PART ONE: MAKING THE LEGAL ARGUMENT FOR INTEGRATED COMMUNITIES

Part One of this policy brief looks at the various legal principles that may be applied in advocating for community integration at the municipal level. The goal of this Part is to provide a foundation for advocates in achieving local legislative and policy reform. This Part outlines the legal and technical analysis for Integrated Communities, which proves the framework for advocates to demonstrate local authority to enact progressive policies. Section I addresses the law of municipal authority in North Carolina as it applies to municipalities’ authority to enact ordinances benefiting the immigrant community. Section II analyzes local municipal power as it relates to constitutional and state law. Section III provides an overview of municipal initiatives that promote community integration. Section IV advocates for building integrated communities from a normative human rights standpoint.

I. A Focus on North Carolina and Municipal Authority: Where We Stand According to State Law and Principles

The goal of the Building Integrated Communities Project is to create and implement a comprehensive community integration plan with municipalities and immigrant communities. This includes increasing access to local government services by immigrants. Whether local governments have the authority to enact ordinances or otherwise provide access to services that would benefit the immigrant community requires a state-by-state legal analysis. Although municipal authority is derived from state law by the power vested in the states from the United States Constitution, it is important to begin this policy brief with a shaper characterization of where North Carolina falls with regard to municipal authority as this project focuses on specific issues involving North Carolina municipalities. This Section addresses the law of municipal
authority in North Carolina which has been variously classified as a Dillon’s Rule state and a Home Rule state and how such classification affects the goals of the Building Integrated Communities Project.

A. Dillon Rule v. Home Rule

The United States Constitution does not make any reference to local governments. Local governments are created by the state and their powers are derived from the state. Dillon’s Rule is a rule of statutory construction used to determine whether a local government has the authority or power to take certain action. Under Dillon’s Rule, the authority of local governments is narrowly construed. Accordingly local governments are limited to the powers: “necessarily or fairly implied or incident to the powers expressly granted; [and] those essential to the declared objects and purposes of the [local government], not simply convenient, but indispensable.”

Under Dillon’s Rule, there is a presumption that local governments do not possess the power to

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4 Bluestein supra note 1, at 1985; Writ, supra note 3, at 3. Dillon’s Rule is named after Judge John F. Dillon, a 19th century Iowa Supreme Court Justice. Dillon’s doctrine was developed in reaction to the corruption and inefficiency present in the local governments of his era and a small movement of individuals proclaiming that local government possessed inherent constitutional powers.
5 Bluestein supra note 12, at 2011; Writ, supra note 14, at 2. At the same time that Judge Dillon set out his rule of statutory interpretation, Judge Thomas Cooley of the Michigan Supreme Court “presented a diametrically opposed view of state delegations of authority to local governments in his concurring opinion in People v. Hurlburt (1871).” In the opinion Cooley asserted the belief that “local governments hold the inherent right of self-governance,” an increasingly popular notion at the time that led Judge Dillon to develop his doctrine in disagreement. Although years later Judge Cooley seemed to retreat partially from his opinion regarding local self-governance, his doctrine combined with the effects of the Dillon Rule in practice energized states to “[enact] constitutional amendments to protect the autonomy of local governments,” and later became known as the Home Rule movement. See Jesse Richardson, et al., Is Home Rule the Answer? Clarifying the Influence of Dillon’s Rule on Growth Management (Brookings Inst. Ctr. on Urban & Metro. Pol’y, Discussion Paper, Jan. 2003), available at http://www.brookings.edu/~media/Files/rc/reports/2003/01metropolitanpolicy_jesse%20j%20richardson%20%20jr/dillonsrule.pdf.
take action. Thus, in states classified as Dillon Rule states, local government actions will be strictly limited to the powers conferred to them by state legislation.

In contrast to Dillon’s Rule, local governments in Home Rule states may take any local action unless preempted by the state. The majority of litigation concerning the Home Rule has raised the issue of preemption: whether the matter at hand is of state or local concern. Home Rule authority, whether granted by the state constitution or by enabling legislation, is not absolute and is subject to judicial interpretation which sometimes can have “a narrowing impact on the scope of the home rule delegation.”

Grants of Home Rule authority have been classified based on the source of authority whether derived from the state constitution or enabling legislation. The nature and extent of Home Rule authority granted may vary between cities and counties within the same state, with some Home Rule states having a combination of some or all types. Home Rule states have been able to utilize this broad grant of authority to successfully support “controversial local

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6 Id.
7 Bluestein, supra note 1, at 1999.
8 Id. at 1992. “Legal challenges in home rule states involve questions about: (1) whether a particular local law conflicts with state law; (2) whether local legislation overrides a state law on the same subject or whether state law preempts local law; and (3) whether the exercise of local authority involves a matter of local concern.”
10 Richardson, supra note 2, at 9. Constitutional home rule is considered to be of a “higher level” than legislative home rule “because the state legislature may not revoke or amend the authority granted by a constitutional provision [however the] legislature holds the power to alter, amend, or abrogate legislative home rule at any time.” Id. Grants of Home Rule have also been categorized by the area of autonomy granted to local governments, including: 1) structural - granting local governments the autonomy to determine their form of government and internal organization; 2) functional - granting local governments autonomy regarding the functions they perform; 3) fiscal - granting local governments autonomy regarding “raising revenue, borrowing, and spending;” and 4) personnel - granting local governments autonomy regarding their employees. See Local Government Authority - Home Rule & Dillon’s Rule, National League of Cities available at http://www.nlc.org/about_cities/cities_101/153.aspx; Michael Libonati, Local Government (Rutgers Law Camden Center for State Constitutional Studies, Subnational Constitutions and Federalism: Design and Reform Papers) available at http://camlaw.rutgers.edu/statecon/subpapers/libonati1.pdf. See also Home Rule in America: A Fifty-State Handbook, Congressional Quarterly (2001) (for a chart classifying the types of home rule in the municipalities and counties of all fifty states) available at http://www.cas.sc.edu/poli/civiced/Reference%20Materials/US_home_rule.htm.
11 Id.
initiatives.”\textsuperscript{12} This is particularly advantageous in the context of integrated communities, where certain immigrants’ rights are considered controversial and are largely of a local nature.

It is important to understand how a state is classified in order to determine the breadth of local government powers and to ascertain the degree of municipal authority. The analysis is not always straightforward, however, and it is often difficult to predict whether a certain local action will be upheld.\textsuperscript{13} The prevailing notion is that Dillon’s Rule and the Home Rule are mutually exclusive. Moreover, some courts have held that Dillon’s Rule is invalidated by the grant of Home Rule authority. Yet some states classified as Home Rule states seem to continue to apply a Dillon’s Rule analysis in order to establish the parameters of local authority.\textsuperscript{14}

\textbf{B. Interpreting the Rules (Dillon’s Rule/Home Rule): North Carolina Statutory Changes and Case Law}

North Carolina has been classified historically as a Dillon’s Rule state.\textsuperscript{15} Notwithstanding this long-standing classification,\textsuperscript{16} both statutory developments and case interpretations have served to undermine any fixed identification. Section I D. below reviews statutory developments more fully. However, before undertaking a review of the statutory enactments as a source of authority

\textsuperscript{12} Bluestein, \textit{supra} note 20, at 17.
\textsuperscript{13} \textit{Id.} at 20; Richardson, \textit{supra} note 2, at 22.
\textsuperscript{14} Bluestein, \textit{supra} note 20, at 17; Professor Jesse Richardson argues that whether a state must be classified as either a Dillon’s Rule state or a Home Rule state is a “false dichotomy,” and explains that “the two doctrines often coexist with one another and neither implies any particular degree of local government autonomy.” Richardson departs from this prevailing notion that the two rules are “polar opposites.” He contends that the Dillon Rule versus Home Rule analysis is similar to the problem of comparing “apples to oranges,” since the Dillon Rule is a statutory interpretation rule and Home Rule “generally refers to source and/or extent of delegation of authority from the state to the local governments.” \textit{See} Richardson, \textit{supra} note 2, at 22-24.
\textsuperscript{15} Bluestein \textit{supra} note 1, at 1985.
\textsuperscript{16} \textit{Id.}
regarding municipal power, it is important to review statutory and case law changes for purposes of understanding the complex nature of North Carolina’s classification as either Home Rule or Dillon Rule.

With the enactment of North Carolina General Statutes (N.C.G.S.) sections 153A and 160A in the 1970’s seemed to change North Carolina’s classification as a Dillon Rule state.\(^\text{17}\) Moreover, inconsistent and varying opinions regarding the Dillon Rule and Home Rule distinction are reflected in state court decisions as well as the scholarly treatment of the issue. Indeed, North Carolina is often cited as an example of a state in which it is difficult to ascertain which rule applies and to what extent local governments have authority to act.\(^\text{18}\) For example, each statutory section includes a broad grant of regulatory authority to North Carolina cities and counties, as well as a wide variety of specific statutes granting regulatory power in certain areas.\(^\text{19}\) Additionally, each statutory section contains a “broad construction” provision which seemingly “clearly abolish[es] Dillon’s Rule and mandate[s] a more liberal interpretation of authority to local governments in North Carolina,” at least with regard to those grants of power provided by these enabling statutes.\(^\text{20}\) N.C.G.S §160A-4, governing cities, states:

> Broad Construction. It is the policy of the General Assembly that the cities of this State should have adequate authority to execute the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect; Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.

\(^\text{17}\) N.C. GEN. STAT. §§ 153A, 160A (2011); Bluestein, supra note 1, at 2004; Bluestein, supra note 20, at 18; Richardson, supra note 2, at 20.

\(^\text{18}\) Id.; Richardson, supra note 2, at 20. See generally Bluestein supra notes 1 and 20.

\(^\text{19}\) Id.

\(^\text{20}\) Richardson, supra note 2, at 20.
Section 153A-4 includes similar language applying this broad construction statute to counties.\textsuperscript{21} As a result of this broad construction language, academics including Jesse Richardson of the faculty at Virginia Technical Institute and Frayda Bluestein of the University of North Carolina’s School of Government argue that North Carolina is no longer a Dillon’s Rule state.\textsuperscript{22} Bluestein, however, also suggests that neither is North Carolina a Home Rule state, as it has no broad delegation as such, which is typical of Home Rule states.\textsuperscript{23} Others now refer to North Carolina as a “modified Dillon Rule” state.\textsuperscript{24} Faced with this theoretical uncertainty regarding the authority of local governments in North Carolina, one would look to the courts for a clarification based on judicial interpretation of the mentioned provisions. Unfortunately, North Carolina case law provides little clarification on the issue.

Initially, it appeared that the North Carolina judiciary acknowledged the shift from the more rigid Dillon’s Rule interpretation to the more broad interpretation promulgated by the legislature.\textsuperscript{25} In the 1980’s the North Carolina Supreme Court and the United States District Court for the Eastern District of North Carolina upheld local ordinances imposing both new and increased fees created for the purpose of improving water treatment facilities.\textsuperscript{26} Although

\textsuperscript{21} Bluestein, \textit{supra} note 20, at 18.
\textsuperscript{22} See generally Bluestein, \textit{supra} note 1; Bluestein, \textit{supra} note 20.
\textsuperscript{23} Bluestein, \textit{supra} note 1, at 1985; Bluestein, \textit{supra} note 9, at 1.
\textsuperscript{24} Home Rule in America \textit{supra} note 21.
\textsuperscript{26} \textit{Id.} In \textit{Town of Spring Hope}, the town enacted an ordinance increasing water and sewer rates to fund a new water treatment facility. The plaintiff in the case argued that this did not fit the strict language of the Public Enterprise statute N.C.G.S. §160A-314, under which the ordinance was enacted. It states that, “A city may establish . . . rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city,” (emphasis added). Despite the plaintiffs argument that “services provided” did not allow for fees for “services to be furnished,” the court interpreted the statute broadly and permitted the fee increase. The court took it one step further in South Shell Investment, finding no distinction between the fee increase in Town of Spring Hope and the imposition of a new fee under the same Public Enterprise statute.
neither court specifically addressed the rule of statutory interpretation to be used, they broadly interpreted the “Public Enterprise statute,” N.C.G.S. §160A-314, to permit such ordinances.\(^{27}\)

The North Carolina Supreme Court specifically recognized the broad interpretation standard mandated by N.C.G.S. 160A-4 in *River Birch Associates v. City of Raleigh*, and upheld an ordinance requiring a conveyance of a recreation area to a homeowner’s association in accordance with an approved plat for a subdivision.\(^{28}\)

By 1994, the North Carolina Supreme Court appeared to have fully rejected the application of the Dillon’s Rule in a case where a municipality imposed user fees for regulatory services.\(^{29}\) The court addressed this issue specifically in *Homebuilders Association of Charlotte v. City of Charlotte* noting that:

This statute makes it clear that the provisions of chapter 160A and of city charters shall be broadly construed and that grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect. We treat this language as a “legislative mandate that we are to construe in a broad fashion the provisions and grants of power contained in Chapter 160A” . . . Dillon's Rule suggests a narrow construction, allowing a municipal corporation only those powers “granted in express words, ... necessarily or fairly implied in or incident to the powers

\(^{27}\) *Id.*

\(^{28}\) *River Birch Associates v. City of Raleigh*, 326 N.C. 100, 388 S.E. 2d 538 (1990); Read and Ott, *supra* note 25, at 17. The statutory language at issue in this case states, “A subdivision control ordinance may provide ... for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision.” The plaintiff argued that the conveyance of recreational land to the homeowner’s association was neither a “dedication” or “reservation.” The court agreed with the plaintiff that the conveyance at issue did not fit the technical definition of either, the opinion noted that drafters often use those terms without regard to the technical meaning and that provisions in §160A shall be broadly construed as mandated by §160A-4.

