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Responding to Crimes Committed by Aliens

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KEY TAKEAWAYS

In some instances, the federal government can employ the same plenary legislative authority that the states possess to regulate private conduct through criminal law.

Congress can and should pass a statute paralleling the Federal Assimilative Crimes Act that incorporates the state criminal law *in the case of aliens.*

This would enable federal immigration agents to arrest aliens for any state-law "street" crimes and hold them for deportation.

Introduction: The Border and Immigration Crisis

The Nature of the Crisis. Over the past four years, there has been a tidal wave of unlawful entries into the United States across our borders with Mexico (principally) and Canada, with the number of inadmissible aliens present in the United States estimated to range from 11 to 22 million before President Joe Biden took office and now perhaps 10 million higher.[1] The reason for that recent influx is that the Biden Administration has encouraged the unlawful entry of migrants. Then-candidate Joe Biden expressly invited them to come to the United States,[2] and, as President, he adopted a matador-like approach to border protection.[3] The upshot is that the Biden Administration endorsed an "If you open it [the border], they will come" immigration policy.[4]

A sad result of that cynical—and unlawful[5]—approach to enforcement of our immigration laws has been the commission of murders, rapes, and other violent crimes by inadmissible aliens.[6] A particularly horrifying recent example involved an illegal alien from Guatemala who set a woman afire on the New York City subway and watched her burn to death.[7] Atop that is the presence of potentially thousands of unvetted military-age males from countries hostile to ours—people who are potentially quite dangerous.[8]

The Cause of the Crisis. Four interrelated factors have caused this crisis. The Biden Administration has had a heavy hand in each one.

First, the Constitution commands the President to execute the acts of Congress and treaties of the United States and assumes that the President will fulfill his oath of office to do just that.[9] The Take Care Clause of Article II, Section 3, makes that pellucid.[10] The President may do so himself but almost always directs one or more of the "Departments" or "Officers" who report to him to execute the law.[11] Because the federal government may spend only the funds that Congress has appropriated (and for other reasons too),[12] the President, aided by his lieutenants, has broad discretion to decide which enforcement actions best maximize the intended effect of the laws that he must see enforced.[13] Here, too, the Framers' assumption was that the President would exercise that discretion in a manner that best served the nation.[14]

Second, although this point is less clear, the practical necessity to exercise discretion in bringing enforcement actions—for example, to choose cases with powerful facts, ones that have a great deterrent effect, or litigation that advances the President's and Congress's policy interests—does not entitle a President to flatly refuse to enforce a federal law. Said differently, the President cannot suspend the effect of a law or create an exception to it, certainly not for an existing or potential favored constituency or to serve his own or his party's political interests.[15] Article I makes it clear that Congress is the nation's lawmaker, and the Take Care Clause shows that the President must carry into effect Congress's legislation. Refusing to enforce a law is tantamount to suspending its effect for a time, place, or person, and that action is not materially different from exercising the legislative power to create an exception to that law. Read together, Articles I and II show that any such action is *verboten*.[16] History reinforces that conclusion. England prohibited the Crown from suspending the law in Parliament's landmark Bill of Rights of 1689,[17] and the Framers carried that prohibition forward into the Constitution in the Take Care Clause of Article II.[18] Yet President Biden effectively suspended the law by ratcheting down to near zero the enforcement of the Immigration and Nationality Act against illegal aliens.

Third, unlike the government's decision to bring an enforcement action against a private party, the government's decision *not* to initiate enforcement proceedings is unreviewable by a federal court.[19] As the Supreme Court of the United States made clear in *Linda R.S. v. Richard D.*, "a citizen lacks standing to contest the policies of the prosecuting authority when he himself is neither prosecuted nor threatened with prosecution" because "a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another."[20] The states are in no better a position to challenge the federal government's refusal to enforce the law. The Supreme Court, speaking through Justice Brett Kavanaugh in *United States v. Texas*, a case that involved the immigration problem discussed in this *Legal Memorandum*, held that a state cannot bring a federal lawsuit seeking relief against the federal government's nonenforcement policies, for two reasons. One is that there is no "precedent, history, or tradition of courts ordering the Executive Branch to change its arrest or prosecution policies so that the Executive Branch makes more arrests or initiates more prosecutions."[21] The other is that, given "inevitable resource constraints and regularly changing public-safety and public-welfare needs," the "complicated balancing process" required to decide what enforcement actions to bring leaves federal courts "without meaningful standards for assessing" those decisions.[22] Thus, judicial review of nonenforcement is unavailable.

Fourth, as a result, only the voters or their representatives in Congress have the power to compel a President to enforce the law.[23] While that might seem sufficient in theory, it has not proven to be effective in practice. Electoral disapproval is not available if a President is not seeking re-election. Even if he is, there are far too many other issues that a voter must consider for a President's nonenforcement policy to register for most of the electorate. Impeachment and removal from office might be effective in some circumstances, but they have not been over the past four years. In April 2024, the Democratic-majority Senate dismissed without a trial the articles of impeachment for Homeland Security Secretary Alejandro Mayorkas approved by the Republican-majority House of Representatives because of Mayorkas's refusal to enforce the immigration laws, even though the evidence of that willful refusal was obvious and overwhelming.[24] Trying to impeach and remove Biden on that ground would have been even more futile. Besides, in the best of political circumstances, impeachment and removal grow increasingly useless as the time grows nigh for the President to move out of 1600 Pennsylvania Avenue.

The upshot is this: President Biden successfully nullified the federal immigration laws for the purpose, some have argued, of adding to the pool

of potential voters, or at least headcount for congressional districts from the U.S. Census, that his party will use for future electoral success.[25] That might be factually different from bribing people to vote for a particular slate of candidates in an upcoming election, but the effect is much the same.

A Complicating Factor: "Sanctuary Jurisdictions." Congress never passed legislation ratifying the Biden immigration policy, so President Donald Trump can countermand it immediately upon being sworn into office. But that only begins the hard work. President Trump vowed to adopt that policy on his first day in office, focusing on aliens with a history of violence in the United States or in their home nations—aliens that pose a public safety or national security threat.[26] Once permitted to do its job of enforcing the immigration laws, the Department of Homeland Security (DHS) must identify, locate, apprehend, and deport the people who are here unlawfully.

DHS, however, has limited resources. There are more than 30 federal law enforcement agencies and 70 Offices of Inspectors General that have what are known as special agents or GS-1811 Class investigators—that is, law enforcement officers authorized to make arrests, execute warrants, and carry firearms.[27] In fiscal year (FY) 2020, there were nearly 137,000 full-time federal law enforcement officers with almost half (49 percent) in DHS.[28] Within DHS, the Office of Immigration and Customs Enforcement (ICE) has only 7,100 agents spread out over 220 cities and 53 foreign nations.[29] By contrast, a 2018 census revealed that there are more than 17,500 state and local law enforcement agencies employing more than 1.2 million full-time law enforcement officers.[30] The number of ICE investigators pales in comparison to the number of state and local troopers, sheriffs, deputy sheriffs, and police officers. ICE must be able to partner with states and localities to do its job effectively.

But there is a problem created by the so-called sanctuary jurisdictions. As of November 1, 2024, 13 states, including populous ones such as California, New York, and Illinois, as well as more than 220 counties, cities, and the District of Columbia, had ordered their law enforcement personnel not to cooperate, to one degree or another, with ICE agents who seek to identify, take custody of, and deport criminal aliens.[31] Those jurisdictions have laws "that obstruct immigration enforcement and shield criminals from ICE" in a host of different ways, such as "refusing to or prohibiting agencies from complying with ICE detainers, imposing unreasonable conditions on detainer acceptance, denying ICE access to interview incarcerated aliens, or otherwise impeding communication or information exchanges between their personnel and federal immigration officers."[32]

Federal Authority to Control Immigration

It is well-settled law that the states possess a so-called police power—viz., the inherent authority to pass legislation that protects and advances the safety, health, and welfare of the public[33]—while the federal government generally does not.[34] Perhaps the best example of that difference, the Supreme Court has noted, is the interest in protecting the public against what is known as "street crime." As Chief Justice William Rehnquist explained in *United States v. Morrison*, "we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims."[35] Long before Chief Justice Rehnquist made that point, one of his predecessors, Chief Justice John Marshall, noted in *Cohens v. Virginia* that Congress "has no general right to punish murder committed within any of the States" and "cannot punish felonies generally...."[36]

Yet there are a small number of instances in which the federal government can exercise the same plenary legislative authority that the states possess to regulate private conduct through criminal law. Examples are the District of Columbia,[37] federal territories,[38] and real property owned by the federal government situated in one of the states,[39] obtained by purchase, condemnation, or retention (when a territory became a state), over which the federal government exercises jurisdiction.[40]

Perhaps the best-known example of that last category is the Federal Assimilative Crimes Act.[41] Ever since Representative Daniel Webster sponsored a bill, originally drafted by Joseph Story (later Associate Justice Story),[42] that became the Act of March 3, 1825, federal criminal law has incorporated state criminal offenses and punishments whenever those offenses are committed on federal property or territory and there is no applicable federal criminal statute.[43] The purpose of the original act and its successors, as Story explained,[44] is to avoid the anomaly that the federal government otherwise might not be able to punish ordinary blue-collar offenses—such as murder or robbery—that occur on federal property because the Congress lacks a general police power[45] and the federal courts lack the authority to create common-law offenses.[46] That lacuna would leave federal officials, employees, and invitees at risk of physical injury or financial loss because the decision whether to prosecute an offender would rest in the relevant state's hands.

