.

Furthermore, in order to realize the benefits of immigrant "distribution" required the development of new legal tools that did not ultimately rely on coercive force. The logic of restriction rests on a binary choice between those whom the law allows in, provisionally treated as "Americans in waiting,"[244] and those it keeps out by threat or use of violence at the hands of border guards, physical barriers, or interior enforcement agents.[245] The Division of Information was an experiment with alternative legal interventions, namely the encouragement of voluntary internal migration and the cooperative apparatus created to coordinate it. In more recent decades, state and local governments have understood the range of non-coercive internal migration tools at their disposal. For many decades, they have sought to shape noncitizen movement in and out of their borders by creating indirect incentives that make their jurisdictions more or less attractive or welcoming to these groups. Similar voluntary internal migration mechanisms are already a part of the federal immigration toolkit, but they are not typically seen as part of federal immigration law's core purpose.[246]

Experimenting with greater federal infrastructure to manage cooperative internal migration partnerships may unlock opportunities to cut against today's restrictionist trends. Partnerships aimed at shared state and federal economic, labor, and industrial policies have the potential to demonstrate that the purpose of immigration law is not simply to police the country's borders or remove "dangerous" individuals, but also actively to promote the welfare of both the national and local communities. This kind of shift in understanding of the basic terms of the immigration debate might reveal avenues for compromise under current political conditions—even within the party of Donald Trump, there are

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243. *See* 1920 Annual Report, *supra* note 194, at 3 ("When that law was written in 1907 it was of great importance that aliens should be beneficially distributed, not for their sakes merely, but for the sake of the country at large.").

244. MOTOMURA, *supra* note 119.

245. *See* Emily R. Chertoff, *Violence in the Administrative State*, 112 CALIF. L. REV. 1941 (2024). The existence of provisional statuses such as DACA—which involves an executive promise not to target certain individuals for coercive enforcement—only somewhat complicates this binary. *See* Chacón, *supra* note 20.

246. Whereas Republicans in national office today tend to support state-level internal restriction policies, this was not always a given. In 1994, for example, Rep. Newt Gingrich spoke out against California's omnibus restriction bill, Proposition 187, saying that "a better solution is to 'seal off' the border." Quoted in Bosniak, *supra* note 10, at 1052 n.13. For at least some federal officials, "external" border and immigration restrictions are a preferable or more intuitive policy tool.

voices calling for measures to promote noncitizen migration between states.[247] Of course, a focus on internal migration is not a panacea. Not all deep disagreements over immigration can be solved by recognizing immigration's internal dimension, much less the deeper roots of xenophobia and racism that drive much of the restrictionist agenda. It may nonetheless offer a useful strategy to shift the terms of a deadlocked debate over national immigration policy.

CONCLUSION

For at least as long as there has been law regulating when noncitizens can enter the United States, law has also shaped how they move within the country's borders. Immigration law has never simply been a matter of who gets in, but also of where they go afterwards, and what life is like for them in the places where they settle. But while these core questions of internal migration have remained a constant feature of immigration law and policy, the legal and administrative framework governing these questions has evolved over time. Today, the law of internal migration in the immigration context is in many respects dysfunctional, fueling fierce interstate and intergovernmental conflict, and providing too few federal tools to meet local communities' needs. Looking back at the Division of Information's brief experiment with cooperative internal migration partnerships, however, reveals a path not taken for U.S. immigration institutions. The Division as it existed over a century ago is not an exact blueprint to be copied today, limited as it was by the prejudices of the Progressive era and the larger socioeconomic and technological changes that have taken place since. Yet it represented an alternative vision of how federal, state, and local officials can work together to promote internal migration in line with shared policy aims—a usable past for those seeking a way beyond recent crises.

247. *See* Eric Holcomb & Spencer Cox, *To Solve Our National Immigration Crisis, Let States Sponsor Immigrants*, WASH. POST (Feb. 21, 2023) (G.O.P. governors of Indiana and Utah calling for state immigration sponsorships), https://www.washingtonpost.com/opinions/2023/02/21/eric-holcomb-spencer-cox-states-immigration/ [perma.cc/LET7-2TPK]; *see also* NORTH DAKOTA OFFICE OF LEGAL IMMIGRATION, FINDINGS AND INITIAL RECOMMENDATIONS (May 2024), https://www.commerce.nd.gov/sites/www/files/documents/Workforce%20Development/OLI/240513%20OLI%20Final%20Report.pdf [perma.cc/BT2S-FPZB] (report published by a North Dakota agency created by the Republican-controlled state legislature in 2023 to "support businesses in recruiting and retaining foreign-born labor," recommending *inter alia* "piloting relocation and job placement efforts within the U.S.—for example by partnering with diaspora communities and large cities that have an abundance of immigrants (e.g., NYC, Chicago) to identify work-authorized individuals interested in moving to North Dakota").