\(^{29}\) *Homebuilders Association of Charlotte, Inc. v. The City of Charlotte*, 336 N.C. 37, 442 S.E. 2d 45 (1994). The court upheld the imposition of fees although the city had no express authority to impose such fees. The court cited the “general ordinance making power of municipalities” in North Carolina, §160A-174(a), which states that “a city may by ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.” The court disagreed with the plaintiff’s argument that the existence of a specific statute, §160A-209, that “provide[s] a means by which to meet the costs of regulating development, i.e., levying of taxes,” meant that the city did not have authority to impose fees under this general broad power. The court held that the specific statute contained no restricting language and the power to impose fees was not in conflict to any State law or public policy. In response to the plaintiff’s argument that the court previously relied on traditional Dillon Rule analysis in two previous cases, the court ruled that neither case was determinative as “in neither case was N.C. GEN. STAT. § 160A-4 discussed or cited . . . and the issue of the interplay between Dillon's Rule of construction and N.C. GEN. STAT. § 160A-4 was, therefore, not addressed.”
expressly granted, ... and those essential to the accomplishment of the declared objects and purposes of the corporation.” . . . The City contends that the imposition of user fees should be upheld even under application of Dillon's Rule. We find it unnecessary to decide that question since we conclude that the proper rule of construction is the one set forth in the statute.30

The very same year that the Dillon’s Rule “died” in Homebuilders, at least with respect to grants of authority under N.C.G.S. sections 160A-4 and 153A-4, the North Carolina Supreme Court issued another opinion that seemed to be at odds with its former ruling and used the Dillon Rule to determine that the city of High Point did not have the authority to institute a retirement policy for law enforcement officers that “went beyond the provisions of the statute governing benefits.”31 It is important to note that the enabling statute at issue in Bowers v. City of High Point was N.C.G.S. §143-166.41, not part of N.C.G.S. Chapter 160A which includes the broad rule of construction discussed previously.32 It is possible that the Bowers court applied the traditional Dillon Rule based on an interpretation of the statutory language of N.C.G.S. §160A-4 to apply only to ordinances enacted under that chapter. However in its discussion of both rules the court never explicitly stated this.33 The doctrine seemed to be resurrected again two years later by the North Carolina Court of Appeals decision in Carteret County v. United Contractors of Kinston, Inc.34 The case involved the ability of counties to enter into binding arbitration agreements with contractors when the North Carolina General Statutes only expressly grant the

30 336 N.C. 37, 44.
32 Id.
33 Bell, supra note 31, at 6. The court never mentioned the Homebuilders case, decided only 8 months earlier. A. Fleming Bell, II, professor of public law and government at the University of North Carolina School of Government, offers both a narrow and broad reading of the Bowers case. He states, that a narrowing reading of the case demonstrates that “the court will not go out of its way to find express or implied statutory authority for a greater allowance [of local autonomy] if the plaintiffs themselves are unwilling to make the necessary case.” Read broadly, he states, “Bowers seems to say that the strict interpretation of Dillon’s Rule is alive and well in North Carolina, at least with respect to local government powers not mentioned in G.S. chapters 153A and 160A.”
34 Carteret County v. United Contractors of Kinston, 120 N.C. App. 336, 462 S.E.2d 816 (1995); Richardson, supra note 2, at 20.
authority to enter into contracts.\textsuperscript{35} Although the final outcome would have been the same had the court used the appropriate broad rule of interpretation, the court upheld Carteret County’s arbitration agreement under what the opinion called “the well-settled rule in [the] state,” the Dillon Rule.\textsuperscript{36} The court found that the ability to enter into arbitration agreements was “necessarily or fairly implied under Dillon’s Rule,” based on the statutory authority to enter into contracts.\textsuperscript{37}

Similarly the North Carolina Supreme Court’s 1999 decision in \textit{Smith Chapel Baptist Church v. City of Durham} demonstrates the judiciary’s reluctance to depart from the Dillon Rule.\textsuperscript{38} In this case, the court did not apply any rules of interpretation but rather relied strictly on the language of the “Public Enterprise statute,” in striking down a Durham ordinance imposing fees on landowners for the purpose of financing its entire storm water program.\textsuperscript{39} The court’s strict application of the statute resulted its determination that the statute on point was not ambiguous, and as such did not require interpretation.\textsuperscript{40} Commentators and dissenting Justice Frye, who wrote the \textit{Homebuilders} opinion, “accuse the majority of reviving the [Dillon] doctrine.”\textsuperscript{41}

\textsuperscript{35} 120 N.C. App. 336.
\textsuperscript{36} \textit{Id.} at 340.
\textsuperscript{37} \textit{Id.} at 341.
\textsuperscript{39} \textit{Id.}
\textsuperscript{40} \textit{Id.} at 812. This case may be compared with the decisions discussed in note 31, as they involved the same enabling statute and the increase and creating of fees to fund a water system. However, since the decisions in Town of Spring Hope and South Shell Investment, the N.C. General Assembly amended §160A-314(a) to include the following provision, “Rates, fees, and charges imposed under this section may not exceed the city's cost of providing a stormwater and drainage system.” N.C. GEN. STAT. § 160A-314(a1), para. 2 (emphasis added). The court held that “this statutory provision clearly and unambiguously mandates that the City may not exceed the cost of providing a stormwater and drainage system. Thus, under a plain reading of the statute, SWU fees are limited to the amount which is necessary for the City to maintain the stormwater and drainage system rather than the amount required to maintain a comprehensive SWQMP [Stormwater Quality Management Program] to meet the requirements of the WQA.” The SWQMP in this case was a comprehensive program and the majority of the fees at issue were not used for maintaining the actual water and drainage systems, as the fees at issue in the Town of Spring Hope and South Shell Investment cases were.
\textsuperscript{41} \textit{Id.} at 819. In his dissent, Justice Frye reminded the court of the previous decision in Homebuilders and cited the specific language of §160A-4, the broad interpretation statute. Frye argued that as the city was obligated to comply
Despite the variance from Homebuilders, the precedent was not forgotten, and was used by the state appellate court in a 2005 case, Bellsouth Telecommunications v. City of Laurinburg, to hold that the municipality had the authority to operate a fiber optic system. The court employed the broad construction statute to determine that the use of the fiber optic network fell under the grant of authority to operate a “cable television system.” Frayda Bluestein described the Laurinburg ruling as “a valiant effort by the state’s appellate court finally to bury Dillon’s rule and to reconcile prior seemingly inconsistent rulings under a unifying standard for judicial review.” The Laurinburg court posited that prior decisions that seemingly strayed from the Homebuilders ruling and reverted to the Dillon rule actually conducted a “plain meaning” analysis of statutes that were unambiguous, and that:

\[\text{[t]he narrow Dillon’s Rule of statutory construction . . . has been replaced by N.C. Gen. Stat. § 160A-4's mandate that the language of Chapter 160A be construed in favor of extending powers to a municipality where there is an ambiguity in the authorizing language, or the powers clearly authorized reasonably necessitate ‘additional and supplementary powers’ to carry them into execution and effect.}\]

This same language is cited in a more recent case concerning a Durham ordinance that sought to impose “school impact fees” on persons constructing new residences within the county. Although the court ultimately ruled that the ordinance was unauthorized, it agreed that the broad interpretation was the appropriate standard to apply. The court then cited the Bowers decision in ruling that “where the plain meaning of the statute is without ambiguity, it ‘must be enforced

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43 Id. This precise language is listed in the statutory definition of public enterprises. N.C.G.S § 160A-311(7).
44 Bluestein, supra note 9, at 20.
45 168 N.C. App. 75, 82.
47 Id. at 203. The court stated, “[t]hough not without nuances and distinguishing factors, we find Homebuilders, Bowers, and Smith Chapel to be consistent statements of the law and in accord with N.C. GEN. STAT. § 160A-4,” then quoted the above language from the Laurinburg case.
as written,” and applied the broad interpretation standard only to the ambiguous more encompassing statutes relied on as authority to enact the ordinance.48

North Carolina’s on and off again relationship with the Dillon Rule has evolved into a new system of review for municipal authority. When a statute is unambiguous, Dillon Rule or “plain meaning” analysis will apply.49 In the case of ambiguous statutes, the broad interpretation standard applies, at this point, only officially to the enabling statutes listed in N.C. G. S. Chapters 160A and 153A.50 Although North Carolina law has evolved to provide local governments with more authority, the shifting characterizations of the two rules in court decisions have resulted in a lack of predictability when issues of municipal authority are at stake. Prof. Jesse Richardson remarks that, “Dillon's Rule and home rule perplex even North Carolina appellate court justices.”51 However, although it is not a Home Rule state, Frayda Bluestein concludes that the local governments of North Carolina have been delegated powers substantially equivalent to and in some cases greater than those enjoyed by local governments in states with Home Rule.52

C. Local power under the North Carolina Constitution

48 Id. at 204.
50 See note 20. See also Bluestein, supra note 20, at 21. “As currently written, the directive for broad construction relates only to powers granted in those chapters and in local acts, including local charters. In reality, local government authority can be found in many important provisions outside the basic city and county statutes. Although the legislature may not intend to extend the broad-construction language to some delegations, such as the authority to levy taxes, there is no logical basis for concluding that the standard should not apply to police power regulations that are authorized in other chapters.” Bluestein proposes that the legislature should revise the broad interpretation statute to apply to these other areas.
51 Richardson, supra note 2, at 21.
52 Bluestein, supra note 20, at 17. Consistent with Bluestein’s conclusion, Richardson states that “the term ‘home rule’ has acquired an almost talismanic aura over the years and often, inaccurately, connotes almost total freedom of local government from state control.” Recall that grants of home rule can be very specific and limiting. For this reason Richardson concludes that, “only one type of home rule, a rule of statutory construction that assumes that local governments hold the authority to act unless denied by the state legislature, may fairly be compared to Dillon’s Rule.” Richardson, supra note 2, at 12, 25.
The N.C. Constitution grants the state legislature broad control over municipal activity, but it also establishes rights, which are guaranteed to all persons in the state of North Carolina. This subsection looks first at the delegation of power under the N.C. Constitution, then at the provisions of the N.C. Constitution related to local acts and the concept of local acts as a means of passing municipality or county-specific legislation, and finally at the rights guaranteed by the N.C. Constitution.

While some of the provisions of the N.C. Constitution relate to the power of local government, most provisions reserve the power to the General Assembly, the state’s legislatively body, to enact local government provisions or restrict local government actions. N.C. Constitution Article VII, Section 2 states that “[t]he General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise provided by this Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.” Thus, under the N.C. Constitution, the General Assembly is free to create and eliminate municipal entities as it so chooses.

1. Delegation of power under the North Carolina Constitution

Although the N. C. Constitution does not grant express power to municipalities to take action concerning matters of interest within their jurisdictions, the Constitution does delegate

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53 See Bell, supra note 31, at 2.
54 See Bluestein, supra note 20, at 17.
56 See Bell, supra note 31, at 2.
municipal power by authorizing the General Assembly to enact laws that will empower municipalities to legislate within select areas.  

Perhaps the best examples of these kinds of authorizing provisions can be found in Article V, which authorizes the General Assembly to establish state finance law and also grants the legislature the right to delegate limited authority to municipalities.  
Furthermore, Article V, Section 2, paragraph 4 permits the General Assembly to grant municipalities the authority to levy tax with the approval of more than fifty percent of voters in the municipality.  Similarly limiting provisions may be found in Article V with respect to local debt and local project development financing.  
As with the constitutional provisions concerning taxation, neither of these provisions grants any actual power to municipalities, but instead both authorize the General Assembly to take action empowering municipalities in these areas.  Additionally, Article V, Section 7 states “[n]o money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.”  

2. Local Acts

Although municipalities are given narrow express power in the N.C. Constitution, there is no explicit authority for municipalities to act independently of enabling state legislation.  Instead, the authority for municipalities to take action is found in the North Carolina Constitution.  Under the Constitution, the General Assembly has the ability to pass “local acts.”  These acts can include local legislation “[r]elating to health, sanitation, and the abatement of nuisances;” “[a]uthorizing the laying out, opening, altering, maintaining, or discontinuing of highways,  

58 Id.  
59 Art V, § 4-5.  
60 Art 5, § 4.  
61 Art 5, § 14.  
62 Art V, § 7.
streets or alleys;” “[r]elating to ferries or bridges;” “[e]recting new townships, or changing township lines, or establishing or changing the lines of school districts;” “[r]emitting fines, penalties and forfeitures, or refunding moneys legally paid into the public treasuring;” “[r]egulating labor, trade, mining or manufacturing;” and “[g]ranting a divorce or securing alimony in any individual case” among others.  

However, Article II, Section 25, paragraph 4 states that “[t]he General Assembly may enact general laws regulating the matters set out in this Section” Article XIV, Section 3 prevents the General Assembly from singling out a particular local municipality and establishes a constitutional principal that the local municipalities should be treated equally.  

The issue of whether an act is “local” has arisen in many court cases in North Carolina. A “local law” has been defined as one that “discriminates between different localities without any real, proper, or reasonable basis or necessity . . .” But, the “[m]ere fact that a statute applies only to certain units of local government does not by itself render the statute a prohibited local act; only if statutory classification is unreasonable or underinclusive will statute be voided as a prohibited local act.”