There is one more potential source of congressional criminal law–making authority to consider. Article I, Section 8 grants Congress the power to regulate various subjects regardless of where they occur, whether on or

off federal land. Some of those examples are excise taxes on imports,[47] the armed forces,[48] the national currency,[49] and the postal service.[50] Congress may enact a criminal law, as the Supreme Court has ruled,[51] if Congress finds that a criminal prosecution is a "necessary and proper" means of protecting and advancing those federal interests.[52]

One of those subjects is the power to establish a "uniform Rule of Naturalization."[53] Those laws represent Congress's judgments regarding what is necessary to protect the nation's safety and security while still allowing the country to profit from the benefits that entrants can offer. Like the subjects just mentioned, the federal government may enforce the immigration laws through use of the criminal law.[54]

The goal of so-called sanctuary jurisdictions is to stiff-arm the efforts of federal immigration authorities to carry out the tasks assigned them by Congress and the President. Their motive for obstructing the federal government's ability to protect the integrity of its borders—whether it be concern for the hardships suffered by fellow people, virtue-signaling as to their moral superiority, or something else—is irrelevant. What matters is that states and localities are often barred by state or local law from assisting federal authorities in implementing policies that Congress and the President have found necessary for the benefit of the nation. To remove those obstacles, three remedies would prove valuable.

Remedies to Address the Immigration Crisis

Proposal 1: Congress should pass a statute modeled on the Federal Assimilative Crimes Act that incorporates state criminal law and authorizes the U.S. Department of Justice to arrest and prosecute aliens for committing crimes in violation of state law.

Congress has vested immigration agents with a limited arrest power. They may arrest someone seeking to enter into or remain in the United States if they have "reason to believe" that the individual is doing or has done so in violation of federal law, if a party has committed a federal felony, or if the party has committed (or is committing) an offense in an agent's presence.[55] That authority parallels the power that other federal law enforcement officers possess,[56] but it falls short in one important respect: Immigration agents do not have the authority to arrest aliens for a violation of *state* law. Ordinarily, state or local police officers can and would arrest aliens who commit ordinary street crimes and then notify federal immigration authorities of the arrest so that the latter can issue a detainer enabling the federal government to take custody of the alien once he or she is released on bail or

for any other reason. But if the police work in a sanctuary jurisdiction, they might not be able to assist federal immigration authorities, or even inform them if and when they intend to release a charged illegal alien who is on bail or in someone else's custody. An all-too-common result is that the alien is released back on to the street, escaping responsibility for whatever crime(s) he or she has already committed, possibly to commit yet more crimes, often violent ones, before finally being held to account and deported.

To prevent that scenario from recurring, Congress can and should pass a statute paralleling the Federal Assimilative Crimes Act that incorporates the state criminal law *in the case of aliens.* This would enable federal immigration agents to arrest aliens for any state-law "street" crimes and hold them for deportation. Congress already has incorporated the state penal code into federal law pursuant to the Federal Assimilative Crimes Act. The executive branch has applied that statute to conduct that occurs on federal property, and the Supreme Court has upheld the constitutionality of that practice.[57] The only difference between that scenario and this one is that Congress would be acting under the authority granted it by a different clause of the Constitution. In the case of the existing Federal Assimilative Crimes Act, Congress relied on its power under the Military Installations and Necessary and Proper Clauses of Article I, Section 8, along with the Property Clause of Article IV, Section 3. Under the proposal set forth in this *Legal Memorandum*, Congress instead would be invoking its authority under the Naturalization and Necessary and Proper Clauses of Article I, Section 8.

For incorporation purposes, there is no material difference in the authority that those provisions grant Congress. The only differences are (1) where those separate grants of authority are found and (2) what specific power they grant Congress. Those, however, are distinctions without a difference. Section 8 of Article I vests a host of different powers in Congress, as even a quick reading of that section makes clear. But that just means the Framers knew that there were a variety of different subjects that Congress should have the power to regulate for the nation's betterment. If Congress believes that federal law enforcement officers should have the ability to make arrests for the violation of state law committed on federal land or property—as Congress concluded in 1825 and has found needful ever since—the Necessary and Proper Clause empowers Congress to incorporate state criminal law for that limited purpose. That rationale applies here too. If Congress believes that federal immigration agents need to be able to make arrests, with or without an arrest warrant, to take custody of an alien for the commission of a state-law crime, Congress should be free to invoke the same Necessary and Proper Clause to achieve a clearly legitimate federal law enforcement goal.

To be sure, Congress lacks the power to make all ordinary street crimes federal offenses, because it lacks the general "police power" necessary to adopt a penal code like the ones that exist in the 50 states. But Congress can do just that for all property it owns within the geographic boundaries of any one of those states, and Congress may use the criminal law to protect any one of the other sources of federal authority specified in Article I, Section 8. Justice Stephen Breyer made that point clear in *United States v. Comstock*:

> [T]he Constitution, which nowhere speaks explicitly about the creation of federal crimes beyond those related to "counterfeiting," "[t]reason," or "Piracies and Felonies committed on the high Seas" or "against the Law of Nations," Art. I, § 8, cls. 6, 10; Art. III, § 3, nonetheless grants Congress broad authority to create such crimes.... And Congress routinely exercises its authority to enact criminal laws in furtherance of, for example, its enumerated powers to regulate interstate and foreign commerce, to enforce civil rights, to spend funds for the general welfare, to establish federal courts, to establish post offices, to regulate bankruptcy, to regulate naturalization, and so forth...[such as] 8 U.S.C. §§ 1324–1328 (immigration crimes).[58]

Justice Breyer's rationale fully applies when the goal is to enforce the federal immigration laws; in fact, his last example makes that point explicitly. It might be that federal immigration agents would not need to invoke this arrest power in jurisdictions that are willing to cooperate with ICE. In those cases, the federal and state law enforcement authorities would work together in a complementary manner, just as they do in the vast number of instances where politics has not infected the enforcement of federal law. In sanctuary jurisdictions, however, ICE might not be able to rely on the assistance of state and local partners. When that is true, the statute proposed here would allow the federal government to overcome many of the obstacles that the states and localities might place in the road.

Proposal 2: Congress should pass a statute authorizing federal district court judges to issue deportation detainers and punishing as contempt of court any state or local official who refuses to comply with an immigration detainer or who orders a state or local official not to comply with such a detainer.

State and local law enforcement officers often come into contact with illegal aliens in the course of responding to or investigating a state-law offense. Ordinarily, when a police officer learns that a particular arrestee is a potentially removable party, the officer (or someone else in his department) will contact ICE to let them know that they now have custody of a

person subject to possible deportation. ICE will then issue to the relevant state or local agency (including jails, prisons, and the like) an "immigration detainer"—viz., a notice that the federal government seeks custody of a potentially removable party and a request that the custodial agency maintain custody of the sought-after individual, potentially for 48 hours, so that ICE can make arrangements to accept a transfer of custody.[59] Judicial approval of a detainer is not required.

Sanctuary jurisdictions, however, disrupt that interagency cooperation, often by prohibiting state or local agencies from releasing an alien into ICE's custody or informing ICE that an arrestee will be released and when. That refusal prevents ICE from completing its mission and protecting the public in the process.

One remedy is the following: Rather than have only an executive branch agency issue detainers, Congress could empower U.S. district courts also to issue them and deem knowing noncompliance as a contempt of court or make it a felony under federal law. That authorization would not require ICE to obtain judicial authorization in a jurisdiction that would honor its requests, but it would be a "necessary and proper" tool to prevent the quiet release of potentially removable aliens in a sanctuary jurisdiction.

One additional feature of such a law would be "necessary and proper"—in fact, it would be invaluable. To ensure that the most senior executive official in the relevant state or locality cannot try to pawn off the responsibility—and any punishment for noncompliance—onto a lower-level official, such as a supervisor at a local jail, the statute should make it clear that the responsibility for compliance *and* the penalty for noncompliance fall upon the relevant senior executive branch official, to include parties such as the chief of police; police commissioner or superintendent; sheriff; head of the state or local department of criminal investigations, homeland security, or corrections; mayor; and governor. Making those parties duty-bound to comply with federal law would enable a federal district court in a contempt proceeding, or the U.S. Attorney General or local U.S. Attorney in a criminal prosecution, to enforce ICE detainers by holding any and all obstructive parties accountable for their interference with ICE's responsibilities through the court's civil contempt power or in a criminal prosecution for contempt.

Proposal 3: Congress should pass a statute expressly preempting any and every state or local law, of whatever type, that bars state and local officials from complying with an immigration detainer or from supplying information to DHS regarding the whereabouts and release date of any alien in state or local custody.

A final option is for Congress to exercise its authority under the Article I Naturalization and Necessary and Proper Clauses expressly to preempt any and all state laws that interfere with ICE's ability to enforce judicially issued detainers.[60]

The Article VI Supremacy Clause provides that the Constitution, federal statutes, and treaties constitute "the supreme Law of the Land; and the Judges in every State shall be bound thereby," regardless of any state law provision to the contrary.[61] Preemption can be implied when the breadth and complexity of congressional regulation in a particular area indicate that Congress intended to exhaust the regulatory field, and preemption also exists whenever federal and state law expressly conflict or state law raises an obstacle to achieving Congress's purposes.[62] In such cases, where the issue is whether Congress has impliedly preempted state law, the courts must engage in a sometimes intricate analysis of the text, purpose, and effect of relevant federal and state laws to determine whether the Supremacy Clause requires that state law must give way.

