Why Sanctuary State Information-Sharing Laws Survive Federal Preemption

by Annabella Lugo[*]

Sanctuary policies have generated substantial legal controversy as states and localities have limited the information they share with federal immigration authorities. At the center of this controversy are federal laws that prohibit state and local governments from restricting the exchange of information regarding citizenship or immigration status. This Contribution argues that these provisions do not preempt state and local sanctuary policies because the statutory text is not sufficiently clear and does not establish Congress's intent to supersede state law. Interpreting these provisions broadly would raise serious anti-commandeering concerns under the Tenth Amendment by compelling state and local officials to administer federal objectives. Courts should therefore resolve this unsettled debate in a manner that preserves state and local authority over information-sharing policies.

In the last year alone, the Department of Justice has filed fifteen lawsuits targeting what it has labeled as "illegal sanctuary policies across the country."[1] States and localities enacted these measures to protect their residents from increasingly stringent enforcement of immigration laws. Their policies rest on the state or locality's control over its law enforcement departments' resources and employees.[2] Sanctuary policies take many forms, but one policy that has garnered significant legal controversy in the past decade is the limitation of information sharing between local or state governments and Immigration and Customs

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[1] Press Release, Department of Justice, Justice Department Files Lawsuit Against Washtenaw County, Michigan for Interfering with Federal Immigration Laws (Apr. 10, 2026).

[2] *See* Raich v. Gonzales, 500 F.3d 850, 867 (9th Cir. 2007) ("Police power is unquestionably an area of traditional state control.").

Enforcement ("ICE"). Opponents of such policies claim that they are preempted by federal statutes such as 8 U.S.C. §§ 1373 and 1644, which prevent state and local governments from prohibiting or restricting their officers from sharing immigration-status information about their residents with ICE.

Preemption is the principle that federal law can displace conflicting state law when the Constitution gives federal law controlling authority.[3] Congress can explicitly or implicitly preempt state law, but courts generally presume that Congress does not intend to displace traditional areas of state authority unless that intent is made sufficiently clear.[4] The Supreme Court has not yet decided whether §§ 1373 and 1644 preempt state law, and this open legal question raises concerns over the separation of powers and state sovereignty.

This Contribution argues that §§ 1373 and 1644 do not preempt state and local laws that limit information sharing with federal immigration authorities. Because the language in §§ 1373 and 1644 is nearly identical, this Contribution will analyze them as one, consistent with court precedent treating the provisions as coextensive.[5] The statutes' plain language does not expressly prohibit states from taking such measures, nor do the statutes demonstrate the necessary intent for implicit preemption. Sections 1373 and 1644 establish no affirmative obligation requiring state or local officials to assist federal immigration enforcement. Interpreting them otherwise would raise serious

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[3] Murphy v. NCAA, 584 U.S. 453, 471 (2018).

[4] *See* Bond v. United States, 572 U.S. 844, 858 (2014) (noting that courts "presume federal statutes do not abrogate state sovereign immunity . . . or preempt state law" unless they are "certain of Congress' intent" otherwise. (internal citations omitted)).

[5] *See* Comcast Corp. v. Nat'l Ass'n. of African American-Owned Media, 589 U.S. 327, 336 (2020) (finding that "[b]ecause § 1982 was also first enacted as part of the Civil Rights Act of 1866 and uses nearly identical language as § 1981, the Court's 'precedents have . . . construed §§ 1981 and 1982 similarly'" (alteration in original) (quoting CBOCS West, Inc. v. Humphries, 553 U.S. 442, 447 (2008))); U.S. v. Illinois, 796 F. Supp. 3d 494, 514–15 (N.D. Ill. 2025) (citing City of Chicago v. Barr, 961 F.3d 882, 888–89 (7th Cir. 2020) [hereinafter *City of Chicago II*] (treating §§ 1373 and 1644 as equivalent); Cnty. of Ocean v. Grewal, 475 F. Supp. 3d 355, 371 n.13 (D.N.J. 2020), *aff'd sub nom.*, Ocean Cnty. Bd. of Comm'rs v. Att'y Gen. of N.J., 8 F.4th 176 (3d Cir. 2021) (same).

constitutional concerns under the Tenth Amendment's anti-commandeering principle.[6] Accordingly, courts should construe §§ 1373 and 1644 narrowly and preserve state and local authority to determine the extent to which their law enforcement resources and personnel participate in federal immigration enforcement.