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63 Id.
64 Id. § 25, para. 4 (emphasis added).
65 Art. XIV, § 3 (“Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State.”).
The test applied by North Carolina courts in determining whether a statute is “local” or “general” is the “reasonable classification” test. North Carolina courts look to whether a law “operates uniformly on all the members of any class of persons, places or things requiring legislation peculiar to itself in matters covered by the law.” The reasonable classification test reserves certain areas for regulation by local ordinances and also serves to ensure that the General Assembly will treat the various municipalities within the state equally.

While the General Assembly is not permitted to pass local acts in the areas prohibited by the state constitution, it may pass general legislation applicable to all municipalities. These provisions do not prohibit local governments from passing legislation consistent with the police power which has been delegated to them by the state. In effect, they carve out areas of the law wherein the municipalities themselves may have a constitutionally protected power to independently regulate themselves, without interference by the state legislature; that is, provided that the General Assembly chooses to empower them by enacting general statutes in these areas which delegate them authority.

Local acts themselves are an important part of the law governing a municipality. Municipal governments in North Carolina can ask the state legislature to pass local acts in areas where the municipality is unclear whether or not it has the

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68 Id. To satisfy the reasonable classification test the classification must: 1) “be reasonable and germane to the law,” (2) “be based on a reasonable and tangible distinction and operate the same on all parts of the state under the same conditions and circumstances,” and (3) “not be arbitrary or capricious.” See id.
69 See State v. Smith, 143 S.E.2d 293, 265 NC 173 (1965). For an illustrative example, see also Southern Blasting Services, Inc. v. Wilkes County, N.C. 162 F.Supp.2d 455 (2001), aff’d 288 F.3d 584 (holding that a state statute delegating to counties the authority to regulate explosive substances was not a “local law” because it conferred this authority uniformly on all counties).
authority to act. Municipalities can request local acts of the state legislature in areas not prohibited by the N.C. Constitution, to modify general state law by giving a municipality or municipalities unique authority, or to create exceptions for certain municipalities. Municipalities can also request local acts to validate local government action. Local acts are introduced in the legislature like other bills, with certain exceptions. They do not go to the governor for approval and are subject to other small differences in procedure. In general, so long as requested local acts are consistent with the N.C. Constitution and non-controversial, the North Carolina state legislature generally grants “courtesy” to local governments and passes local acts.

3. **Individual rights under the N.C. Constitution**

Because municipal governments are granted very little authority through the N.C. Constitution, the N.C. Constitution is of limited use in demonstrating to municipalities the power they have to enact immigrant-friendly legislation. However, it also bears mention that Article I of the N.C. Constitution sets out many of the same or similar guarantees that appear in the U.S. Constitution, and which control the action of municipalities. For example, the protections of the First Amendment of the U.S. Constitution are echoed in North Carolina’s constitution, Article I, Sections 12-14. The substantive and procedural due process rights of the Fourteenth and Fifth amendment’s of the U.S. Constitution are also found in Section 1 of the state constitution, which states: “we hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment

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70 See Bluestein, *supra* note 20, at 18-19.
72 Id.
73 Id.
74 Id.
75 N.C. CONST. Art. I, § 12 (Right of assembly and petition); § 13 (Religious liberty); §14 (Freedom of speech and press).
of the fruits of their own labor, and the pursuit of happiness.”76 The N.C. Constitution also creates a fundamental right “to the privilege of education” and places a duty on the state to ensure that this right is protected.77 Article I, Section 19 further establishes the due process guarantees which are also in the Fourteenth Amendment of the U.S. Constitution, and also states that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion or national origin.”78 Finally, Article I, Section 36 states: “[t]he enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.”79

D. Municipal Charters

Municipalities in North Carolina must also act consistently with their municipal charters. “Municipal charters are the constitutions of municipal corporations, defining their powers and structures.”80 A municipality is organized as a municipal corporation, similar to a private corporation for business purposes. It is a legal fiction which can own property, form contracts, sue and be sued.81 Municipalities are incorporated as cities and towns by the General Assembly.82 Incorporation is the process by which these entities receive state charters, which legally recognize their existence.83

76 Art I, § 1.
77 Id. § 15.
78 Id. § 19.
79 Id., § 36.
82 Id. For more information about the elements of a municipal charter, see Appendix
83 Id. A community that wishes to incorporate must meet certain requirements, such as possessing a permanent population of at least 100 persons, and a permanent or seasonal population density of at least 250 persons per square
E. North Carolina Statutory Development on Municipal Authority

As noted above in Section I. B, statutory developments have served to undermine North Carolina’s historic classification as a Dillon Rule state. It is important to understand the statutory developments on their own, particularly as set out in N.C.G.S. Section 160A which governs the actions of municipalities.\textsuperscript{84} Section 160A-4 broadly grants municipal power and states “the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably necessary or expedient to carry them into execution and effect.”\textsuperscript{85} This is limited with the caveat: “Provided, that the exercise of such additional or supplementary powers shall not be contrary to State or federal law or to the public policy of this State.”\textsuperscript{86} In practice, this statute means that in North Carolina, interpretation of whether municipal action is consistent with the General Assembly’s legislative intent is necessary only if a statute is ambiguous; when a statute

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\textsuperscript{84} See N.C. GEN. STAT. § 160A. N.C.G.S. § 153A is a similar body of statutory law governing counties. These statutes were rewritten in the 1970s. See A. Fleming Bell, II, The Police Power, County and Municipal Government in North Carolina 5 (UNC-Chapel Hill Sch. of Gov’t 2007) available at http://www.sog.unc.edu/pubs/cmg/cmgo4.pdf.

\textsuperscript{85} Id. See also § 153A-4 as to counties.
is either unambiguous, or there is no relevant grant of power at all, North Carolina courts should honor this grant or lack of grant of power.87

Statutes under N.C.G.S. Section 160A Article 8 address the ordinance-making power of North Carolina municipalities. 160A-174(a) states broadly: “A city may b[y] ordinance define, prohibit, regulate, or abate acts, omissions, or conditions, detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the city, and may define and abate nuisances.”88

The exceptions to NCGS §160A-174, listed under 160A-174(b) are the following:

(b) A city ordinance shall be consistent with the Constitution and laws of North Carolina and of the United States. An ordinance is not consistent with State or federal law when:

(1) The ordinance infringes a liberty guaranteed to the people by the State or federal Constitution;

(2) The ordinance makes unlawful an act, omission or condition which is expressly made lawful by State or federal law;

(3) The ordinance makes lawful an act, omission, or condition which is expressly made unlawful by State or federal law;

(4) The ordinance purports to regulate a subject that cities are expressly forbidden to regulate by State or federal law;

(5) The ordinance purports to regulate a field for which a State or federal statute clearly shows a legislative intent to provide a complete and integrated regulatory scheme to the exclusion of local regulation;

(6) The elements of an offense defined by a city ordinance are identical to the elements of an offense defined by State or federal law.89

Moreover, “The fact that a State or federal law, standing alone, makes a given act, omission, or condition unlawful shall not preclude city ordinances requiring a higher standard of conduct or

88 N.C. GEN. STAT. § 160A-174(a).
89 § 160A-174(b).
condition.”\textsuperscript{90} N.C.G.S. 160A-175 also grants municipalities the power to enforce its ordinances.\textsuperscript{91}

N.C.G.S. 160A-177 clarifies that the enumeration of powers to regulate in Article 8 and elsewhere are not meant “to be exclusive or a limiting factor upon the general authority to adopt ordinances conferred on cities by G.S. 160A-174.\textsuperscript{92} Section 160A frequently expressly delegates grants of legislative authority to municipalities.

N.C.G.S. 160A contains numerous provisions which often legislate the minutia of the day-to-day management of a municipality. When express detail about how a delegation of power should be carried out is given, municipalities are expected to follow the language of that statute, rather than relying on the general ordinance-making powers set out by 160A-174(a).\textsuperscript{93}

As is codified in N.C.G.S. 160A-174(b), North Carolina municipalities are also subject to preemption, not only by federal, but also by state law.\textsuperscript{94} Even when there is no explicit state statute that governs a particular area of the law, if a state’s regulators scheme is so comprehensive that there is clear legislative intent to “occupy the field,” local ordinances cannot be enacted.\textsuperscript{95} In the context of a community integration project, it is critical to understand how this preemption limits the action that municipalities can take.

It should be noted that, a local ordinance “cannot prohibit exactly the same conduct that is prohibited by state law.”\textsuperscript{96} The North Carolina Supreme Court held in \textit{State v. Langston} that a “general grant of power, such as a mere authority to make by-laws, or to make by-laws for the

\begin{flushright}
\textsuperscript{90} Id.
\textsuperscript{91} § 160A-175.
\textsuperscript{92} § 160-177.
\textsuperscript{93} See, e.g., Bell, \textit{supra} note 31, at 6.
\textsuperscript{94} See N.C. GEN. STAT. § 160A-174(b). See also discussion in Bell, \textit{supra} note 31, at 7-8.
\textsuperscript{95} N.C. GEN. STAT. § 160A-174(b). See also Bell, \textit{supra} note 31, at 8.
\textsuperscript{96} Bell, \textit{supra} note 31, at 9.
\end{flushright}
good government of the place, and the like, should not be held to confer authority upon the [municipal] corporation to make an ordinance punishing an act” which has been made punishable as a criminal act, for example, by State law.97 However, it is also important to remember that there is precedent to suggest that ordinances may impose higher standards of conduct.98

The state’s statutory development is illustrative of the North Carolina’s continued shifting between the Dillon Rule and the Home rule. The flexibility created by the inconsistencies of the North Carolina courts allows local authorities some power to create Integrated Communities.

F. Conclusion

Despite the lack of precise clarity as to North Carolina’s classification as a Dillon Rule or Home Rule state and the unpredictability of the North Carolina judiciary regarding cases of municipal authority, municipalities have broad flexibility to act to integrate immigrants into the community. The series of cases outlined in this report provide guidance for local governments considering enacting new ordinances for that purpose. As a matter of practical strategy, new ordinances in North Carolina should be enacted in such a way to avoid Dillon rule analysis, should they ever be challenged in the courts. While the Bowers court never explicitly held that the broad interpretation statutes included in N.C.G.S. Chapters 153A and 160A were limited to ordinances enacted under those chapters, the court’s ultimate ruling and the plain language of the provisions appears to limit the use of the standard.99 And although there is a call to “clarify the scope and applicability of the broad-construction approach,” and to extend its use more broadly

97 State v. Langston, 88 N.C. 692 (1883), as discussed in Bell, supra note 31, at 9.
99 See supra note 33.
outside of the mentioned chapters and without the threshold of ambiguity, local governments should try when possible to utilize the enabling statutes provided in these chapters as authority to enact community integration related ordinances unless the proposed ordinance falls unquestionably within the plain language of a specific statute.100

Both Chapter 153A and 160A contain several specific enabling statutes and broad delegations of authority.101 N.C.G.S. §153A-121(a) states that “[a] county may by ordinance, define, regulate, prohibit, or abate acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens and the peace and dignity of the county; and may define and abate nuisances.”102 The statute pertaining to cities, N.C.G.S. §160A-174(a), contains almost identical language.103 If there is no enabling statute on point, local governments should try to structure the proposed ordinance to fall under these general provisions. Doing so is ideal, as these provisions are those most likely to be held as ambiguous by the courts due to their vague and encompassing language. Recall that ambiguity is required to get past Dillon Rule interpretation in North Carolina.104 Local governments should still look for any more specific statute that is sufficiently related to the ultimate goal of the ordinance, as the city of Laurinburg did with their fiber optic system.105

It is important, however, to be cautious that if relying on a more specific statute under Chapters 153A and 160A, a court might determine that “the statute has a ‘clear meaning,’” and thus there is

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100 See note 61 (Bluestein’s proposals to the state legislature to expand the application of the broad interpretation statutes).
101 N.C. GEN. STAT. § 153A, 160A. See also Bell supra note 31.
102 § 153A-121(a). See also Bell, supra note 31.
103 § 160A-174(a). See also Bell, supra note 31.
104 See text accompanying supra note 49.
105 168 N.C. App. 75.
no room for expansion or interpretation by a municipality. However, even if a statute within these chapters is sufficiently specific, as long as it does not contain restrictive language and is not preempted by state law or public policy, a local government can make the argument that a broad construction should be applied.

As made apparent by N.C.G.S. Chapters 160A and 153A and the discussed case law, North Carolina is no longer a traditional Dillon Rule state. There is enough flexibility within North Carolina’s current modified system of statutory interpretation regarding municipality, and within the governing statutes to empower local municipalities to act. With knowledge of the law in this area and with careful craftsmanship, municipalities should utilize their authority to enact local laws that will benefit community integration and benefit immigrants.