Congress, however, can always make its intent clear, and it would be valuable for Congress to do so here. Expressly stating that no state may interfere with the ability of ICE to obtain, or of a court to issue and enforce, a detainer would avoid the needless debate and litigation over the potentially numerous permutations of what should be a clearly stated congressional policy: Foreigners have no right to enter this country unlawfully, extralegally, or in any manner other than what federal law provides. Further, aliens become deportable for committing most crimes. The executive branch should and must have the ability to enforce the immigration laws with dispatch.

Would Any (or All) of Those Statutes Violate the States' Tenth Amendment Rights or Federalism Principles?

No.

It is a commonplace that the Framers not only distributed power laterally by separating and vesting federal power in three different branches, but also respected the distinct role of the states in our constitutional framework by distributing power vertically, specifying the powers expressly granted to the federal government while leaving state powers untouched except as necessary to ensure that we have one overall unified structure. For that reason, there are certain limitations on how far Congress may go in assigning responsibilities to the state. For example, Congress cannot direct state legislatures to adopt or refrain from enacting legislation to Congress's liking, as the Supreme Court held in *New York v. United States*[63] and *New Jersey*

Thoroughbred Horsemen's Ass'n v. NCAA.[64] Nor may Congress conscript state officials into executing a federal program as if they were federal officials, as the Court held in *Printz v. United States*.[65]

The legislation proposed here does nothing of the kind. It would expand the range of crimes that federal law enforcement officers may investigate and enforce in order to help federal immigration officials see to the identification, detention, and deportation of parties not entitled to be or remain within this nation. It would expand the jurisdiction of the federal district courts to issue and enforce writs necessary for federal immigration officials to do their jobs. And it would remove state-imposed impediments to the legitimate tasks that Congress has directed the executive branch to see performed to respect the nation's sovereignty.

That last point is of critical importance here. Each of the three cases mentioned above involved a task that was peculiarly state in its nature: passing a state law, refraining from doing that, or using state or local law enforcement officers to implement a federal law enforcement program. None of those cases involved an activity that is an inherent attribute of national sovereignty: namely, the enforcement of our national security and protection of our citizens by deciding which foreigners may and may not cross our borders or remain here. As the Supreme Court has made clear for more than a century, that power—one shared by all nations—"is a fundamental act of sovereignty."[66] Time and again for more than a century, the Court has repeatedly made that point.[67] The protection of our nation's sovereignty is an "inherent executive power,"[68] but its importance is buttressed by the statutes that Congress has passed pursuant to its authority under Article I, Section 8, Clause 4.[69] As the Supreme Court has also acknowledged, "[t]his Court has repeatedly emphasized that 'over no conceivable subject is the legislative power of Congress more complete than it is over' the admission of aliens."[70] Those laws represent Congress's judgments regarding what is necessary to protect the nation's safety and security while still allowing the country to profit from the benefits that entrants can offer.[71]

Besides, all that the proposed federal laws would require the states to do is to notify the federal government of the date, time, and place of the proposed release of a potentially removable alien and not interfere in the ability of immigration agents to perform their duties. Neither of those obligations is new or burdensome. For those reasons, the legislation proposed in this *Legal Memorandum* is not remotely comparable to the statutes held unconstitutional in *New York v. United States*, in *Printz*, and in *New Jersey Thoroughbred Horsemen's Ass'n*.

Conclusion

The sanctuary jurisdiction problem is an effort by politicians to put lead in the saddlebags of ICE special agents while virtue-signaling to their constituencies that they are morally superior to the federal officials responsible for implementing the deportation laws. Those efforts to trip up the federal government should be halted: The lead can be removed, and the virtue-signaling can be ignored. What would aid the federal government's efforts are three laws—or three components of one law—that lift obstacles that sanctuary jurisdictions will continue to throw up to impede the new Administration's policy.

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Appendix

1. The Federal Assimilative Crimes Act, 18 U.S.C. § 13 (West 2025) provides as follows:

(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

(b)(1) Subject to paragraph (2) and for purposes of subsection (a) of this section, that which may or shall be imposed through judicial or administrative action under the law of a State, territory, possession, or district, for a conviction for operating a motor vehicle under the influence of a drug or alcohol, shall be considered to be a punishment provided by that law. Any limitation on the right or privilege to operate a motor vehicle imposed under this subsection shall apply only to the special maritime and territorial jurisdiction of the United States.

(2)(A) In addition to any term of imprisonment provided for operating a motor vehicle under the influence of a drug or alcohol imposed under the law of a State, territory, possession, or district, the punishment for such an offense under this section shall include an additional term of imprisonment of not more than 1 year, or if serious bodily injury of a minor is caused, not more than 5 years, or if death of a minor is caused, not more than 10 years, and an additional fine under this title, or both, if—

(i) a minor (other than the offender) was present in the motor vehicle when the offense was committed; and

(ii) the law of the State, territory, possession, or district in which the offense occurred does not provide an additional term of imprisonment under the circumstances described in clause (i).

(B) For the purposes of subparagraph (A), the term "minor" means a person less than 18 years of age.

(c) Whenever any waters of the territorial sea of the United States lie outside the territory of any State, Commonwealth, territory, possession, or district, such waters (including the airspace above and the seabed and

> subsoil below, and artificial islands and fixed structures erected thereon) shall be deemed, for purposes of subsection (a), to lie within the area of the State, Commonwealth, territory, possession, or district that it would lie within if the boundaries of such State, Commonwealth, territory, possession, or district were extended seaward to the outer limit of the territorial sea of the United States.

The jurisdictional reach of that provision—that is, "the places now existing or hereafter reserved or acquired as provided in section 7," also known as "the special maritime and territorial jurisdiction of the United States"—is set forth in 18 U.S.C. § 7, which provides as follows:

> The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:
>
> **(1)** The high seas, any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof, or to any corporation created by or under the laws of the United States, or of any State, Territory, District, or possession thereof, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.
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> **(2)** Any vessel registered, licensed, or enrolled under the laws of the United States, and being on a voyage upon the waters of any of the Great Lakes, or any of the waters connecting them, or upon the Saint Lawrence River where the same constitutes the International Boundary Line.
>
> **(3)** Any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.
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> **(4)** Any island, rock, or key containing deposits of guano, which may, at the discretion of the President, be considered as appertaining to the United States.
>
> **(5)** Any aircraft belonging in whole or in part to the United States, or any citizen thereof, or to any corporation created by or under the laws of the United States, or any State, Territory, district, or possession thereof, while such aircraft is in flight over the high seas, or over any other waters within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular State.

(6) Any vehicle used or designed for flight or navigation in space and on the registry of the United States pursuant to the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies and the Convention on Registration of Objects Launched into Outer Space, while that vehicle is in flight, which is from the moment when all external doors are closed on Earth following embarkation until the moment when one such door is opened on Earth for disembarkation or in the case of a forced landing, until the competent authorities take over the responsibility for the vehicle and for persons and property aboard.

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

(8) To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.

(9) With respect to offenses committed by or against a national of the United States as that term is used in section 101 of the Immigration and Nationality Act—

(A) the premises of United States diplomatic, consular, military or other United States Government missions or entities in foreign States, including the buildings, parts of buildings, and land appurtenant or ancillary thereto or used for purposes of those missions or entities, irrespective of ownership; and

(B) residences in foreign States and the land appurtenant or ancillary thereto, irrespective of ownership, used for purposes of those missions or entities or used by United States personnel assigned to those missions or entities.

Nothing in this paragraph shall be deemed to supersede any treaty or international agreement with which this paragraph conflicts. This paragraph does not apply with respect to an offense committed by a person described in section 3261(a) of this title.

2. 8 U.S.C. §1357 provides as follows:

(a) Powers without warrant

Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant—

(1) to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States;

(2) to arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation

made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest, but the alien arrested shall be taken without unnecessary delay for examination before an officer of the Service having authority to examine aliens as to their right to enter or remain in the United States;

(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States;

(4) to make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such felony and if there is likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be taken without unnecessary delay before the nearest available officer empowered to commit persons charged with offenses against the laws of the United States; and

(5) to make arrests—

(A) for any offense against the United States, if the offense is committed in the officer's or employee's presence, or

(B) for any felony cognizable under the laws of the United States, if the officer or employee has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony,

if the officer or employee is performing duties relating to the enforcement of the immigration laws at the time of the arrest and if there is a likelihood of the person escaping before a warrant can be obtained for his arrest.

Under regulations prescribed by the Attorney General, an officer or employee of the Service may carry a firearm and may execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. The authority to make arrests under paragraph (5)(B) shall only be effective on and after the date on which the Attorney General publishes final regulations which (i) prescribe the categories of officers and employees of the Service who may use force

(including deadly force) and the circumstances under which such force may be used, (ii) establish standards with respect to enforcement activities of the Service, (iii) require that any officer or employee of the Service is not authorized to make arrests under paragraph (5)(B) unless the officer or employee has received certification as having completed a training program which covers such arrests and standards described in clause (ii), and (iv) establish an expedited, internal review process for violations of such standards, which process is consistent with standard agency procedure regarding confidentiality of matters related to internal investigations.

(b) Administration of oath; taking of evidence

Any officer or employee of the Service designated by the Attorney General, whether individually or as one of a class, shall have power and authority to administer oaths and to take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States, or concerning any matter which is material or relevant to the enforcement of this chapter and the administration of the Service; and any person to whom such oath has been administered, (or who has executed an unsworn declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of Title 28) under the provisions of this chapter, who shall knowingly or willfully give false evidence or swear (or subscribe under penalty of perjury as permitted under section 1746 of Title 28) to any false statement concerning any matter referred to in this subsection shall be guilty of perjury and shall be punished as provided by section 1621 of Title 18.