The language in federal immigration statutes is not sufficiently clear to expressly preempt state law because the language only governs information specifically related to immigration status, whereas the state laws generally prohibit sharing information, such as an individual's release date or personal information including work and home addresses.[7] Federal courts begin with the plain meaning of a federal statute to determine whether a state law is expressly preempted by a federal law.[8] By its plain terms, § 1373(a) provides that government entities or officials "may not prohibit, or in any way restrict, any government entity or official" from sending or receiving "information regarding the citizenship or immigration status, lawful or unlawful, of any individual."[9] The appropriate construction of the "regarding" clause is a narrow one. Courts should not interpret this phrase as a catchall provision encompassing any information even tangentially related to immigration status.[10] Doing so would allow imprecise congressional language to monopolize entire spheres of policymaking best left to local legislatures.

Courts have endorsed this narrow construction. In *U.S. v. Illinois*, the Northern District of Illinois directly addressed this question and held that the federal provisions "only pertain[] to information regarding a person's legal classification under federal law."[11] In other words, the provisions only cover information that can

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[6] *See* 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.").
[7] *See, e.g.*, CAL. GOV'T CODE § 7284.6 (c), (d) (West 2023).
[8] *See, e.g.*, Chamber of Com. of the U.S. v. Whiting, 563 U.S. 582, 600 (2011) (finding that the Immigration Reform and Control Act ("IRCA") does not expressly preempt Arizona's Legal Arizona Workers Act of 2007).
[9] 8 U.S.C. § 1373(a).
[10] *See Illinois*, 796 F. Supp. 3d at 516 (finding that the structure and history of Section 1373 supports a narrow interpretation of the clause that does not include contact information, release dates, or custody status).
[11] *Id.* at 519.

directly establish an individual's status as a U.S. citizen, lawful permanent resident, or undocumented immigrant. The Ninth Circuit also supports this interpretation, finding that the "plain meaning of Section 1373 limits its reach to information strictly pertaining to immigration status . . . and does not include information like release dates and addresses."[12] If this question were to reach the Supreme Court, the Court could hold, on plain language alone, that the federal statutes do not expressly preempt states from legislating on information sharing between state and local law enforcement and federal immigration officers.

Nevertheless, if the Court were to find that the plain language is ambiguous, there is still no basis to conclude that the federal law contains an implied preemptive intent. The Court has recognized two types of implied preemption: conflict and field preemption.[13] Conflict preemption occurs where "compliance with both federal and state regulations is a physical impossibility"[14] or where state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."[15] Field preemption occurs where the federal regulatory scheme is "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it."[16] Notably, implied preemption is a high bar requiring clear intent.[17] Sections 1373 and 1644 do not convey a sufficiently clear preemptive intent to overcome the presumption against preemption.

State laws directing state and local law enforcement to not share information such as prison release dates or residential addresses—which are arguably unrelated to immigration

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[12] U.S. v. California, 921 F.3d 865, 877 (9th Cir. 2019) [hereinafter *California II*] (quoting *U.S. v. California*, 314 F. Supp. 3d 1077, 1102 (E.D. Cal. 2018) [hereinafter *California I*]).

[13] Gade v. Nat'l Solid Wastes Mgmt. Ass'n, 505 U.S. 88, 98 (1992) (citations omitted).

[14] Florida Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142–43 (1963) (citations omitted).

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

[16] Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947) (citations omitted).