II. North Carolina Municipalities under Federal and International Law: Progressive Mandates for Community Integration of Immigrants and the Duty to Uphold Them

Though North Carolina is arguably not a “Dillon’s Rule” state, and North Carolina’s municipalities have been delegated relatively broad discretion by the North Carolina legislature to “exercise the powers, duties, privileges and immunities conferred upon them by law,” municipal law not only subject to state law but is generally subordinate to and preempted by federal law these laws come into conflict. Municipalities in North Carolina must act consistently

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106 Bell, supra note 31, at 6.
107 See supra note 29, regarding the Homebuilders decision.
108 See Bluestein, supra note 20, at 19. See also supra Part I, Section I, which provides a comprehensive explanation of the state of the Dillon’s Rule in North Carolina.
109 See N.C. GEN. STAT. § 160A-4:

It is the policy of the General Assembly that the cities of this State should have adequate authority to exercise the powers, duties, privileges, and immunities conferred upon them by law. To this end, the provisions of this Chapter and of city charters shall be broadly construed and grants of power shall be construed to include any additional and supplementary powers that are reasonably expedient to carry them into execution and effect . . .

Id. See also N.C. GEN. STAT. § 153A-4 as to counties.
with the United States Constitution and federal law. They must abide by the applicable decisions of federal courts. Moreover, international legal principles apply to municipalities.

Section II builds on the preceding Section by reviewing in some detail the different bodies of law that frame the parameters of law within which municipalities have the power to act, focusing on the U.S. Constitution, and international law. Understanding both the floor and ceiling established by these bodies of law is useful. Advocates for community integration can sometimes argue that unfavorable municipal law does not rise to the level of the minimum standards established by superior law, or alternatively, that it oversteps limitations. In other instances, advocates may be able to demonstrate that desired municipal action which would aid community integration falls within the realm that municipalities are authorized to act, or even that such action is necessary to satisfy the minimum standards established by superior law.

Subsection A of this Section discusses the limiting impact of the U.S. Constitution and federal preemption on municipal law in North Carolina.\textsuperscript{110} Subsection B briefly examines international legal norms that have direct bearing on the treatment of immigrants by municipalities.

\textbf{A. The U.S. Constitution and Federal Preemption}

The U.S. Constitution is silent on the existence of local governments. In the U.S. Supreme Court decision \textit{Hunter v. City of Pittsburg}, the Court stated that “the number, nature, and duration of powers conferred upon these [municipal] corporations and the territory over

\begin{quote}
\textbf{Municipalities should utilize their authority to enact local laws that will benefit community integration and benefit immigrants.}
\end{quote}

\textsuperscript{110} At the time of the publication of this policy brief, the U.S. Supreme Court is considering the case of \textit{Arizona et al., v. United States}, No. 11-182 (2012), the holding in which may change much of what has previously been understood with regard to preemption and immigration law.
which they shall be exercised rests in the absolute discretion of the state . . .” and that the
destruction or abolition of municipal power “may be done, conditionally or unconditionally, with
or without the consent of the citizens, or even against their protest. In all these respects the state
is supreme, and its legislative body . . . may do as it will, unrestrained by any provision of the
Constitution of the United States.” While municipalities are not empowered by the U.S.
Constitution, they are subject to it, and any action that a municipality takes must be
constitutionally permissible. Municipal action can be and has been challenged on
constitutionality grounds.112 At most, a municipal government is a creation of state government,
and therefore it can do no more than a state can do, within the confines of the U.S. Constitution.
Certain rights apply to all persons residing within the United States regardless of their status. In
the past fifty years, the U.S. Supreme Court has overturned local ordinances as unconstitutional
under the Commerce Clause113 for violation of the First Amendment,114 and for violation of the
Fourteenth Amendment.115

1. Commerce Clause

Municipal ordinances may violate the Commerce Clause by unjustifiably discriminating
against residents from other localities or states in interstate commerce. For example, in Edwards
v. Service Machine and Shipbuilding Corp.116 an ordinance which required non-local job seekers

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111 Hunter v. City of Pittsburgh, 207 U.S. 161, 178-79 (1907). See analysis of this case in Bluestein, supra note 20,
at 15-16. See also Bluestein, supra note 1, at 1984.
112 See State Constitutional and Statutory Provisions and Municipal Ordinances Held Unconstitutional or Held to be
(providing a comprehensive list of all U.S. Supreme Court cases holding state statutes and municipal ordinances
unconstitutional or preempted, and briefly explaining the grounds).
113 U.S. CONST. Art. I, § 8, cl. 3.
114 U.S. CONST. Amend. I.
115 Amend. XIV.
to obtain identification cards, provide fingerprints and a photograph, and pay a special fee, was invalidated on Commerce Clause grounds.\textsuperscript{117}

In the context of community integration and the immigrant community, the U.S. Constitution’s delegation of the power to regulate interstate commerce to Congress and the scope to which this power has expanded is significant. Under the Commerce Clause, Congress has enacted comprehensive legislation which protects the rights of workers, such as the Fair Labor Standards Act\textsuperscript{118} and Title VII.\textsuperscript{119} Moreover, Congress has regulated discrimination based on race, gender, and ethnicity in places of business which engage in interstate commerce.\textsuperscript{120} As discussed subsequently, municipalities cannot enact ordinances which subvert the objectives of existing federal laws under the doctrine of preemption. Under Commerce Clause-enacted federal legislation, municipalities cannot pass laws which take away federally-mandated protections for workers in the workplace, or which permit businesses to discriminate on the basis of race or ethnicity. However, in many cases it may be constitutionally permissible for states and municipalities to enact legislation which creates greater protections than those established by such federal laws. If a state or locality’s legislation is in conflict with federal legislation concerning workers, the law most favorable to the worker may be found to prevail.\textsuperscript{121}

\begin{flushright}
Municipalities in North Carolina must act consistently with the United States Constitution and federal law.
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\begin{footnotesize}
\textsuperscript{117} Id.
\textsuperscript{120} See e.g., \textit{Heart of Atlanta Motel v. United States}, 379 U.S. 241 (1964) (upholding the Civil Rights Act of 1964 as constitutional because the motel in question served interstate travelers).
\textsuperscript{121} See, e.g. \textit{Carlson, Employment Law} 265 (2\textsuperscript{nd} ed. 2009) (discussing in context of FLSA).
\end{footnotesize}
2. **First Amendment**

The First Amendment states “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” As the First Amendment is applied to the states and local governments through the Due Process Clause of the Fourteenth Amendment, municipalities may not enact legislation which violates any part of this amendment.

In formulating First Amendment arguments in the context of community integration on behalf of the immigrant community, it is important first to establish that First Amendment rights are applicable to the immigrant population. There is substantial judicial precedent to suggest that the First Amendment applies to undocumented as well as documented immigrants. Moreover, in *Plyer v. Doe*, the Court established that “even aliens whose presence in this country is unlawful have long been recognized as ‘persons’ guaranteed due process of law by the Fifth and Fourteenth Amendments.” Thus it may be argued that the use of “persons” both here and in the plain language of the First Amendment renders the First Amendment applicable to undocumented persons present in the United States.

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122 U.S. CONST. Amend. I.
126 *See* Johnson, supra note 124, at 681 (citing *American-Arab Anti-Discrimination Comm. V. Reno*, 70 F.3d 1045, 1063-64 (9th Cir. 1995), rev’d on other grounds, 525 U.S. 471 (1999)). “The Supreme Court has consistently distinguished between aliens in the United States and those seeking to enter from outside the country, and has accorded to aliens living in the United States those protections of the Bill of Rights that are not, by the text of the Constitution, restricted to citizens.” *Reno*, 70 F.3d at 1063-64. Johnson also notes that the cases he discusses in his analysis all establish that undocumented persons are entitled to first amendment protections. *See* Johnson, supra note 1245. *See also* *Comite de Jornaleros de Redondo Beach v. City of Redondo Beach*, 607 F.3d 1178, 1183 (2010) (finding that at least one of the plaintiff organizations had standing, in which case there was no need to address the standing of other organizations or persons).
The First Amendment provides a useful tool, then, in that it guards activities which this population may engage in from being prohibited by municipal law. One application of this is discussed subsequently in Part Two of this policy brief, with respect to the First Amendment constitutionality of municipal ordinances regulating day laborers who gather in a particular location to seek employment.  

3. **Fourteenth Amendment**

Like the Commerce Clause, the Fourteenth Amendment is another substantial source of congressional authority. The Fourteenth Amendment states that no state may “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The Due Process Clause of the Fourteenth Amendment has been the vehicle for applying the majority of the enumerated rights in the Bill of Rights to the states, and in turn to municipal governments. It has formed the foundation for federal courts in considering whether state and municipal legislation comes under scrutiny for violating due process or equal protection.

Fourteenth Amendment protections can come into play in the context of community integration and the immigrant community. As discussed in Subsection A(2) above, the U.S. Supreme Court has recognized that the Due Process Clause applies to “all ‘persons’ within the United States, including aliens,” and regardless of status. The level of scrutiny under substantive Due Process review would necessarily depend on the right in question. Under Equal

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127 See infra Part Two of this briefing book, discussing the Carrboro-Chapel Hill project with day laborers.
129 US CONST. Amend. XIV.
130 See ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 99-100, 365-518 (2d Ed. 2005).
131 See Thomas, supra note 128, at 10.
Protection review, the level of scrutiny would depend upon the nature of the classification, however ordinances which discriminate based on race or national origin, or which inherently call for race based discrimination would likely be subject to “strict scrutiny.” In Plyer v. Doe, the U.S. Supreme Court established that the Equal Protection Clause also applies to immigrants, regardless of status.\textsuperscript{133} The U.S. Supreme Court held that undocumented immigrants were not a “suspect class,” and that the right to education was not a fundamental right.\textsuperscript{134} Nevertheless, the court applied an intermediate level of scrutiny, rather than rational basis review, holding that excluding unauthorized immigrant children from public school was not substantively related to a legitimate state interest.\textsuperscript{135} It remains unclear what standard would apply to the analysis of ordinances which discriminate against undocumented persons in every instance, but Due Process and Equal Protection considerations are relevant when determining the validity of ordinances concerning employment, housing, benefits, law enforcement, and many other areas.

In April 2010, the Arizona legislature passed the Support Our Law Enforcement and Safe Neighborhoods Act, known nationally as SB 1070.\textsuperscript{136} Some of the most controversial provisions

\begin{footnotesize}
\textsuperscript{133} See Plyer, 457 U.S. at 210.
\textsuperscript{134} Id.
\textsuperscript{135} Id. at 230.
\textsuperscript{136} Support Our Law Enforcement and Safe Neighborhoods Act, SB 1070. This act was signed by Arizona governor Jan Brewer in April 2010, but the most controversial provisions of the bill were prevented from going into effect by a preliminary injunction issued by U.S. District Judge Susan Bolton. See Preliminary Injunction, United States v. Arizona, No. CV 10-1413-PHX-SRB (District Court of AZ). See also Randal C. Archibold, Judge Blocks Arizona's Immigration Law, WASHINGTON POST, July 28, 2010, A1, available at http://www.nytimes.com/2010/07/29/us/29arizona.html. As noted above, the U.S. Supreme Court is currently considering various challenges related to the law. See supra note 110.
\end{footnotesize}
of the bill would have required state and local law enforcement officers to inquire about immigration status during any lawful stop, detention, or arrest, authorized police to make warrantless arrests of persons they believed to be removable, criminalized the failure to carry proper immigration documents, and made it unlawful for workers to get into cars impeding traffic, and criminalized the act of stopping to hire day laborers.\textsuperscript{137} The most controversial portions of the bill were prevented from going into effect by a preliminary injunction issued by U.S. District Judge Susan Bolton.\textsuperscript{138} However, similar legislation is being proposed in legislatures across the country, and these legislative attempts to control immigration raise serious Due Process and Equal Protection concerns. The outcome of these types of state laws is currently being determined by the U.S. Supreme Court in its review of the U.S. government’s challenge to Arizona’s anti-immigration laws and the subsequent challenges that will follow by other groups that have filed suit to enjoin SB1070.\textsuperscript{139}

4. Preemption Doctrine and Regulation of Immigration

Article VI, Section 2 of the U.S. Constitution establishes that the Constitution, federal law, and treaties are the “supreme Law of the Land,”\textsuperscript{140} and in effect, these laws preempt any action taken by state and local governments.\textsuperscript{141} “States cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.”\textsuperscript{142} Preemption of state action by the federal government may be expressly stated in the enacting legislation (express preemption), determined to exist by a

\begin{footnotes}
\footnote{137} Id.
\footnote{138} Id.
\footnote{139} See supra 110.
\footnote{140} U.S. CONST. Art. VI, § 2.
\footnote{141} See Manuel, supra note 132, at 4.
\footnote{142} Id. (citing Hines v. Davidowitz, 312 U.S. 52, 66-67 (1941)).
\end{footnotes}
court of law (field preemption), or it may occur when state or local action directly conflicts with or contradicts the purpose of a federal legislative scheme (conflict preemption).\textsuperscript{143}

The doctrine of preemption is important in understanding the limits of a municipality because desired municipal action may be preempted by existing federal law or it may violate the intention of Congress in choosing not to legislate in a particular area. In the context of community integration and the immigrant community, the preemption doctrine is particularly important when considering the power of a municipality with respect to United States immigration law. Article I, Section 8 of the U.S. Constitution grants Congress the "authority to regulate Naturalization."\textsuperscript{144} The U.S. Supreme Court has interpreted this to mean a broader exclusive power to regulate \textit{all} immigration.\textsuperscript{145} Proponents of the state-and municipal-based approaches argue that the Tenth Amendment\textsuperscript{146} grants the states the power to act if the federal government does not.\textsuperscript{147}

The Arizona legislature’s S.B.1070 is an example of a piece of legislation that raises serious preemption issues. The law in fact copies some of the wording of certain immigration statutes, but goes far beyond what Congress has mandated in its enacted immigration

\textsuperscript{143} \textit{Id.}  
\textsuperscript{144} U.S. CONST. Art. 1, § 8.  
\textsuperscript{145} \textit{See, e.g., Hampton v. Mow Sun Wong} 426 U.S. 88 (1976).  
\textsuperscript{146} U.S. CONST. Amend. X.  
Federal laws such as I.N.A. Section 287(g), which establish partnerships in immigration enforcement between the state and federal governments, are much more limited in scope than S.B. 1070, and ostensibly leave ultimate determination of immigration status and removal decisions to the federal government. However, it is possible that even the 287(g) program may be implemented in such a way by localities so as to trigger preemption issues, if not other constitutional violations. In the context of community integration, state and local legislation can be analyzed to determine whether it would be preempted by federal immigration law, an analysis that will turn on the U.S. Supreme Court’s decision in *Arizona v. United States.*

**B. Fundamental Human Rights Considerations under International Law**

The “moral underpinnings” of the relationship between immigrant rights and human rights have long been recognized by scholars and commentators who have invoked spiritual texts that have underscored the basic principles of humanity that require protection of “the alien” as a matter of human dignity. Certain rights should apply to all human beings by virtue of their humanity, regardless of their status or citizenship to a particular country. As noted above in Section II A, the U.S. Constitution supports this premise as dos Supreme Court decisions.