(c) Search without warrant

Any officer or employee of the Service authorized and designated under regulations prescribed by the Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for denial of admission to the United States under this chapter which would be disclosed by such search.

(d) Detainer of aliens for violation of controlled substances laws

In the case of an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances, if the official (or another official)—

(1) has reason to believe that the alien may not have been lawfully admitted to the United States or otherwise is not lawfully present in the United States,

(2) expeditiously informs an appropriate officer or employee of the Service authorized and designated by the Attorney General of the arrest and of facts concerning the status of the alien, and

(3) requests the Service to determine promptly whether or not to issue a detainer to detain the alien,

the officer or employee of the Service shall promptly determine whether or not to issue such a detainer. If such a detainer is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General shall effectively and expeditiously take custody of the alien.

(e) Restriction on warrantless entry in case of outdoor agricultural operations

Notwithstanding any other provision of this section other than paragraph (3) of subsection (a), an officer or employee of the Service may not enter without the consent of the owner (or agent thereof) or a properly executed warrant onto the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(f) Fingerprinting and photographing of certain aliens

(1) Under regulations of the Attorney General, the Commissioner shall provide for the fingerprinting and photographing of each alien 14 years of age or older against whom a proceeding is commenced under section 1229a of this title.

(2) Such fingerprints and photographs shall be made available to Federal, State, and local law enforcement agencies, upon request.

(g) Performance of immigration officer functions by State officers and employees

(1) Notwithstanding section 1342 of Title 31, the Attorney General may enter into a written agreement with a State, or any political subdivision of a State, pursuant to which an officer or employee of the State or subdivision, who is determined by the Attorney General to be qualified to perform a function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States (including the transportation of such aliens across State lines to detention centers), may carry out such function at the expense of the State or political subdivision and to the extent consistent with State and local law.

(2) An agreement under this subsection shall require that an officer or employee of a State or political subdivision of a State performing a function under the agreement shall have knowledge of, and adhere to, Federal law relating to the function, and shall contain a written certification that

the officers or employees performing the function under the agreement have received adequate training regarding the enforcement of relevant Federal immigration laws.

(3) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State shall be subject to the direction and supervision of the Attorney General.

(4) In performing a function under this subsection, an officer or employee of a State or political subdivision of a State may use Federal property or facilities, as provided in a written agreement between the Attorney General and the State or subdivision.

(5) With respect to each officer or employee of a State or political subdivision who is authorized to perform a function under this subsection, the specific powers and duties that may be, or are required to be, exercised or performed by the individual, the duration of the authority of the individual, and the position of the agency of the Attorney General who is required to supervise and direct the individual, shall be set forth in a written agreement between the Attorney General and the State or political subdivision.

(6) The Attorney General may not accept a service under this subsection if the service will be used to displace any Federal employee.

(7) Except as provided in paragraph (8), an officer or employee of a State or political subdivision of a State performing functions under this subsection shall not be treated as a Federal employee for any purpose other than for purposes of chapter 81 of Title 5 (relating to compensation for injury) and sections 2671 through 2680 of Title 28 (relating to tort claims).

(8) An officer or employee of a State or political subdivision of a State acting under color of authority under this subsection, or any agreement entered into under this subsection, shall be considered to be acting under color of Federal authority for purposes of determining the liability, and immunity from suit, of the officer or employee in a civil action brought under Federal or State law.

(9) Nothing in this subsection shall be construed to require any State or political subdivision of a State to enter into an agreement with the Attorney General under this subsection.

(10) Nothing in this subsection shall be construed to require an agreement under this subsection in order for any officer or employee of a State or political subdivision of a State—

(A) to communicate with the Attorney General regarding the immigration status of any individual, including reporting knowledge that a

particular alien is not lawfully present in the United States; or

(B) otherwise to cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.

(h) Protecting abused juveniles

An alien described in section 1101(a)(27)(J) of this title who has been battered, abused, neglected, or abandoned, shall not be compelled to contact the alleged abuser (or family member of the alleged abuser) at any stage of applying for special immigrant juvenile status, including after a request for the consent of the Secretary of Homeland Security under section 1101(a)(27)(J)(iii)(I) of this title.

Endnotes

1. Lora Ries, *Rising from the Ashes: Principles and Policies for a New American Immigration System*, Heritage Found., Backgrounder No. 3848, at 3, 7 (2024); *see also* Homeland Security Comm., U.S. House of Representatives, *Border Crisis Startling Stats* 2 (Jan. 6, 2025), https://homeland.house.gov/wp-content/uploads/2025/01/November-24-SS.pdf ("Since the beginning of FY2021, there have been more than 11 million encounters nationwide, including over 8.5 million encounters at the Southwest border. By contrast, CBP [U.S. Customs and Border Protection] recorded around 3.1 million encounters nationwide from FY 2017–2020.").
2. *See*, *e.g.,* Steven Malanga, *No, You're Not Imagining a Migrant Crime Spree*, City J., Autumn 2024, https://www.city-journal.org/article/no-youre-not-imagining-a-migrant-crime-spree ("In a 2020 debate with Trump, Biden seemed to encourage an immigration surge, and it followed soon after his election, with about 8 million people, on some estimates, flocking to the U.S. border without applying first for legal entry."); Karl Salzmann, *FLASHBACK: Biden Tells Migrants to "Surge to the Border,"* Wash. Free Beacon, May 10, 2023, https://freebeacon.com/biden-administration/flashback-biden-tells-migrants-to-surge-to-the-border/ ("As a candidate, Joe Biden said that if he were elected president, migrants should 'immediately surge to the border.' The migrants took him up on it.").
3. *See*, *e.g.*, Ries, *supra* note 1, at 2: "Over the decades, the illegal alien population and the immigration benefit application and immigration court case backlogs continued to increase. All the while, the American public continued to differentiate between legal and illegal immigration, supporting the former while opposing—yet accepting some levels of—the latter. When faced with the question of what to do with the millions of illegal aliens already living here, Americans at the same time opposed amnesties while repeating the claim that 11 million illegal aliens could not be deported. The result: just a couple of hundred thousand deportations each year while the remaining, growing population continued to reside here unlawfully and gain greater footholds in the U.S. Enter the Biden–Harris Administration and with it a fundamental transformation of our immigration system. By changing legal terms; twisting and warping statutory requirements; waiving, ignoring, or refusing to enforce laws; and unconstitutionally creating immigration benefits not authorized by Congress, the Biden–Harris Administration has intentionally erased the line between legal and illegal immigration. We can no longer recognize our immigration 'system' because we no longer operate by the rule of law."
4. *Field of Dreams* (Universal Pictures 1989), https://www.youtube.com/watch?v=o3c_pJ_CLJQ.
5. *See infra* notes 17–18 (discussing the issue of whether nonenforcement of the law is tantamount to the suspension of the law, which is prohibited by the Article II Take Care Clause).
6. *See*, *e.g.*, Homeland Security Comm., U.S. House of Representatives, *Border Crisis Startling Stats* 2 (Oct. 22, 2024) [hereafter *Startling Stats October 2024*], https://homeland.house.gov/wp-content/uploads/2024/10/September-24-Startling-Stats.pdf ("Encounters at the northern border [with Canada] surpassed half a million from FY2021–FY2024. NB encounters in FY2024 increased more than 600% compared to FY2021 and surpassed all of FY2021 and FY2022 combined."); *id.* ("Roughly 2 million known gotaways have evaded Border Patrol agents since FY2021," a number that "could be underreported by as much as 20%. Since FY 2021, Border Patrol has recorded 55,106 arrests of aliens with criminal convictions or outstanding warrants nationwide. For comparison, Border Patrol arrested 21,936 from FY2017–FY2021. Data from Immigration and Customs Enforcement (ICE) shows that, as of July 21, 2024, nearly 650,000 criminal illegal aliens were currently on ICE's Non-Detained Docket (NDD) and roaming free in the interior. "). Homeland Security Comm., U.S. House of Representatives, *Border Crisis Startling Stats* 2 (May 16, 2024), https://homeland.house.gov/wp-content/uploads/2024/05/April-24-Startling-Stats.pdf ("So far this year, CBP has arrested 21,963 aliens with criminal convictions or outstanding warrants nationwide, including 295 known gang members, 42 of those being MS-13 members."); Immigration & Customs Enforcement, U.S. Dep't of Homeland Security, *Newsroom* (Feb. 1, 2024), https://www.ice.gov/news/releases/ice-arrests-171-noncitizens-pending-charges-or-convictions-murder-homicide-or-assault ("U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) officers apprehended 171 unlawfully present noncitizens with pending charges or convictions for murder, homicide or assault against children during a nation-wide law enforcement effort that ran from January 16–28, 2024.") (last visited Jan. 6, 2025); *id.* ("In fiscal year (FY) 2023 ERO arrested 73,822 noncitizens with criminal histories; this group had 290,178 associated charges and convictions with an average of four per individual. These included 33,209 assaults; 4,390 sex and sexual assaults; 7,520 weapons offenses; 1,713 charges or convictions for homicide; and 1,655 kidnapping offenses."); Malanga, *supra* note 2 ("[A]fter years of a migrant border 'surge'—with countless asylum-seekers inadequately vetted and then allowed to enter the U.S.—state law-enforcement agencies now warn that immigrant gangs have seized control of many drug- and human-trafficking networks and have unleashed robbery sprees across the nation."). Some have argued that the number of deportations for crime declined after Biden took office, but the Biden Administration changed the criteria for immediate removal to focus only on those illegal aliens who posed an immediate public safety risk. *See* Malanga, *supra* note 2 ("Yet, even as more illegals arrived, removals of those convicted or accused of a crime have dropped.... We have no reason to think that this reflects reduced levels of criminality. Shortly after taking office, in fact, the Biden administration narrowed the criteria for expelling criminal aliens, requiring immigration officials to remove only those deemed an immediate risk to public safety; others, even felony offenders, were permitted to stay. The order also mandated newly extensive investigation of individual cases, which, combined with the border influx, overwhelmed immigration services. The crisis is captured in the numbers: the caseload of immigration-removal operations has soared from about 3 million in 2019 to 6 million under Biden in 2023, while staffing has stayed flat.").
7. *See*, *e.g.*, Andy Newman & Chelsia Rose Marcius, *Suspect Charged in Fatal Burning of Woman on Subway*, N.Y. Times, Dec. 23, 2024, https://www.nytimes.com/2024/12/23/nyregion/fatal-subway-fire.html ("The videos rocketed across social media. A woman stands motionless in the doorway of a subway car as flames engulf her body. A police officer strolls by, as people scream out of frame. [¶] Then a man rises from a subway bench, holding a coat or blanket. He approaches the woman, but instead of trying to smother the flames, he waves the garment at her, appearing to fan them."); Michael Ruiz & Sandy Ibrahim, *Illegal Charged with Lighting Sleeping Woman on Fire Pleads Not Guilty*, Fox News, Jan. 7, 2025, https://www.foxnews.