In addition to constitutional law, the value our society places on human rights is also manifested by the international treaties the United States has supported, by way of signing, ratifying, and effectively binding itself to those treaties. For example, the United States has

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149 Id. INA § 287(g). 8 U.S.C. § 1357(g) (2010).

150 See *supra* note 110.

151 David Cole, *The Idea of Humanity: Human Rights and Immigrants’ Rights,* 37, Colum. Hum. Rts. L. Rev. 627, 627 (2006) (citing H. Freedman, ed., Jeremiah, Hebrew Text & English Translation with an Introduction and Commentary, 52 (1949)). “The alien was to be protected, not because he was a member of one’s family, clan, or religious community; but because he was a human being. In the alien, therefore, man discovered the idea of humanity.”
signed and ratified the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The provisions of these treaties are not always directly enforceable in U.S. courts, but by ratifying these treaties the United States has arguably bound itself to them under the Supremacy Clause and has acknowledged the importance of their underlying values.

The ICCPR declares, in part:

**Article 9**

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

**Article 10**

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

The language of the ICCPR sets forth a number of rights and protections for all persons, irrespective of their immigration status. All persons, including undocumented immigrants, are given the right to a judicial review of the decision to detain and freedom from lengthy

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To the extent that people are not recognized as members of the community where they live, the community policies that fail to promulgate such integration may be dangerously close to the equivalent of political and social tyranny.

In addition the ICERD states:

**Article 1**

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

While forbidding the discrimination based on national or ethnic origin and guaranteeing human rights and fundamental freedoms to everyone, the ICERD also mandates that each country must prohibit and affirmatively act, by all appropriate means, to end racial discrimination by any persons, group or organization.

The ICERD also declares that each country shall take, "measures to ensure the adequate development and

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156 *id.*


158 *id.* at art. 2.e.
protection of certain racial groups or individuals belonging to them, for the purpose of
guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.”  
All countries bound by the treaty must assure that everyone within the jurisdiction of the country
has effective protection and remedies against any acts of racial discrimination which violates
human rights and fundamental freedoms conveyed by the treaty.  
In addition to the rights noted above, the ICERD also guarantees several rights, including the right to freedom of
movement and residence within the border of the country, the right to public health, medical
care, social security, and social services, and the right of access to any place or service intended
for use by the general public.

Although the Convention does not apply to distinctions, exclusions, or restrictions made
between citizens and non-citizens, discrimination does not have to be strictly based on race for
the treaty to apply; rather, the enforcing committee will determine whether a state action is
effectively discriminatory by, “[looking] to see whether that action has an unjustifiable disparate
impact upon a group distinguished by race, colour, descent, or national or ethnic origin.”  
This means that while governments may enact laws and adopt policies which distinguish between
citizens and non-citizens, if the effect of those laws or policies has a disproportionate impact
against one particular race or ethnic group involving the above-referenced human rights, then the
government may be found to be in violation of the Convention.

In addition, the Universal Declaration of Human Rights, which the United States voted to
adopt, states that, “All human beings are born free and equal in dignity and rights.”  

\[^{159}\text{Id. at art. 2.2.}\]
\[^{160}\text{Id. at art. 6.}\]
\[^{161}\text{Id at art. 5. See also Appendix II: Provisions of the International Convention on the Elimination of All Forms of Racial Discrimination Relevant to Immigrant Rights.}\]
\[^{162}\text{Id. at art. 1.2. But see CERD General Recommendation No. 14: Definition of discrimination (Art. 1, par. 1), UN OHCHR, May 22, 1993.}\]
\[^{163}\text{Universal Declaration of Human Rights, art. 1, December 10, 1948, G.A. res. 217 A (III).}\]
that everyone, regardless of race, national origin, or jurisdictional or international status of the
country or territory to which a person belongs, is entitled to the rights specified within.164 Those
rights include, equal protection under the law, freedom from arbitrary arrest, freedom from
arbitrary interference with privacy, family, and home, and the right to seek and enjoy in other
countries asylum from persecution.165

Unfortunately, several United States policies violate the rights and protections that these
treaties and declarations set forth, and often these violations disproportionately impact Hispanics.
Yet, although the United States does not always comply with its human rights obligations (and
even sometimes affirmatively violates some terms), these principles remain as viable human
rights standards.166

The discussion above makes clear that the United States Constitution, Supreme Court
case law, and international treaties and law all dictate that every person within the United States,
regardless of their country of birth or citizenship, should be afforded fundamental human rights
and dignity. These principles stand as guides for local governments that are also morally, if not
legally compelled to adopt ordinances or avoid laws to assure that immigrants are afforded all
protections found in these bodies of law. For a democracy to operate justly, the rights offered
within should “be open, and equally open, to all those men and women who live within [a
political community’s] territory…and are subject to local law.”167 To the extent that people are
not recognized as members of the community where they live, the community policies that fail to

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164 Id. at art. 2.
165 Id. at art. 7, 9, 12, 14.
166 The right to judicial review is often denied to people in immigration detention—U.S. law imposes mandatory
detention and a hearing before an immigration judge for certain immigrants. See The Advocates for Human Rights,
supra note 388, at 1. Included in the category of cases which U.S. law mandates detention without judicial review
are asylum seekers and non-citizens convicted of certain crimes.
167 Linda Bosniak, Being Here: Ethical Territoriality and the Rights of Immigrants, Theoretical Inquiries in Law, 8,
393 (citing Michael Walzer, Spheres of Justice: A Defense of Pluralism and Equality, 59 (1983)).
promulgate such integration may be dangerously close to the equivalent of political and social
tyanny.\textsuperscript{168} In the end it is one’s membership in a community and status as a human being that
morally requires constitutional protections and government benefits.\textsuperscript{169} Or in other words:

> Whatever their legal status, individuals who live in a society over an extended 
> period of time become members of that society, as their lives intertwine with the 
> lives of others there. These human bonds provide the basic contours of the rights 
> that a state must guarantee; they cannot be regarded as a matter of political 
> discretion.\textsuperscript{170}

\section*{C. Conclusion}

Section II of Part One of this report has provided a survey of the provisions under the U.S.
Constitution which frame the window within which municipalities may act, and which, in certain 
instances may be used to protect the immigrant community or create minimum requirements for 
municipalities in the community integration context. It has demonstrated that there is a 
fundamental duty to guarantee human rights considerations under federal and international law.
This Section should not be viewed, however, as an exhaustive list of provisions under with 
immigrant-unfriendly municipal action may be challenged or immigrant-friendly action may be 
protected. Instead it has been intended to serve as a resource for advocacy to be viewed in 
conjunction with the more specific analysis of the Dillon’s rule and its relationship with North 
Carolina municipal power.

\textsuperscript{168} \textit{Id}.
\textsuperscript{169} \textit{See} Jason H. Lee, \textit{Unlawful Status as a Constitutional Irrelevancy: The Equal Protection Rights of Illegal 
\textsuperscript{170} \textit{Id.} at 31 (citing Joseph H. Carens, \textit{On Belonging: What We Owe People Who Stay}, Boston Rev., 2005, at 1, 
available at http://bostonreview.net/Br30.3/carens.html).
III. Using Local Law to Further Community Integration

The legal principles discussed above can and must be molded into policy and practice to assist with the project of Community Integration. This section describes some examples of how the laws described in Sections I and II may be applied. As the immigrant population in the United States continues to grow, and immigrants move into nontraditional destination cities causing municipalities to react to the demographic changes in their communities.171 Some municipalities have resisted this change and have reacted by passing ordinances that make life more difficult for immigrants in their communities.172 Other municipalities throughout the United States are using their ordinance-making powers to pass progressive, immigrant-friendly ordinances.173 These ordinances “help newly arrived immigrants to get settled in their new communities; reduce their risk of being exploited by unscrupulous employers; give them access to social services; promote social integration; and generate an overall climate of trust, respect, and welcoming.”174

172 See Id. at 7 (“Some cities have proposed and some have passed ordinances expressing anti-immigrant sentiments, such as fining employers who hire undocumented immigrants; prohibiting companies from getting business permits if they employed or helped illegal immigrants within the past five years; making English the city government’s official language; denying housing to undocumented people; and banning immigrants’ access to city-provided social services.”).
173 Id.
174 Id.
Subsection A of this section expands on two types of ordinances that are being enacted by municipalities throughout the country in order to promote the integration of immigrants into their new communities. Ordinances that allow for the use of municipal I.D. cards and ordinances that limit local enforcement of federal immigration law allow immigrants to prosper in their communities and in turn benefit the communities as a whole. Subsection B of this section reviews the establishment or expansion of local advisory commissions and councils to improve communication between local governments and immigrant residents. Through the use of commissions or councils, local governments are able to be more in touch with the specific concerns of immigrant residents, allowing the governments to shape legislation to meet the needs of their immigrant populations. Subsection C highlights, by way of example, progressive community integration efforts in Durham, North Carolina. Subsection D concludes that there are a variety of ways for municipalities in North Carolina to take action on behalf of immigrant residents.

A. Local Laws that Promote Community Integration

This section will focus specifically on local laws that have been established that promote community integration. Both the identification initiatives and the limits placed on local law enforcement promote community integration.

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175 Id. at 9.
176 See generally, MUNICIPAL ACTION FOR IMMIGRANT INTEGRATION, NATIONAL LEAGUE OF CITIES, IMMIGRANT AFFAIRS COMMITTEES & COUNCILS (2009) [hereinafter IMMIGRANT AFFAIRS].
1. Municipal Identification Initiatives

The City of New Haven, Connecticut, became the first city to issue municipal identification cards (I.D cards) in 2007. These types of cards are available to all residents, regardless of immigration status. The Community Services Administrator of New Haven described the need for I.D. cards:

The lack of acceptable forms of identification currently prevents many city residents from participating in local commerce or other forms of civic engagement (e.g. obtaining a library card or opening a bank account). A municipal I.D. card will enable them to do so. The populations that will likely benefit the most from this identification are young children, elderly citizens, students and immigrants (both documented and undocumented).

Municipal I.D. cards benefit the immigrant population and promote general public safety. The cards allow people to open bank accounts and securely safeguard their money. Cards issued to children may include emergency contact information in case they are lost or hurt. The I.D. cards provide elderly residents who may no longer have a driver’s license with proof of identification to access city services. The “Elm City Resident Card” issued by the City of New Haven provides more than just a form of identification.

In addition to serving as an identification card, the Elm City Resident Card will have multiple uses, including 1) serving as a library card; 2) providing access to municipal services and sites including the public beach (free), the golf course (resident discount) [and] the city dump; 3) offering a ParkXmart debit card component, which allows the user to load up to $150 to the card to be used to pay for parking meters and for goods and services at approximately 50 participating stores.

178 Id. at 1.
179 Id.
180 Id.
181 Id.
182 Id.
183 Id.
184 Id. at 2.
Other cities have issued municipal I.D. cards to ensure that all city residents have access to public services and facilities. San Francisco passed a municipal identification ordinance in 2007. The ordinance allows a person who provides proof of identity and residency in San Francisco to receive an identification card which serves as a valid form of identification for all city entities. In addition to providing access to city services such as libraries and parks, the San Francisco I.D. card also allows residents to list medical conditions and allergies on the card, provides discounts to participating businesses, and allows residents to open accounts at participating banks.