com/us/illegal-charged-lighting-sleeping-woman-fire-pleads-not-guilty ("Sebastian Zapeta, the Guatemalan man accused of lighting a sleeping subway rider on fire and watching her burn to death on a Brooklyn subway car, pleaded not guilty to murder and arson charges Tuesday.").

8. *See*, *e.g.*, *Startling Stats October 2024*, *supra* note 6, at 1 ("Since the start of FY2021, 64,174 Chinese nationals were apprehended illegally crossing the Southwest border. For comparison, only 5,651 were apprehended from FY17–FY20."); *id.* at 2 ("In March 2024, an illegal alien from Lebanon caught on the border on March 17 admitted to being a Hezbollah terrorist and having intentions of making a bomb. On March 21, 2024, illegal aliens, including over 100 suspected Tren de Aragua gang members [a violent, criminal gang originating in Venezuela], in El Paso rushed the fence and Texas National Guard troops, rioting to get across the border into the U.S.") (paragraphing omitted).
9. *See* U.S. Const. art. II, § 1, cl. 6 ("I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."); *id.* art. II, § 3 ("[The President] shall take Care that the Laws be faithfully executed[.]").
10. U.S. Const. art. II, § 3 (quoted *supra* note 9).
11. U.S. Const. art. I, § 8, cls. 1–18 (defining Congress's powers); *id.* art. II, § 1, cl. 1 ("The executive Power shall be vested in a President of the United States of America."); *id.* art. II, § 12, cl. 1 ("The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States" and "may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices[.]"); *id.* art. II, § 2, cl. 2 ("[The President] shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."); *id.* art. II, § 3 ("[The President] shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.").
12. *See* U.S. Const. art. I, § 9, cl. 7 ("No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time."). There are other reasons at work as well. *See*, *e.g.*, Heckler v. Chaney, 470 U.S. 821, 831–32 (1985) ("This Court has recognized on several occasions over many years that an agency's decision not to prosecute or enforce, whether through civil or criminal process, is a decision generally committed to an agency's absolute discretion.... This recognition of the existence of discretion is attributable in no small part to the general unsuitability for judicial review of agency decisions to refuse enforcement. [¶] The reasons for this general unsuitability are many. First, an agency decision not to enforce often involves a complicated balancing of a number of factors which are peculiarly within its expertise. Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all. An agency generally cannot act against each technical violation of the statute it is charged with enforcing. The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.").
13. *See* United States v. Texas, 599 U.S. 670, 678 (2023) ("Under Article II, the Executive Branch possesses authority to decide how to prioritize and how aggressively to pursue legal actions against defendants who violate the law.") (citation and punctuation omitted); *see also*, *e.g.*, United States v. Armstrong, 517 U.S. 456, 464 (1996); Wayte v. United States, 470 U.S. 598, 607–08 (1985); United States v. Goodwin, 457 U.S. 368, 380 n.11 (1982) (all noting that the Attorney General has "broad discretion" to decide how best to enforce federal criminal law).
14. The assumption likely flowed from the Framers' belief that George Washington would be the first President and that his successors would possess the same virtuous character. *See* Jack Rakove, Original Meanings: Politics and Ideas in the Making of the Constitution 244 (1996).
15. *See* Paul J. Larkin, *Wholesale-Level Clemency: Reconciling the Pardon and Take Care Clauses*, 19 Univ. St. Thomas L.J. 534, 545–46 (2023).
16. As Justice Hugo Black explained in *Youngstown Sheet & Tube Co. v. Sawyer*, "[i]n the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker." 343 U.S. 579, 587 (1952).
17. *See* Larkin, *supra* note 15, at 545–46 (footnotes and punctuation omitted): "Suspension first grew into a serious dispute while Elizabeth I was queen when she granted (or sold) commercial monopolies to favored parties. The conflict became most acute when James II sought to appoint Catholics to positions in the government and the army in the teeth of a parliamentary law limiting those positions to members of the Church of England, a policy calculated by everyone except James himself to arouse fear and hostility in his subjects' hearts. When the controversy reached its boiling point, James II fled the country to escape the fate of his brother Charles I, who had been beheaded. Parliament invited William of Orange and Mary to assume the Crown on the condition that they disavow any power of suspension, which they did. To secure its victory against descendants of William and Mary who might seek to restore a suspensory authority, Parliament enacted the Bill of Rights of 1689, which barred the Crown from suspending the law without Parliament's authorization. The result was that Parliament won the battle over what in Latin was known as *non obstante* authority—viz., the power to act in the teeth of a law of Parliament."
18. *See* Larkin, *supra* note 15, at 545–46, 551 (footnotes omitted; emphasis in original): "Little discussed at the Convention of 1787 or in the *Federalist Papers,* the Take Care Clause, according to the Supreme Court, serves a variety of purposes. It identifies the President as the federal government's chief law enforcement officer. It simultaneously reflects the assignment of lawmaking powers to Congress by limiting the President's role to managing the execution of the laws. It allows the President the discretion to decide the who, what, when, where, why, and how questions of law enforcement.... Did the Article

ll Take Care Clause incorporate a suspensory limitation on presidential power? Unlike the restriction that the English Bill of Rights expressly imposed on the Crown, the text of the Take Care Clause does not in terms deny the President a suspension power. That would appear to foreclose the argument that the Take Care Clause forbids the suspension of the law. Nonetheless, there is a powerful case that such a ban is implicit in the clause's command that the President '*shall* take Care that the Laws be faithfully executed,' as several commentators have concluded. [¶] Constitutional history, text, and reason make a strong case for the absence of a suspension power."); *id.* at 551–60 (discussing why "history, text, and reason" bar a President from suspending the law).