Municipal identification cards have been the object of legal challenges, albeit unsuccessful. In 2008, a group of citizens of San Francisco brought a lawsuit against the City and County of San Francisco, alleging that the identification ordinance was “an illegal expenditure of public funds and a regulation of immigration that is preempted by the California and United States Constitutions.” The citizens claimed that the City was “inducing or knowingly influencing illegal aliens’ course of conduct whereby such aliens choose to continue to reside in San Francisco in violation of the law.” The San Francisco Superior Court

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185 SAN FRANCISCO, CAL., CODE § 95.2 (2007)
186 See § 95.2(c).
187 § 95.2(f). (“When requiring members of the public to provide identification or proof of residency in the City, each City department and any Entity That Receives City Funds shall accept a Municipal Identification Card as valid identification and as valid proof of residency in the City, unless such City department or Entity has reasonable grounds for determining that the card is counterfeit, altered, or improperly issued to the card holder, or that the individual presenting the card is not the individual to whom it was issued.”).
189 Petition for Peremptory Writ of Mandamus; Complaint for Injunctive and Declaratory Relief at ¶1, Langfeld, et al. v. City and County of San Francisco et al., No. 08-508341, (Cal. Super. Ct. May 13, 2008).
190 Id. at ¶ 29.
dismissed the case on November 19, 2008, and entered judgment in favor of the City.\textsuperscript{191} The ACLU Immigrants’ Rights Project, in commenting on the ruling, observed that the ruling “sends a message that cities do not violate the immigration laws by enacting immigration status-neutral programs for the benefit of all of their community members.”\textsuperscript{192}

Municipalities have also passed ordinances that allow the matricula consular, a document issued by the Mexican consulate, to be accepted as a valid form of identification.\textsuperscript{193} These ordinances, though not providing for a city-issued ID, allow immigrants who obtain a matricula consular access to city services. Initiatives such as issuing municipal identification cards or accepting the matricula consular as a valid form of identification not only provide concrete benefits to the immigrant community; the initiatives also enfranchise immigrants symbolically, making them feel more included in their new communities.


\textsuperscript{193} See \textit{e.g.}, St. Paul, Minn. Code \S 44.02(a)(4)(2004) (“Where presentation of a state driver's license is customarily accepted as adequate evidence of identity, presentation of a photo identity document issued by the person's nation of origin, such as a driver's license, passport, or matricula consular (consulate-issued document), or of a photo identity document issued by any Minnesota county, shall not subject the person to an inquiry into the person's immigration status. This paragraph does not apply to I-9 forms.”); Atlanta, Ga. Ord. 04-0-0772 (May 3, 2004), \textit{available at} http://citycouncil.atlantaga.gov/2004/Minutes/..%5CIMAGES%5CAdopted%5C0503%5C04O0772.pdf (“[T]he City of Atlanta recognizes the Matricula Consular, issued by the Mexican government, as sufficient and valid identification for any City of Atlanta government transaction where establishing a positive identification is required.”). Similarly, the city of Durham, NC passed a resolution to accept the \textit{matricula consular}, Ray Gronberg, \textit{Council OKs matricula consular resolution}, \textit{Herald Sun}, Nov. 15, 2010, \textit{available at} http://www.heraldsun.com/view/full_story/10325992/article-Council-OKs-matricula-consular-resolution?instance=main_article.
2. Municipal Initiatives Limiting Local Enforcement of Immigration Laws

Recently, municipalities throughout the United States have passed ordinances opposed to local enforcement of federal immigration laws. Generally, these ordinances “prohibit their resources and institutions from being used to enforce civil immigration law and make it as difficult as possible for agency officials to share information on people’s immigration status with the federal government.” The cities that have passed such ordinances recognize the problems associated with local immigration enforcement, including increased distrust of the police, racial profiling, and civil rights violations. Cities also hope to better provide for their residents’ general welfare with such ordinances. In cities that collaborate with Immigration and Customs Enforcement (ICE), “immigrants may avoid using city services or calling city agencies, including public schools, fire departments, and emergency ambulance services.”

Municipalities that act to restrict local immigration enforcement hope to encourage all residents to use city services when they need them, without fearing that there will be consequences because of their immigration status.

Municipalities have been limiting local immigration enforcement for decades. In 1979, Los Angeles, California, was the first city to prohibit local enforcement of federal

195 Id, at 7.
196 Id, at 10.
197 Id.
198 See NATIONAL EMPLOYMENT LAW PROJECT, TREND: LOCAL EFFORTS TO ENCOURAGE IMMIGRANTS TO ACCESS ESSENTIAL SOCIAL SERVICES AND COOPERATE WITH THE POLICE WITHOUT FEAR OF IMMIGRATION CONSEQUENCES services and (2003), available at http://nelp.3cdn.net/8df199babb0a4c2a14_4sm6bx11y.pdf [hereinafter LOCAL EFFORTS].
199 Cities have promoted policies limiting the enforcement of immigration laws through different initiatives, including ordinances, resolutions, executive orders, and police directives. The method a city chooses is often dependent on the political climate in the particular community.
immigration law with the issuance of Special Order 40, a police directive.\textsuperscript{200} Takoma Park, Maryland; Chicago, Illinois; San Francisco, California; and New York, New York followed Los Angeles, passing ordinances or issuing executive orders prohibiting city employees from collecting or sharing information about the immigration status of residents with federal immigration authorities and prohibiting the use of any city personnel or resources to enforce immigration law.\textsuperscript{201} The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), enacted in 1996, outlawed bans on sharing information with the federal government, but cities have complied with IIRIRA by forbidding city employees from gathering information about immigration status “unless required by law.”\textsuperscript{202} Other cities responded to IIRIRA by including immigration status as protected information in provisions of privacy policies.\textsuperscript{203} In New York City, this was accomplished by Mayor Michael Bloomberg through the issuance of Executive Order 41, a “City-Wide Privacy Policy,” which prevented city workers from asking about residents’ immigration status when they sought city services.\textsuperscript{204}

The most common provisions in city ordinances that limit local immigration enforcement are those that prohibit city employees from inquiring into immigration status,\textsuperscript{205} prohibit

\textsuperscript{200} CITIES AND IMMIGRATION, supra note 171, at 11 (“SO 40 establishes that ‘officers shall not initiate police action with the objective of discovering the alien status of a person’ and ‘shall not arrest nor book persons for’ illegal entry.”).
\textsuperscript{201} Id. The Takoma Park ordinance was passed in 1985, while Chicago, San Francisco, and New York passed ordinances or issued executive orders in 1989. Id.
\textsuperscript{202} Id. (“Section 642(a) of IIRIRA establishes that cities cannot prohibit agencies or officials from exchanging information about people’s citizenship or immigration status with the federal government, but it does not require them to collect such information and says nothing about prohibiting its collection.”); Immigration Law Enforcement by State and Local Police, BACKGROUNDER, Aug. 2007, at 3-4. “However, this provision did not address local policies that prohibit police and other employees from inquiring about the immigration status of persons with whom they come in contact.” Id. at 4.
\textsuperscript{203} See LOCAL EFFORTS, supra note 198.
\textsuperscript{204} Id. at 1-2.
\textsuperscript{205} See, e.g., PORTLAND, ME. CODE § 2-21(a). (2006) (“Unless otherwise required by law or by court order, no city police officer or employee shall inquire into the immigration status of any person, or engage in activities for the purpose of ascertaining the immigration status of any person.”); DETROIT, MICH. CODE § 27-9-4 (2007) (“(a) A public servant, who is a police officer (1) Shall not solicit information concerning immigration status for the purpose
profiling by the police on the basis of immigration status, and limit the enforcement of civil immigration laws. The city of Hartford, Connecticut, enacted a progressive and expansive ordinance limiting local immigration enforcement in 2008. The ordinance makes all city services available to all residents of Hartford, regardless of immigration status. It also prohibits Hartford police officers from inquiring about a person’s immigration status unless it is necessary for a criminal investigation. The police may not inquire about the immigration

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206 See, e.g., DETROIT, MICH. CODE § 27-9-3 (2008) (“A public servant, who is a police officer, shall not exercise differential treatment of individuals in rendering police services based on a person's appearance, ethnicity, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, or sexual orientation, or gender identity or expression. A public servant, who is a police officer, shall not base reasonable suspicion for an investigative detention, probable cause for an arrest, or any other police action, on a person's appearance, ethnicity, immigration status, manner of dress, national origin, physical characteristics, race, religious beliefs, sexual orientation, or gender identity or expression.”).

207 See, e.g., MINNEAPOLIS, MINN. CODE § 19.30(3) (2003) (“Public safety officials shall not question, arrest or detain any person for violations of federal civil immigration laws except when immigration status is an element of the crime or when enforcing 8 U.S.C.1324(c).”). Other cities have expressed disdain for the 287(g) program and Secured Communities.


209 § 2-927 (“(a) Any service provided by a City of Hartford department shall be made available to residents, regardless of immigration status, unless such agency is required by Federal law to deny eligibility for such service to residents because of their immigration status. (b) Every City of Hartford department shall encourage residents, regardless of immigration status, to make use of all City services provided by City departments for which residents are not denied eligibility by Federal law as it relates to their immigration status. (c) Referrals to medical or social service agencies will be made in the same manner for all residents, without regard to immigration status. (d) Nothing in this section shall be construed to prohibit any employee of the City of Hartford from cooperating with federal immigration authorities as required by law.”).

210 § 2-928 (“(a) Hartford police officers shall not inquire about a person’s immigration status unless such an inquiry is necessary to an investigation involving criminal activity as defined in § 2-926 above. (b) Hartford police shall not inquire about the immigration status of crime victims, witnesses, or others who call, approach or are interviewed the Hartford Police Department. (c) No person shall be detained solely on the belief that he or she is not present legally in the United States, or that he or she has committed a civil immigration violation. There is no general obligation for a police officer to contact Immigration and Customs Enforcement regarding any person. (d) Hartford police officers shall not make arrests or detain individuals based on administrative warrants for removal entered by ICE into the National Crime Information Center database, including administrative immigration warrants for persons with outstanding removal, deportation or exclusion orders. Enforcement of the civil provisions of United States immigration law is the responsibility of Federal immigration officials. (e) The Hartford Police Department shall
status of crime victims, witnesses, or others who approach the police, and the police may not
detain a person based on their immigration status or for a civil immigration violation.211 The
ordinance states that “[e]nforcement of the civil provisions of
United States immigration law is the responsibility of Federal
immigration officials,” and it prohibits city police officers
from making arrests based on ICE administrative warrants.212
Additionally, the ordinance provides that immigration status
is considered confidential information,213 and prohibits city
employees from inquiring about or disclosing such
information.214

The National Immigration Law Center (NILC) has
drafted sample language for city ordinances to limit local
immigration enforcement.215 The NILC suggests that cities include provisions establishing equal
access to city services,216 limiting enforcement of civil immigration laws,217 prohibiting the

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211 § 2-928(b) and (c).
212 § 2-928(d).
213 § 2-926 (“Confidential information means any information obtained and maintained by a City agency relating to
an individual’s sexual orientation, status as a victim of domestic violence, status as a victim of sexual assault, status
as a crime witness, receipt of public assistance, or immigration status, and shall include all information contained in
any individual’s income tax records.”).
214 § 2-929 (“No employee of the City of Hartford shall inquire about or disclose confidential information as defined in
§2-926 or other personal or private attributes except when either required by law or when this information is
necessary to the provision of the City service in question.”).
215 See NATIONAL IMMIGRATION LAW CENTER, SAMPLE LANGUAGE FOR POLICIES LIMITING THE ENFORCEMENT OF
IMMIGRATION LAWS BY LOCAL AUTHORITIES (2004), available at
http://www.nilc.org/immlawpolicy/LocalLaw/sample%20policy_intro%20briefNov%202004.pdf [hereinafter
SAMPLE LANGUAGE].
216 Id. at 4-5.
217 Id. at 5.
singling out of individuals based on immigration status,\textsuperscript{218} protecting immigrant victims and witnesses,\textsuperscript{219} and creating general disclosure policies protecting confidential information.\textsuperscript{220} The Hartford ordinance discussed above contains many of these provisions.\textsuperscript{221} Each of these suggested provisions contribute to the broader policy goals of the ordinance. By passing such an ordinance, a city aims to gain the trust of its immigrant community by limiting local enforcement of federal immigration laws and to promote the general welfare of its immigrant residents by providing equal access to city services.\textsuperscript{222}

\textbf{B. Mayoral Advisory Boards and Immigrant Affairs Offices as Tools for Community Integration}

It is important for local governments and their leaders to be connected to local immigrant populations in order to become aware of their concerns, which are often unique to those of other residents. While large cities may have the resources to create a specific office focused on immigrant issues, smaller cities can establish volunteer committees, commissions, or councils dedicated to integrating immigrants into the community.\textsuperscript{223} The National League of Cities promotes such practices, finding that “[e]stablishing a committee, commission, or council is one of the most direct and effective methods for mayors and local officials to work with their communities and promote a spirit of collaboration and understanding with their immigrant populations.”\textsuperscript{224} Advisory commissions also promote diversity, culture, and tolerance within communities. While the ultimate goal of all municipal advisory offices or commissions will be

\begin{footnotes}
\footnotetext{218}{Id. at 5.}\footnotetext{219}{Id. at 5-6.}\footnotetext{220}{Id. at 6-7.}\footnotetext{221}{See HARTFORD, CONN. CODE §§ 2.925-2.929 (2008).}\footnotetext{222}{See SAMPLE LANGUAGE, supra note 215, at 6.}\footnotetext{223}{See IMMIGRANT AFFAIRS, supra note 176, at 1.}\footnotetext{224}{Id.}
\end{footnotes}
to integrate immigrants into their new communities, structures and initiatives will vary in each municipality depending on available resources and population demographics.

Advisory offices or commissions may focus on a municipality’s immigrant community as a whole. For example, the Mayor’s Office of Immigrant and Refugee Affairs (MOIRA) in Houston was established with the goal of integrating immigrants, who make up twenty-eight percent of the city’s population, into the community. MOIRA works to educate immigrants about their rights and the city services available to them and acts as a liaison between immigrant communities and the government. Similarly, in New York City, the mission of the Mayor’s Office of Immigration Affairs (MOIA) is to promote “the well-being of immigrant communities by recommending policies and programs that facilitate successful integration of immigrant New Yorkers into the civic, economic, and cultural life of the City.” The MOIA connects immigrants with local organizations and also assists government agencies in reaching immigrant communities.

Advisory commissions may also be established to meet the needs of a specific immigrant population. For example, the Mayor’s Commission on African and Caribbean Immigrant Affairs

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228 Id.
was created in Philadelphia in 2005 to help integrate African and Caribbean Immigrants into the community.\textsuperscript{229} Over 200,000 people of Caribbean and African descent reside in Philadelphia, many of whom immigrated to Philadelphia in the 1980s and 1990s as refugees and political asylees.\textsuperscript{230} The Commission assists immigrants in accessing city services and promotes cultural activities in the city.\textsuperscript{231} Through cultural events, immigrants are able to carry on African traditions and also expose other community members to their heritage.\textsuperscript{232}

C. An Example of a N.C Municipality: Incorporating Community Integration Initiatives Through Local Law

The city of Durham, North Carolina has promoted community integration through a number of initiatives. The city was recently recognized in the The National League of Cities Report, \textit{Innovations in Immigrant Integration: 20 Cities, 20 Good Practices}, for the Mayor’s Hispanic Latino Initiative.\textsuperscript{233} The Mayor’s Hispanic Latino Initiative (MHLI) began in 2002 in response to the number of violent crimes being committed against Hispanic residents.\textsuperscript{234} The MHLI was initiated to strengthen the relationship between the Hispanic community, the city government, and the police.\textsuperscript{235} The overall goal of the initiative is to “ensure that

\begin{quote}
Municipalities in North Carolina can promote community integration through ordinances and initiatives that provide immigrants with access to city services and limit local enforcement of immigration law
\end{quote}
the Hispanic community has access to the full range of City services,” is informed of city laws
and policies, and has a voice in the government.236 As part of the MHLI, Durham Police became
more active in Hispanic neighborhoods in order to deter crime and also to improve relations
between the police and the Hispanic community.237 As a result of the initiative, the number of
Spanish-speaking city employees and police officers has increased, crimes committed against
Hispanics have decreased, and information on a range of issues has been distributed throughout
the Hispanic community.238

In 2003, the Durham City Council adopted a Resolution “Supporting the Rights of
Persons Regardless of Immigration Status.”239 As part of the resolution, Durham incorporated
immigration status into its confidentiality policy, stating that “[unless otherwise required] no
Durham City officer or employee, during the course and scope of their employment, shall inquire
into the immigration status of any person, or engage in activities designed to ascertain the
immigration status of any person.”240 This language is similar to that of ordinances discussed
above in Section III.A.2. that seek to limit local enforcement of immigration law.241 In 2010, the
Durham City Council passed a resolution recognizing the matricula consular as a valid form of
identification with regard to the police department.242 The resolution was supported by the

236 Mayor’s Hispanic Latino Initiative, CITY OF DURHAM, NORTH CAROLINA,
237 See innovations, supra note 225, at 15-16; Mayor’s Hispanic Latino Initiative, CITY OF DURHAM, NORTH
238 Mayor’s Hispanic Latino Initiative, CITY OF DURHAM, NORTH CAROLINA,
239 LOCAL EFFORTS, supra note 198, at 3.
240 LOCAL EFFORTS, supra note 198, at 3; Minutes, Durham, N.C. City Council (Oct. 20, 2003),
http://www.ci.durham.nc.us/agendas/minutes/cc_minutes_10_20_03.pdf.
241 See supra III.A. 2.
242 Ray Gronberg, Council OKs matricula consular resolution, HERALD SUN, Nov. 15, 2010, available at
http://www.heraldsun.com/view/full_story/10325992/article-Council-OKs-matricula-consular-
resolution?instance=main_article.
Durham Police Department, and the Police Chief stated that acceptance of the matricula helps “to garner trust from the community.”

The Durham Police Department has also been conscious of its relationship with the immigrant community in its implementation of the 287(g) Program. A report by the Latino Migration Project at the University of North Carolina found that the Durham Police Department “is focused on identifying and punishing serious criminals rather than using the program as an anti-immigration tool.” Only one officer in the Durham Police Department has received training to enforce 287(g) and is thus designated to implement the program. The officer is only notified in cases where an individual is charged with a serious crime and does not have proper identification. Unlike other 287(g) communities where immigrants are often processed for immigration action as a consequence of infractions or low-level misdemeanors, all of the individuals who have been processed through the 287(g) Program in Durham were charged with felonies or violent crimes. The Police Department has worked to assure members of the immigrant community that it will not use 287(g) as a deportation tool, so as not the damage the relationship the Police Department has formed with the Hispanic community through the Mayor’s Hispanic Latino Initiative.

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243 Id.
244 NGUYEN & GILL, supra note 40 (2010).
245 Serious crimes include: “homicide, aggravated assault, armed robbery, identity theft, possession of an illegal firearm, or other gang related activity.” Id.
246 Id.
247 Id. at 41.
248 Id. at 41.
D. Conclusion

Municipalities in North Carolina can promote community integration through ordinances and initiatives that provide immigrants with access to city services and limit local enforcement of immigration law. By establishing immigrant advisory offices or commissions, North Carolina governments can learn of the specific challenges faced by immigrants in their communities and structure legislation to fit their needs. Durham is one North Carolina city that has promoted community integration through progressive initiatives. Municipalities may implement community integration policies through ordinances, resolutions and executive orders. If a municipality in North Carolina is unclear as to whether it has the authority to enact a certain ordinance, it may ask the state legislature to enact a local act, as discussed above in Section II.B.2.

IV. North Carolina Municipalities: The Case for Integrated Communities

Why should municipalities want to help the immigrant populations in their jurisdictions? The most direct way of answering this question is to simply evaluate the positives and negatives of pro-immigration policy. Immigration has been an integral part of America’s success and history. Indeed, the country has been and continues to be a country of immigrants.249 Immigrants are generally law abiding residents who positively impact the economy and strengthen their local communities.250 It would be morally unjust to accept and enjoy the benefits of immigration on one hand and shun the immigration community on the other. But community integration should be the goal of all communities not just because of the benefits our society enjoys as a result, but because immigrants are entitled to constitutional and human rights.

249 See infra Section B. 1. Lessons from American History.
250 See infra Section A. Myths About Immigrants. See also infra Section B. 2. North Carolina: Evidence of the Benefits of Immigrants in Our Communities.
Immigrants are owed these rights and protections not on the basis of their immigration status, but by virtue of them being human.

A. Myths about Immigrants and their Impact on Communities

In order to accurately weigh all the variables and arguments for integrated communities, we must first address some commonly believed myths about the immigrant population. Only after dispelling these myths can we ascertain how beneficial the immigrant community and pro-immigration policies are to our communities. There has been a substantial amount of research that has examined these myths; the Henry J. Kaiser Family Foundation, Cato Institute, and American Civil Liberties Union are among many groups which have thoroughly researched many common beliefs about immigrants. The following table is a compilation and analysis of many of those findings. The paragraphs following the table describe the details behind the myths and the actual facts concerning U.S. immigrants.
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<td>• In 2005 it was estimated that around 69% of the 37 million immigrants in the United States were either U.S. citizens or legal non-citizens.(^{251})</td>
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| 2. Most Immigrants Receive Social Welfare Benefits | • Health care spending on immigrants is approximately half that of U.S. citizens.\(^{252}\)  
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| 3. Most Immigrants Do Not Pay Taxes       | • On average every immigrant and his or her children will pay $80,000 more in taxes than they will receive in government services during their lifetime.\(^{254}\) |
| 4. Immigrants Bring Crimes to Our Communities | • Among men age 18-39 (the vast majority of the U.S. prison population) native-born men were five times more likely to be incarcerated than their immigrant counterparts.\(^{255}\)  
|                                           | • “Crime in the United States is not “caused” or even aggravated by immigrants, regardless of their legal status.”\(^{256}\) |
| 5. Immigrants Take Away Jobs from U.S. Citizens | • U.S.-born worker employment is not significantly affected by immigration, with estimates never statistically different from zero.\(^{257}\)  
|                                           | • Immigration actually has a positive long-term effect on U.S.-born workers’ income.\(^{258}\) |

\(^{253}\) See infra Myth #3: Most immigrants do not pay taxes.  
\(^{256}\) *Id.* at 1  
\(^{258}\) *Id.* “Over the long run, however, a net inflow of immigrants equal to 1% of employment increases income per worker by 0.6% to 0.9%. This implies that total immigration to the United States from 1990 to 2007 was associated with 6.6% to 9.9% increase in real income per worker.”
1. Myth: Most Immigrants are Undocumented Aliens

Actually the great majority of immigrants in the United States have permission to be in the country. In 2005 it was estimated that around 69% of the 37 million immigrants in the United States were either U.S. citizens or legal non-citizens.\textsuperscript{259} Therefore, most immigrants in any given community are likely to be U.S. citizens, legal residents, or guests of the United States who have been given permission to stay in the country. As such, municipalities should naturally be eager to assist immigrant groups to further strengthen the community and fulfill its duties to its residents. When a municipality fails to support, welcome, or promote the integration of its immigrant population, it is shunning a group that largely consists of U.S. citizens and permanent residents—a group that is not going anywhere. Municipalities would be wise to take steps towards community integration and subsequently a more harmonious, productive community.


Statistics actually show that immigrants receive less social benefits than the general public. In fact, it has been estimated that health care spending immigrants is approximately half that of U.S. citizens.\textsuperscript{260} Part of the reason for this is that many immigrants, regardless of legal status, are barred from receiving social benefits. For example, a legal permanent resident who has lived in the United States for less than five years usually is barred from receiving Medicaid or State Children’s Health Insurance Program benefits, which are government programs specifically designed to provide health coverage for adults and children who have do not have

\textsuperscript{259} The Kaiser Commission supra note 251, at 4.
the means to buy private insurance. Immigrants without status are generally barred from enrolling in most federal public benefit programs, such as Medicaid, Medicare, the Children’s Health Insurance Program, Temporary Assistance for Needy Families, Foster Care, Adoption Assistance, and the Low-Income Home Energy Assistance Program—all programs designated to help the poor and needy.

In addition, immigrants without status often pay Social Security taxes while being barred from receiving Social Security benefits. And although many immigrants are not eligible to receive benefits from social programs, the Social Security Administration has found that the cost of maintaining these programs becomes less as the number of immigrants in our country rises. “The cost of [Social Security and Medicare] decreases with increasing rates of immigration because immigration occurs at relatively young ages, thereby increasing the number of [workers contributing to the programs] [relative to] the number of beneficiaries.”

The few immigrants who are entitled to social benefits may not even utilize them. Many immigrants do not know about the programs or their eligibility, and they might have trouble effectively applying for benefits because they are limited by their ability to speak or write English. Approximately eight percent of the U.S. population speaks English less than very well, and these people face obstacles when applying for or communicating with a health care provider without language assistance. Although the Department of Justice has issued guidance for improving language assistance to comply with Title VI of the Civil Rights Act, many federal agencies remain delinquent in taking reasonable steps to assure meaningful access to federally

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261 The Henry J. Kaiser Family Foundation, supra note 251, at 6.
262 Tanya Broder & Jonthan Blazer, Overview of immigrant Eligibility for Federal Programs, National Immigration Law Center, April 2010, 2-3 (citing Welfare law § 401 (8 U.S.C. § 611)).
263 See infra Myth #3: Most immigrants do not pay taxes, 59-60.
264 Cato Handbook supra note 254, at 632.
265 Tanya Broder & Jonthan Blazer, supra note 262, at 7.
funded services. These language barriers prevent many limited English speaking immigrants from accessing services to which they might be otherwise entitled.

With government health care spending on the rise, there has also been a growing concern that immigrants are creating a burden on the health care system and negatively impacting the health care citizens receive. Aside from concerns that immigrants are receiving benefits from social programs, some worry that the use of emergency room services by immigrants is a major drain on the country’s health care resources. The federal Emergency Medical Treatment and Active Labor Act (EMTALA) requires most hospitals with emergency-room services to treat anyone regardless of citizenship or ability to pay. It has been argued that as result of EMTALA hospitals must absorb more than $200 million in unreimbursed costs and that some emergency rooms have been forced to shut down mainly due to providing services to immigrants. However, immigrants are actually less likely to go to the emergency room than U.S. citizens. A study has shown that only about 13% of immigrant adults visit the emergency room in the span of a year, while about 20% of U.S. citizen adults go to the emergency room at least once a year.

3. Myth: Most Immigrants Do Not Pay Taxes

While many immigrants do not receive social benefits, they do contribute to such federal programs as well as support their local communities by paying taxes. The National Academy of Sciences found that on average every immigrant and his or her children will pay $80,000 more in taxes...
taxes than they will receive in government services during their lifetime.\textsuperscript{270} Simply put, that is a net gain for the federal and local governments of $80,000 per immigrant. For immigrants with college degrees that number jumps to $198,000.\textsuperscript{271}

The same study found that immigration in the United States produces a positive gain of about $10 billion each year for U.S. citizens as a result of tax contributions by immigrants.\textsuperscript{272} That number has surely increased since the study was conducted in 1997. In addition the Social Security Administration has reported that it has approximately $420 billion in funds taken from the earnings of immigrants who are not entitled to benefits.\textsuperscript{273} That number has also certainly climbed since the report was issued in 2004. Immigrants strongly support the federal, state, and local governments by paying their taxes, even when they are barred from reaping the benefits that their citizen counterparts enjoy. It is not only wrong to not recognize their contribution, but it is also dangerous. Without the support of immigrants, the federal government and local communities alike would be vulnerable to an economic collapse.