19. Two years ago, the Supreme Court speculated that judicial review might be available in an extraordinary case. *See* United States v. Texas, 599 U.S. 670, 682–83 (2023) ("[T]he standing calculus might change if the Executive Branch wholly abandoned its statutory responsibilities to make arrests or bring prosecutions. Under the Administrative Procedure Act, a plaintiff arguably could obtain review of agency non-enforcement if an agency 'has consciously and expressly adopted a general policy that is so extreme as to amount to an abdication of its statutory responsibilities.'... So too, an extreme case of non-enforcement arguably could exceed the bounds of enforcement discretion and support Article III standing. But the States have not advanced a[n]...abdication argument in this case or argued that the Executive has entirely ceased enforcing the relevant statutes. Therefore, we do not analyze the standing ramifications of such a hypothetical scenario.") (footnotes and punctuation omitted). That "hypothetical scenario" is like Bigfoot: There have been reports of sightings, but no such creature has ever been proven to exist.
20. 410 U.S. 614, 619 (1973).
21. 599 U.S. 670, 677 (2023).
22. *Id.* at 680.
23. *See* U.S. Const. art. I, § 2, cl. 4 (granting the House of Representatives "the sole Power of Impeachment"); *id.* art. I, § 3, cl. (granting the Senate "the sole Power to try all Impeachments"); *id.* art. II, § 1, cl. 1 (limiting a President's term of office to four years); amend. XXII, § 1 (limiting the number of terms a President may hold).
24. Cong. Rec. S2807 (Apr. 17, 2024); *see id.* at S2800–22; Letter from Speaker of the House of Representatives Mike Johnson to Senate Majority Leader Charles E. Schumer Regarding the House-Passed Articles of Impeachment Against Department of Homeland Security Secretary Alejando Mayorkas (Mar. 28, 2024), https://www.speaker.gov/wp-content/uploads/2024/05/wp-content-uploads-2024-03-schumer-letter-from-impeachment-managers.pdf; Luke Broadwater, *Senate Dismisses Impeachment Charges Against Mayorkas Without a Trial*, N.Y. Times, Apr. 17, 2024, https://www.nytimes.com/2024/04/17/us/politics/senate-alejandro-mayorkas-impeachment-charge.html?searchResultPosition=1.
25. *See*, *e.g.*, Elon Musk, *X*, Oct. 25, 2024, https://x.com/elonmusk/status/1849718117297246377?mx=2 ("The Dems have imported massive numbers of illegals to swing states. Triple digit increases over the past 4 years! Their STATED plan is to give them citizenship as soon as possible, turning all swing states Dem. America would then become a one-party, deep blue socialist state.") (paragraphing omitted).
26. *See*, *e.g.*, *Day One We're Going to Prioritize Public Safety Threats, Says Incoming Tom Homan*, Fox News, Jan. 6, 2025, https://www.foxnews.com/video/6366755498112; Priscilla Alvarez & Phil Mattingly, *Mass Detention and Returning Migrants to Mexico: Trump's Plans on Immigration Are Coming into Focus*, CNN, Nov. 16, 2024, https://www.cnn.com/2024/11/16/politics/donald-trump-immigration-plans/index.html ("The people shaping operational plans are well versed on the immigration system, particularly Homan, who was also the architect of family separation. He's repeatedly stressed that operations will be targeted and focused on public safety and national security threats."); Patrick Terpstra, *Trump's Mass Deportation Plan Targets Specific Groups of Immigrants*, Scripps News, Nov. 20, 2024, https://www.scrippsnews.com/scripps-news-investigates/trumps-mass-deportation-plan-targets-specific-groups-of-immigrants ("[President elect Trump's 'Border Czar' Tom] Homan said the new Trump administration will prioritize deporting unauthorized immigrants with a criminal past. [¶] 'It's going to be public safety threats and national security threats (that) will be the priority,' Homan said.").
27. *See* Paul J. Larkin, Jr., Essay: *A New Law Enforcement Agenda for a New Attorney General*, 17 Geo. J.L. & Pub. Pol'y 231, 239 (2019) ("More than thirty federal agencies are authorized to investigate crimes, execute search warrants, serve subpoenas, make arrests, and carry firearms—the functions traditionally associated with being a law enforcement officer.") (footnote omitted); *e.g.*, 18 U.S.C. § 3052 (West 2025) (FBI agents); 18 U.S.C. § 3053 (U.S. Marshals and deputy marshals); 28 U.S.C. §§ 564, 566(c)–(d) (West 2025) (same); 18 U.S.C. § 3056 (West 2025) (U.S. Secret Service agents). *See generally* Gov't Accountability Office, Federal Law Enforcement: Survey of Federal Civilian Law Enforcement Functions and Authorities (2006), http://www.gao.gov/new.items/d07121.pdf [https://perma.cc/KP4E-QGU9].
28. Bureau of Justice Statistics, Off. of Justice Programs, U.S. Dep't of Justice, *Federal Law Enforcement Officers, 2020—Statistical Tables*, NCJ No. 304752, at 1 (Rev. Sept. 29, 2023), https://bjs.ojp.gov/document/fleo20st.pdf (last accessed Jan. 6, 2025).
29. Homeland Security Investigations, U.S. Immigration & Customs Enforcement, Criminal Investigator (2024), https://www.ice.gov/careers/criminal-investigator (last accessed Jan. 6, 2025).
30. Bureau of Justice Statistics, Off. of Justice Programs, U.S. Dep't of Justice, *Census of State and Local Law Enforcement Agencies, 2018—Statistical Tables*, NCJ 302187, at 1 (Oct. 2022), https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/csllea18st.pdf (last accessed Jan. 6, 2025).
31. Jessica Vaughn & Bryan Griffith, *Map: Sanctuary Cities, Counties, and States*, Cntr. for Immigration Studies (Nov. 1, 2024), https://cis.org/Map-Sanctuary-Cities-Counties-and-States; *see*, *e.g.*, Adam Shaw, *Border State Governor Vows to Defy Trump's "Misguided" Mass Deportation Push*, Fox News, Nov. 19, 2024, https://www.foxnews.com/politics/border-state-governor-vows-defy-trumps-misguided-mass-deportation-push ("[Arizona Governor Katie Hobbs] is the latest Democratic official to promise not to assist the Trump administration with deportations. Earlier this week, Boston Mayor Michelle Wu said the sanctuary city would not be cooperating with the deportation operation, after Mass. Gov. Maura Healey has promised to use 'every tool in the toolbox' to protect residents.").

32. Vaughn & Griffith, *supra* note 31; *see*, *e.g.*, WEST'S ANN. CAL. GOV. CODE ch. 17.1, §§ 7282–7282.5 (2025).
33. *See*, *e.g.*, U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."); Jacobson v. Massachusetts, 197 U.S. 11, 25 (1905) (noting that each state possesses "the police power—a power which the State did not surrender when becoming a member of the Union under the Constitution," which includes "such reasonable regulations established directly by legislative enactment as will protect the public health and the public safety").
34. *See*, *e.g.*, United States v. Morrison, 529 U.S. 598, 618 (2000); United States v. Lopez, 514 U.S. 549, 552, 564, 566 (1995); Hamilton v. Ky. Distilleries & Warehouse Co., 251 U.S. 146, 156 (1919) ("That the United States lacks the police power, and that this was reserved to the States by the Tenth Amendment, is true."); McCulloch v. Maryland, 17 U.S. 316, 405 (1819) ("This [federal] government is acknowledged by all to be one of enumerated powers."); THE FEDERALIST PAPERS No. 45, at 292–93 (James Madison) (Clinton Rossiter ed., 1961) ("The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite.").
35. *Morrison*, 529 U.S. at 618.
36. Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 426, 428 (1821).
37. *See*, *e.g.*, U.S. CONST. art. I, § 8, cl. 17 ("To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings[.]"); Palmore v. United States, 411 U.S. 389, 397 (1973) ("Art. I, § 8, cl. 17, of the Constitution provides that Congress shall have power '[t]o exercise exclusive Legislation in all Cases whatsoever, over' the District of Columbia. The power is plenary. Not only may statutes of Congress of otherwise nationwide application be applied to the District of Columbia, but Congress may also exercise all the police and regulatory powers which a state legislature or municipal government would have in legislating for state or local purposes. Congress 'may exercise within the District all legislative powers that the legislature of a state might exercise within the State....'").
38. *See*, *e.g.*, U.S. CONST. art. IV, § 3, cl. 2 ("The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."); United States v. Vaello Madero, 596 U.S. 159, 162 (2022) ("Exercising that authority, Congress sometimes legislates differently with respect to the Territories, including Puerto Rico, than it does with respect to the States. That longstanding congressional practice reflects both national and local considerations. In tackling the many facets of territorial governance, Congress must make numerous policy judgments that account not only for the needs of the United States as a whole but also for (among other things) the unique histories, economic conditions, social circumstances, independent policy views, and relative autonomy of the individual Territories."); Simms v. Simms, 175 U.S. 162, 168 (1899) ("In the territories of the United States, Congress has the entire dominion and sovereignty, national and local, Federal and state, and has full legislative power over all subjects upon which the legislature of a state might legislate within the state[.]"); Shively v. Bowlby, 152 U.S. 1, 48 (1894) ("By the constitution, as is now well settled, the United States, having rightfully acquired the territories, and being the only government which can impose laws upon them, have the entire dominion and sovereignty, national and municipal, federal and state, over all the territories, so long as they remain in a territorial condition.").
39. *See*, *e.g.*, Kleppe v. New Mexico, 426 U.S. 529, 535–36 (1976 ("The Property Clause of the Constitution provides that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. Const., Art. IV, § 3, cl. 2. ("Congress determined to preserve and protect the wild free-roaming horses and burros on the public lands of the United States. The question under the Property Clause is whether this determination can be sustained as a 'needful' regulation 'respecting' the public lands. In answering this question, we must remain mindful that, while courts must eventually pass upon them, determinations under the Property Clause are entrusted primarily to the judgment of Congress."); *id.* at 540–41 ("[O]ver public land within the States, the general government doubtless has a power over its own property analogous to the police power of the several states, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case.... In short, Congress exercises the powers both of a proprietor and of a legislature over the public domain.... Although the Property Clause does not authorize an exercise of a general control over public policy in a State, it does permit an exercise of the complete power which Congress has over particular public property entrusted to it.") (citations and punctuation omitted); United States v. City & Cnty. of San Francisco, 310 U.S. 16, 29–30 (1940) ("The power over the public land thus entrusted to Congress is without limitations. And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.") (footnotes and punctuation omitted); McKelvey v. United States, 260 U.S. 353, 359 (1922) ("It is firmly settled that Congress may prescribe rules respecting the use of the public lands. It may sanction some uses and prohibit others, and may forbid interference with such as are sanctioned.... The provision now before us is but an exertion of that power. It does no more than to sanction free passage over the public lands and to make the obstruction thereof by unlawful means a punishable offense.") (citations omitted); Camfield v. United States, 167 U.S. 518, 525 (1897) ("The general government doubtless has a power over its own property analogous to the police power of the several states, and the extent to which it may go in the exercise of such power is measured by the exigencies of the particular case.").
40. In each instance, it does not matter whether the federal government exercises exclusive or concurrent jurisdiction over intrastate property, such as a military base or government office building. In either case, Congress may exercise plenary legislative authority. *See*, *e.g.*, *Kleppe*, 426 U.S. at 542–43 ("Congress may acquire derivative legislative power from a State pursuant to Art. I, § 8, cl. 17 of the Constitution by consensual acquisition of land, or by nonconsensual acquisition followed by the State's subsequent cession of legislative authority over the land.... In either case, the legislative jurisdiction acquired may range from exclusive federal jurisdiction with no residual state police power...to concurrent, or partial, federal legislative jurisdiction, which may allow the State to exercise certain authority.... But while Congress can acquire exclusive or partial jurisdiction over lands within a State by the State's consent or cession, the presence or absence of such jurisdiction has nothing to do with Congress' powers under the Property

Clause. Absent consent or cession a State undoubtedly retains jurisdiction over federal lands within its territory, but Congress equally surely retains the power to enact legislation respecting those lands pursuant to the Property Clause.... And when Congress so acts, the federal legislation necessarily overrides conflicting state laws under the Supremacy Clause.... A different rule would place the public domain of the United States completely at the mercy of state legislation.") (citations, footnote, and punctuation omitted).

41. An Act More Effectually to Provide for the Punishment of Certain Crimes against the United States, and for Other Purposes, Act of Mar. 3, 1825, § 3, 4 Stat. 115, 115 ("That, if any offence shall be committed in any of the places aforesaid [in §§ of the act], the punishment of which offence is not specially provided for by any law of the United States, such offence shall, upon a conviction in any court of the United States having recognisance thereof, be liable to, and receive the same punishment as the laws of the state in which such fort, dock-yard, navy-yard, arsenal, armory, or magazine, or other place, ceded as aforesaid, is situated, provide for the like offence when committed within the body of any county of such state.").

42. *See* United States v. Press Pub. Co., 219 U.S. 1, 10–11 (1911) (quoted *infra* note 44).

43. For later readoptions of that 1825 act, see Act of April 5, 1866, ch. 24, § 2, 14 Stat. 13; Act of July 7, 1898, ch. 576, § 2, 30 Stat. 717 (codified at Revised Statutes § 5391 (1901)); Act of March 4, 1909, ch. 321, § 289, 35 Stat. 1145; Act of June 15, 1933, ch. 85, 48 Stat. 152; Act of June 20, 1935, ch. 284, 49 Stat. 394; Act of June 6, 1940, ch. 241, 54 Stat. 234; United States v. Sharpnack, 355 U.S. 286, 290 (1958); Note, *The Federal Assimilative Crimes Act,* 70 Harv. L. Rev. 685 (1957). The current version of the Federal Assimilative Crimes Act can be found at 18 U.S.C. § 13 (West 2025) and is reprinted in the Appendix to this *Legal Memorandum*.

44. *See Press Pub. Co.*, 219 U.S. at 10–11 ("The basis of the 3d section of the act of 1825 was the 11th section of a bill drawn by Mr. Justice Story, and of such 11th section its author said (Life of Justice Story, Boston, 1851, vol. 1, p. 293): 'This is the most important section of the whole bill. The criminal Code of the United States is singularly defective and inefficient.... Few, very few, of the practical crimes (if I may so say) are now punishable by statutes, and if the courts have no general common-law jurisdiction (which is a vexed question), they are wholly dispunishable. The state courts have no jurisdiction of crimes committed on the high seas, or in places ceded to the United States. Rapes, arsons, batteries, and a host of other crimes may in these places be now committed with impunity. Suppose a conspiracy to commit treason in any of these places, by civil persons, how can the crime be punished? These are cases where the United States have an exclusive local jurisdiction. And can it be less fit that the government should have power to protect itself in all other places where it exercises a legitimate authority? That Congress has power to provide for all crimes against the United States is incontestable.'").

45. *See supra* text accompanying notes 34–37.

46. That was uncertain when Story drafted the bill, *see* Gary D. Rowe, Note, *The Sound of Silence:* United States v. Hudson & Goodwin*, the Jeffersonian Ascendancy, and the Abolition of Federal Common Law Crimes*, 101 Yale L.J. 919 (1992); *supra* note 44, but the Supreme Court later resolved it by ruling that only Congress may create a federal offense. *See* United States v. Hudson, 11 U.S. (7 Cranch) 32 (1812).

47. U.S. Const. art. I, § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States[.]"). The Sixteenth Amendment, which empowers Congress to create a federal income tax, supplements that authority.

48. U.S. Const. art. I, § 8, cl. 12 ("[The Congress shall have Power to] raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years[.]); *id.* art. I, § 8, cl. 13 ("[The Congress shall have Power to] provide and maintain a Navy [.]"); *id.* art. I, § 8, cl. 14 ("[The Congress shall have Power to] make Rules for the Government and Regulation of the land and naval Forces[.]"); *see*, *e.g.*, Solorio v. United States, 483 U.S. 435, 438–39 (1987) ("The Constitution grants to Congress the power '[t]o make Rules for the Government and Regulation of the land and naval Forces.' U.S. Const., Art. I, § 8, cl. 14. Exercising this authority, Congress has empowered courts-martial to try servicemen for the crimes proscribed by the [Uniform Code of Military Justice].... In an unbroken line of decisions from 1866 to 1960, this Court interpreted the Constitution as conditioning the proper exercise of court-martial jurisdiction over an offense on one factor: the military status of the accused.").

49. U.S. Const. art. I, § 8, cl. 6 ("[The Congress shall have Power to] provide for the Punishment of counterfeiting the Securities and current Coin of the United States."); *see*, *e.g.*, Regan v. Time, Inc., 468 U.S. 641, 643, 656 (1984) (noting that "[p]ursuant to that authority, Congress enacted two statutes that together restrict the use of photographic reproductions of currency. 18 U.S.C. § 474, ¶ 6, and 18 U.S.C. § 504" and upholding those statutes over a First Amendment Free Speech Clause challenge based on "the Government's concededly compelling interest in preventing counterfeiting").

50. U.S. Const. art. I, § 8, cl. 7 ("[The Congress shall have Power to] establish Post Offices and post Roads[.]"); *see*, *e.g.*, United States v. Kokinda, 497 U.S. 720 (1990) (holding that U.S. Postal Service regulations prohibiting "[s]oliciting alms and contributions, campaigning for election to any public office, collecting private debts, commercial soliciting and vending, and displaying or distributing commercial advertising on postal premises" did not violate the Free Speech Clause in that case); *Ex parte* Rapier, 143 U.S. 110, 134 (1892) ("The states, before the Union was formed, could establish post-offices and postroads, and in doing so could bring into play the police power in the protection of their citizens from the use of the means so provided for purposes supposed to exert a demoralizing influence upon the people. When the power to establish post offices and post-roads was surrendered to the congress, it was as a complete power; and the grant carried with it the right to exercise all the powers which made that power effective. It is not necessary that congress should have the power to deal with crime or immorality within the states in order to maintain that it possesses the power to forbid the use of the mails in aid of the perpetration of crime or immorality."); *Ex parte* Jackson, 96 U.S. 727, 728 (1877) ("The power vested in Congress 'to establish post-offices and post-roads' has been practically construed, since the foundation of the government, to authorize not merely the designation of the routes over which the mail shall be carried, and the offices where letters and other documents shall be received to be distributed or forwarded, but the carriage of the mail, and all measures necessary to secure its safe and speedy transit, and the prompt delivery of its contents.").

51. *See*, *e.g.*, United States v. Comstock, 560 U.S. 126, 133–34, 135–36 (2010) (quoted *infra* note 52); *Rapier*, 143 U.S. at 134 (quoted *supra* note 50); Dynes v. Hoover, 61 U.S. (20 How.) 65 (1857) (upholding Congress's power to use a non–Article III court-martial to try members of the military for crimes).

52. U.S. Const. art. I, § 8, cl. 18 ("[The Congress shall have Power to] make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."); *see*, *e.g.*, *Comstock*, 560 U.S. at 135–36 ("[T]he Constitution, which nowhere speaks explicitly about the creation of federal crimes beyond those related to 'counterfeiting,' '[t]reason,' or 'Piracies and Felonies committed on the high Seas' or 'against the Law of Nations,' Art. I, § 8, cls. 6, 10; Art. III, § 3, nonetheless grants Congress broad authority to create such crimes. See [McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 416 (1819)]) ('All admit that the government may, legitimately, punish any violation of its laws; and yet, this is not among the enumerated powers of Congress'); see also *United States v. Fox,* 95 U.S. 670, 672 (1878). And Congress routinely exercises its authority to enact criminal laws in furtherance of, for example, its enumerated powers to regulate interstate and foreign commerce, to enforce civil rights, to spend funds for the general welfare, to establish federal courts, to establish post offices, to regulate bankruptcy, to regulate naturalization, and so forth. Art. I, § 8, cls. 1, 3, 4, 7, 9; Amdts. 13–15."); *id*. at 133–34 (noting that "the Necessary and Proper Clause makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are 'convenient, or useful' or 'conducive' to the authority's 'beneficial exercise'"; that the term "necessary" does not mean "'absolutely necessary'") (quoting McCulloch, v. 17 U.S. (4 Wheat.) at 413–15, 418)). Judicial review of Congress's choice is quite narrow and equally limited. The Constitution generally "'leaves to Congress a large discretion as to the means that may be employed in executing a given power.'" *Comstock*, 560 U.S. at 135 (quoting Lottery Case, 188 U.S. 321, 355 (1903)). The only question for a court is "whether the statute constitutes a means that is rationally related to the implementation of a constitutionally enumerated power," *Comstock*, 560 U.S. at 134, "'whether the means chosen are 'reasonably adapted' to the attainment of a legitimate end under the commerce power' or under other powers that the Constitution grants Congress the authority to implement." *Id*. at 135 (quoting Gonzales v. Raich, 545 U.S. 1, 37 (2005)).