4. Myth: Immigrants Bring Crimes to Our Communities

Several studies have repeatedly shown that the immigrant communities in our country account for less crime than the general public. For example, one study showed that among men age 18-39 (the vast majority of the U.S. prison population) native-born men were five times more likely to be incarcerated than their immigrant counterparts.\textsuperscript{274} The study also showed that in California, the state with the highest undocumented and documented alien population, native-
born men age 18-39 were eleven more times likely to be incarcerated than immigrants in the same age group.\textsuperscript{275}

Other studies have supported these findings and have shown that “crime in the United States is not “caused” or even aggravated by immigrants, regardless of their legal status.”\textsuperscript{276} One such study found that during the past thirty years, incarceration rates among young men were lowest for immigrants regardless of ethnicity. This was especially the case for Mexicans, Salvadorans, and Guatemalans, who account for a large portion of the immigrants without status in the United States.\textsuperscript{277}

Studies in North Carolina have found similar results. From 1997 through 2006, North Carolina’s Hispanic population grew 158.7\%, while the non-Hispanic population grew to 14.77\%. During this same time period, statewide violent and property crime fell.\textsuperscript{278} North Carolina counties with higher Hispanic growth actually had lower crime rates than those with lower Hispanic growth rates.\textsuperscript{279}

Another North Carolina study concerned with the relationship between crime and immigrant populations noted the lack of correlation between crimes and immigrant community growth and concluded that immigrants who choose to migrate to the United States are, “more

\begin{quote}
However, despite the fear and hostility they faced, immigrants have continued to succeed and prosper in the communities they live in.
\end{quote}

\textsuperscript{275} \textit{Id.}
\textsuperscript{276} \textit{Id.} at 1
\textsuperscript{278} \textit{Id.}
\textsuperscript{279} \textit{Id.}
ambitious, driven, and hard-working than the general population, thus, are less likely to be involved in criminal behavior.” In addition, “[Immigrants] are also less prone to commit crime and become incarcerated because their primary purpose for migrating is to build a better life for themselves (and their families), whether it be through employment education or other productive means.”

The study correctly points out that most immigrants have absolutely no desire or inclination to break the law--on the contrary, they are eager to stay out of any trouble as they pursue new economic and educational opportunities in the United States. In addition, undocumented aliens have even more reason to not commit crimes because of the risk and fear of deportation. As with any group of people, there are some within the group that may commit crimes, but statistically crime should be less of a concern within the immigrant population than with other groups.

5. Myth: Immigrants Take Away Jobs from U.S. Citizens

There is a commonly held belief that immigrants negatively affect U.S.-born workers by taking jobs and causing wages to be reduced. Some economists have supported this belief. Harvard professor George Borjas estimated that between 1980 and 2000 immigrants may have reduced the earnings of U.S.-born workers by 3 to 4 percent, with a larger negative impact.

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281 Immigrants and Crime, supra note 255, at 1.
among high school dropouts. Other labor economists estimate that the negative impact is lower, while others estimate the impact is negligible.

However, immigrants actually tend to fill jobs that are in demand because U.S. citizens will not or cannot fill those jobs; thus, immigrants are actually filling a very real need in the U.S. job market—a need that wouldn’t be filled otherwise. As a result, immigrants are disproportionately represented in many high-skilled professions such as medicine and computer science as well as in fields such as hotels, domestic service, and construction. By meeting the demand for these jobs, immigrants give a large boost to the economy. A 2007 White House economic report estimated that immigrants account for approximately an additional $37 billion in the U.S. gross domestic product each year. The report stated that immigrants provide this increase in productivity each year by increasing the labor force, complementing the U.S. citizen workforce, and stimulating investment by adding to the labor pool.

Another study revealed that overall immigration does not crowd out U.S.-born workers in either the short-term or long-term. The data showed that U.S.-born worker employment is not significantly affected by immigration, with estimates never statistically different from zero. The study concluded that this is because U.S.-born workers and immigrants typically take different occupations and are not competing for the same jobs. “Among less-educated workers, [U.S.-born workers] tend to have jobs in manufacturing or mining, while immigrants tend to

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284 Cato Institute, *supra* note 254, at 632.


286 *Id.*

287 Peri, *supra* note 257.

288 *Id.*
have jobs in personal services and agriculture. Among-more educated workers, [U.S.-born workers] tend to work as managers, teachers, and nurses, while immigrants tend to work as engineers, scientists, and doctors.”²⁸⁹ However, data did show that immigration has a positive long-term effect on U.S.-born workers’ income.²⁹⁰ From 1990 through 2007, the flow of immigrants into the workforce resulted in approximately $5,100 in additional yearly income for the average U.S. worker.²⁹¹ In addition, there seems to be a causal relationship between high immigration and low unemployment in the country. For example, during the late 1990’s when there was a relatively high amount of immigration in the United States unemployment fell below 4 percent.²⁹²

B. The Fruits of an Integrated Community

1. Lessons from American History

The United States has greatly benefited from its proud history of immigration. America is commonly referred to as “a nation of immigrants” and has taken in an almost continuous migration of immigrants during its entire existence.²⁹³ This history of immigration has made the country what it is today: a strong, diverse nation rich with multiple cultures, beliefs, and traditions. Everywhere they go immigrants strengthen and build up their local communities, and a study of American history reflects that.

²⁸⁹ Id.
²⁹⁰ Id. “Over the long run, however, a net inflow of immigrants equal to 1% of employment increases income per worker by 0.6% to 0.9%. This implies that total immigration to the United States from 1990 to 2007 was associated with 6.6% to 9.9% increase in real income per worker.”
²⁹¹ Id.
²⁹² Cato Institute, supra note 254, at 632.
²⁹³ Rudolph J. Vecoli, The Significance of Immigration in American History, Business Forum, 10, 15 (1985). “From the earliest Spanish settlements in Florida and Southern California, colonists and immigrants have been drawn or transported to this New World...[even Native Americans] were the descendants of migrants who crossed a land bridge from Asia to the western hemisphere. For almost four hundred years, from the English settler in Jamestown to the latest arrivals from Southeast Asia, a procession of humanity in all its varied forms and hues has been coming to this “Promised Land.”
There have been several periods of mass migration in the United States. One of the first was from the 1820s through the 1880s. During that time, approximately 15 million immigrants, many from England, Scandinavia, and Central Europe entered the United States. These immigrants, much like modern day immigrants, filled a very important role in the national economy. The United States was growing and it required a labor force to continue and sustain that growth. Demand for immigration labor had sky rocketed due to the rise of the port of New York, the beginnings of the industrial development in New England, and the need for settlement in the American Midwest. It was during this time, which later would be called “The Industrial Revolution,” that the United States transitioned into a world power.

From 1880 to 1924 an additional 25 million more immigrants, primarily from Southern and Eastern Europe, migrated to the United States. During the early 1900s, as many as one million immigrants arrived annually. These immigrants played an important role in the shift to an urban industrial economy. Immigrants were over-represented as peddlers, merchants, and laborers in urban areas. “Immigrants and their children were the majority of workers in the garment sweatshops of New York, the coal fields of Pennsylvania, and the stockyards of Chicago.” Major cities in the United States were largely immigrant cities, and by 1900 populations in cities such as New York, Chicago, Boston, Cleveland, San Francisco, and Detroit were approximately three quarters immigrants and their children. During this time of growth,
“[t]he rapidly expanding industrial economy of the North and Midwest drew disproportionately on immigrant labor from 1880 to 1920.”

Despite the correlation between high immigration periods and the country’s growth and prosperity, many fear that today’s immigrants are a threat to society and harmful to the economy. This phenomenon is not new. As sociology professor Charles Hirschman explains:

Each new wave of immigration to the United States has met with some degree of hostility and popular fears that immigrants will harm American society or will not conform to the prevailing “American way of life.” In 1751, Benjamin Franklin complained about the “Palatine Boors” who were trying to Germanize the province of Pennsylvania and refused to learn English. Throughout the 19th century, Irish and German Americans, especially Catholics, were not considered to be fully American in terms of culture or status by old stock Americans. In May 1844, there were three days of rioting in Kensington, an Irish suburb of Philadelphia, which culminated in the burning of two Catholic churches and other property. This case was one incident of many during the 1840s and 1850s—the heyday of the “Know Nothing Movement”—when Catholic churches and convents were destroyed and priests were attacked by Protestant mobs.

However, despite the fear and hostility they faced, immigrants have continued to succeed and prosper in the communities they live in. Approximately 60 million people, more than one fifth of the population in the United States, are immigrants or the children of immigrants. For most of these people, “immigration policy is not an abstract ideology but a means of family reunification and an affirmation that they part of the “American dream.” Local governments should embrace pro-immigrant policies that protect and uphold the rights of these people. They take jobs that others do not want, they pay taxes and contribute to social welfare programs that


300 *Id*.


302 *Id*.

303 *Id*. 
they are often barred from participating in, and time and time again they have proven to be a key component of America’s success story.304

2. North Carolina: Evidence of the Benefits of Immigrants in Our Communities

North Carolina is a modern day of example of the positive influence immigrants bring to their communities. The foreign-born part of North Carolina’s population has risen dramatically in the past twenty years. This portion of the state population rose from 1.7% in 1990, to 5.3% in 2000, to 7.0% in 2008.305 Now nearly one-in-ten North Carolinians are Latino or Asian.306 They are in general people who uphold the law and regulations in their respective communities.307

As a result of the growing immigrant community, the local economy has become stronger and new jobs have been created. The Hispanic labor force in the state has supported and made economically competitive entire industries such as, meatpacking, agriculture, and textiles.308

As of 2008, immigrants comprised of 9.1% of the state’s

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306 Id.

307 See Nguyen & Gill, supra note Error! Bookmark not defined..

workforce, and immigrants without status comprised of 5.3% of the state’s workforce. If only
the immigrants without status were removed, the state would lose an estimated $14.5 billion in
economic activity, $6.4 billion in gross state product, and approximately 101,414 jobs, even
when taking into account adequate market adjustment time.\textsuperscript{309}

Due to the immigrant population, additional jobs in industries, such as real estate and
mortgage finance, are created because of the ripple effect that immigrants have on the state
economy.\textsuperscript{310} In 2002, the last year for which data is available, North Carolina’s 13,695 Asian-
owned businesses had sales and receipts of $3.5 billion and employed 32,759 people, and the
state’s 9,043 Hispanic-owned businesses had sales and receipts of $1.8 billion and employed
11,615 people.\textsuperscript{311} More recently, spending by Hispanics alone has generated approximately
89,600 spin-off jobs, $2.4 billion labor income, and $455 million in state tax revenue.\textsuperscript{312} And
the purchasing power of immigrants living in the state continues to rise. In 2009 the purchasing
power of North Carolina’s Latinos totaled $12.8 billion, an increase of 1,424.0% since 1990, and
the Asian buying power totaled $6.0 billion, an increase of 724.2% since 1990.\textsuperscript{313} North
Carolina residents also enjoy lower costs of goods and services as a result of cheaper Hispanic

\textsuperscript{310} Nguyen & Gill, supra note \textbf{Error! Bookmark not defined.}, at 4.
\textsuperscript{311} Immigration Policy Center, \textit{New Americans in the Tar Heel State}, supra note 363.
\textsuperscript{312} \textit{Id.} (citing John D. Kasarda & James H. Johnson, Jr., \textit{The Economic Impact of the Hispanic Population on the State of North Carolina} (Kenan-Flagler Business School, The University of North Carolina at Chapel Hill, Chapel Hill, N.C.), January 2006, http://www.kenan-
flagler.unc.edu/assets/documents/2006_KenanInstitute_HispanicStudy.pdf#page=35.)
\textsuperscript{313} \textit{Id.} (citing Jeffrey M. Humphreys, \textit{The multicultural economy 2009}, Georgia Business and Economic Conditions, 69, 1-16 (2009)).
labor. These facts should not be surprising given the history of immigration America—North Carolina and its municipalities are simply experiencing the natural benefits of immigration.

Municipalities out of self-interest and for moral reasons should enact ordinances and adopt policies, which reflect an appreciation for the country’s immigration past and for all contributing members of society, regardless of status or citizenship. By doing so, local governments would be operating in harmony with the position that George Washington, the country’s first president, took when he said, “…America is open to receive not only the opulent and respectable stranger, but the oppressed and persecuted of all nations and religions, whom we shall welcome to participate in all of our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment.”

C. Conclusion

Immigrants are an essential part of our society. They continue to be, as they have been throughout the history of our country, a positive influence on the national and local economy. Immigrants regularly fill the needs of our economy by taking jobs that U.S. citizens do not want or do not qualify for, and at the same time they pay taxes and support welfare programs for which they often do not qualify as benefit recipients. In

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addition, immigrants are generally law abiding residents who have risked their personal possessions and future to establish a new life in the United States. Unfortunately, there are several myths about immigrants and the impact they have in our communities, and these myths contribute to the prejudice that immigrants often face. Municipalities have a moral obligation to not only welcome immigrants but protect their constitutional and human rights. As such, community integration should be the goal of all communities, as it benefits all residents within the community, promotes harmony and safety, and provides a necessary protection of rights, to which immigrants are entitled.