53. U.S. Const. art. I, § 8, cl. 4.

54. *See* 8 U.S.C. §§ 1324 (smuggling or harboring illegal aliens); 1324a(f) (engaging in a pattern or practice of hiring or employing illegal aliens); 1324c(e) & (f) (document fraud); 1325(c) (marriage fraud) & (d) (establishing a commercial enterprise to evade the immigration laws); 1326 (re-entry of removed aliens); 1327 (knowingly assisting in the re-entry or certain illegal aliens); 1328 (importing an alien "for the purpose of prostitution, or for any other immoral purpose"); 1329 (granting the U.S. District Courts "jurisdiction of all causes, civil and criminal, brought by the United States that arise under the provisions of this subchapter"); *infra* text accompanying note 58.

55. 8 U.S.C. § 1357 (West 2025). That law is reprinted in the Appendix to this *Legal Memorandum*.

56. *See*, *e.g.*, 18 U.S.C. § 3052 (2018) (FBI agents); *id*. § 3053 (U.S. Marshals and Deputy Marshals); *id*. § 3056 (2018) (U.S. Secret Service agents); Gov't Accountability Office, Federal Law Enforcement: Survey of Federal Civilian Law Enforcement Functions and Authorities (2006), http://www.gao.gov/new.items/d07121.pdf [https://perma.cc/KP4E-QGU9].

57. *See* United States v. Sharpnack, 355 U.S. 286 (1958).

58. 560 U.S. 126, 136 (2010) (citations omitted).

59. 8 C.F.R. § 287.7(a) (West 2025) ("A detainer serves to advise another law enforcement agency that the Department seeks custody of an alien presently in the custody of that agency, for the purpose of arresting and removing the alien. The detainer is a request that such agency advise the Department, prior to release of the alien, in order for the Department to arrange to assume custody, in situations when gaining immediate physical custody is either impracticable or impossible.") & (d). Only certain ICE officers may issue detainers. *Id*. § 287.7(b). Authority to issue a detainer stems from 8 U.S.C. §§ 1103, 1182, 1225, 1226, and 1357. Of course, insofar as immigration detainers are merely communications among law enforcement agencies, no authorization would be necessary.

60. Congress should also create a cause of action authorizing the U.S. Attorney General to bring an action in federal district court to have state impediments declared preempted.

61. U.S. Const. art. VI, cl. 2.

62. *See*, *e.g.*, Oneok, Inc. v. Learjet, Inc., 575 U.S. 373, 376–77 (2015); Geier v. American Honda Motor Co., 529 U.S. 861, 869–86 (2000); Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

63. 505 U.S. 44 (1992) (holding unconstitutional a federal law directing states to assume "title" to radioactive waste or to regulate the waste as Congress saw fit).

64. 584 U.S. 453 (2018) (holding unconstitutional a federal law prohibiting a state from authorizing sports gambling).

65. 521 U.S. 898 (1997) (holding unconstitutional a federal law that required chief state and local law enforcement officers to conduct background checks on prospective handgun buyers).

66. United States *ex rel*. Knauff v. Shaughnessy, 338 U.S. 537, 542 (1950).

67. *See*, *e.g.*, Trump v. Hawaii, 585 U.S. 667, 702 (2018) ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.") (citation and punctuation omitted); Fiallo v. Bell, 430 U.S. 787, 792 (1977) ("This Court has repeatedly emphasized that over no conceivable subject is the legislative power of Congress more complete than it is over the admission of aliens.... Our cases have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.") (citations and punctuation omitted); Kleindienst v. Mandel, 408 U.S. 753, 762 (1972) ("It is clear that Mandel personally, as an unadmitted and nonresident alien, had no constitutional right of entry to this country as a nonimmigrant or otherwise."); Galvan v. Press, 347 U.S. 522, 530–31 (1954) (Frankfurter, J.) ("The power

of Congress over the admission of aliens and their right to remain is necessarily very broad, touching as it does basic aspects of national sovereignty, more particularly our foreign relations and the national security.... As to the extent of the power of Congress under review, there is not merely 'a page of history,' New York Trust Co. v. Eisner, 256 U.S. 345, 349, but a whole volume. Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. In the enforcement of these policies, the Executive Branch of the Government must respect the procedural safeguards of due process.... But that the formulation of these policies is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government.") (citations omitted); Shaughnessy v. United States *ex rel*. Mezei, 345 U.S. 206, 210 (1953) ("Courts have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control."); *id*. at 211 ("It is true that aliens who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process of law.... But an alien on the threshold of initial entry stands on a different footing: Whatever the procedure authorized by Congress is, it is due process as far as an alien denied entry is concerned.") (citations and punctuation omitted); Harisiades v. Shaughnessy, 342 U.S. 580, 587–88 & n.11 (1952) (collecting cases); *Knauff*, 338 U.S. at 542 ("[A]n alien who seeks admission to this country may not do so under any claim of right. Admission of aliens to the United States is a privilege granted by the sovereign United States Government. Such privilege is granted to an alien only upon such terms as the United States shall prescribe. It must be exercised in accordance with the procedure which the United States provides."); United States *ex rel*. Turner v. Williams, 194 U.S. 279, 289–90 (1904) ("Repeated decisions of this court have determined that Congress has the power to exclude aliens from the United States; to prescribe the terms and conditions of which they may come in; to establish regulations for sending out of the country such aliens as have entered in violation of law, and to commit the enforcement of such conditions and regulations to executive officers; that the deportation of an alien who is found to be here in violation of law is not a deprivation of liberty without due process of law, and that the provisions of the Constitution securing the right of trial by jury have no application."); *id*. (collecting cases so ruling); Lem Moon Sing v. United States, 158 U.S. 538, 541–42 (1895) (citing *Ping* and *Nishimura Ekiu*); Fong Yue Ting v. United States, 149 U.S. 698, 705–07 (1893) (quoting *Ping*); Nishimura Ekiu v. United States, 142 U.S. 651, 659 (1892) ("It is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe.... In the United States this power is vested in the national government, to which the constitution has committed the entire control of international relations, in peace as well as in war. It belongs to the political department of the government, and may be exercised either through treaties made by the president and senate, or through statutes enacted by congress, upon whom the constitution has conferred power to regulate commerce with foreign nations, including the entrance of ships, the importation of goods, and the bringing of persons into the ports of the United States; to establish a uniform rule of naturalization; to declare war, and to provide and maintain armies and navies; and to make all laws which may be necessary and proper for carrying into effect these powers and all other powers vested by the constitution in the government of the United States, or in any department or officer thereof.") (citations omitted); Ping v. United States, 130 U.S. 581, 606–07, 609 (1889) (Chinese Exclusion Case) ("The power of the government to exclude foreigners from the country whenever, in its judgment, the public interests require such exclusion, has been asserted in repeated instances, and never denied by the executive or legislative departments.... The power of exclusion of foreigners being an incident of sovereignty belonging to the government of the United States as a part of those sovereign powers delegated by the constitution, the right to its exercise at any time when, in the judgment of the government, the interests of the country require it, cannot be granted away or restrained on behalf of any one. The powers of government are delegated in trust to the United States, and are incapable of transfer to any other parties. They cannot be abandoned or surrendered. Nor can their exercise be hampered, when needed for the public good, by any considerations of private interest."); *cf*. *Harisiades*, 342 U.S. at 594 (Robert Jackson, J.) (quoting Bugajewitz v. Adams, 228 U.S. 585, 591 (1913) (Holmes, J.)) ("It is thoroughly established that Congress has power to order the deportation of aliens whose presence in the country it deems hurtful. The determination by facts that might constitute a crime under local law is not a conviction of crime, nor is the deportation a punishment; it is simply a refusal by the government to harbor persons whom it does not want. The coincidence of the local penal law with the policy of Congress is an accident.").

68. *See Knauff*, 338 U.S. at 542 ("The exclusion of aliens is a fundamental act of sovereignty. The right to do so stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation.... When Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing an inherent executive power.") (citations omitted).

69. *See*, *e.g.*, *Trump*, 585 U.S. at 684 ("The text of [8 U.S.C.] § 1182(f) states: 'Whenever the President finds that the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States, he may by proclamation, and for such period as he shall deem necessary, suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.' [¶] By its terms, § 1182(f) exudes deference to the President in every clause. It entrusts to the President the decisions whether and when to suspend entry ('[w]henever [he] finds that the entry' of aliens 'would be detrimental' to the national interest); whose entry to suspend ('all aliens or any class of aliens'); for how long ('for such period as he shall deem necessary'); and on what conditions ('any restrictions he may deem to be appropriate'). It is therefore unsurprising that we have previously observed that § 1182(f) vests the President with 'ample power' to impose entry restrictions in addition to those elsewhere enumerated in the INA."); Sale v. Haitian Cntrs. Council, Inc., 509 U.S. 155, 187 (1993) (concluding that it is "perfectly clear" that the President may "establish a naval blockade" to prevent illegal migrants from entering the United States); Oceanic Steam Nav. Co. v. Stranahan, 214 U.S., 320 (1909) ("[O]ver no conceivable subject is the legislative power of Congress more complete than it is over [immigration].").

70. *Fiallo*, 430 U.S. at 792 (quoting *Oceanic Navigation*, 214 U.S. at 339).

71. Nor does an alien's long tenure within this nation stand in the way of his removal. As Justice Robert Jackson wrote, "[t]hat aliens remain vulnerable to expulsion after long residence is a practice that bristles with severities. But it is a weapon of defense and reprisal confirmed by international law as a power inherent in every sovereign state." *Harisiades*, 342 U.S. at 587–88.