[17] *See Whiting*, 563 U.S. at 607 (finding that "a high threshold must be met if a state law is to be preempted for conflicting with the purposes of a federal Act" (quoting *Gade*, 505 U.S. at 110 (Kennedy, J., concurring in part and concurring in the judgment))).

status—do not obstruct the congressional purpose of the federal statute. Thus, these state laws should not be conflict preempted. Congress used the words "prohibit" and "restrict" to prevent state and local governments from erecting direct obstacles that hinder communication between these states or localities and ICE.[18] Sections 1373 and 1644, however, do not create an affirmative duty of compliance.[19] The only affirmative requirement present in either of the federal statutes falls on the Department of Homeland Security, which "shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency."[20] Since Congress demonstrated what an obligation looks like in § 1373(c), the absence of such mandatory language elsewhere in the text indicates the Congress imposed no obligation on the states.

Even if a federal scheme is somewhat frustrated when states opt not to participate in enforcement efforts, this frustration does not establish preemption where the state retains the right to refuse participating in a federal program.[21] The right of refusal is implied when there is no administrative warrant issued by federal authorities and there is no other provision that compels state or local action.[22]

Furthermore, because the federal statutes refer to "information regarding the citizenship or immigration status, lawful or unlawful, of any individual," the most natural interpretation would limit the provisions to information only *directly* related to

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[18] City of New York v. United States, 179 F.3d 29, 35 (2d Cir. 1999) (finding that these federal statutes "prohibit state and local governmental entities or officials only from *directly* restricting the voluntary exchange of immigration information with the [Immigration and Naturalization Service]" (emphasis added)).

[19] *See* 8 U.S.C. §§ 1373, 1644.

[20] 8 U.S.C. § 1373(c).

[21] *California II*, 921 F.3d at 890 (holding that the state there retained the right of refusal and thus the choice to refrain from participation was not conflict preempted).

[22] *See id*. at 887 (distinguishing its opinion from Oregon Prescription Drug Monitoring Program v. DEA, 860 F.3d 1228 (9th Cir. 2017), where the state statute stood as an obstacle to full federal statute implementation by interfering with the methods of goal pursuit).

such status. Thus, in states that explicitly permit the sharing of immigration status with the relevant authorities while restricting the sharing of other information, there is no preemption issue.[23] Interpreting the phrase following "regarding" as including any information even minutely related to ascertaining an individual's immigration status would be erroneous as it would allow federal authorities to ask for virtually any private information about a person.[24] It is implausible that Congress created these statutes as an avenue for unrestrained inquiries into individuals' personal affairs.

Similarly, Congress was not clear enough to preempt the entire field of information sharing.[25] The Court has held that "[f]ederal regulation . . . should not be deemed preemptive of state regulatory power in the absence of persuasive reasons either that the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained."[26] What is at issue in cases with sanctuary policies that limit information sharing is not the federal government's power over naturalization or its power to enforce immigration law. Rather, what is at issue is the decidedly narrow field on which Congress legislated: information sharing *regarding the citizenship or immigration status* of any individual.[27] Sanctuary policies such as California's, which prevent sharing release dates and addresses, do not intrude on this narrow limitation.[28]

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[23] *See, e.g.*, *id*. at 891 (finding that SB 54, in limiting the extent of its disclosure to immigration status, does not conflict with § 1373).

[24] *See id.* at 892 (noting that if the term "regarding" were "taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes preemption would never run its course, for [r]eally, universally, relations stop nowhere." (quoting NY State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co., 514 U.S. 645, 655 (1995) (alteration in original))).

[25] *See* R.J. Reynolds Tobacco Co. v. Durham Cnty., 479 U.S. 130, 140 (1986) (explaining that field preemption is limited to the narrow circumstances where Congress has demonstrated a clear and manifest intent to occupy the entire field of regulation, leaving no room for supplementary state legislation).

[26] De Canas v. Bica, 424 U.S. 351, 356 (1987) (alteration in original) (quoting *Florida Lime & Avocado Growers*, 373 U.S. at 142).

[27] *See* 8 U.S.C. §§ 1373, 1644.

[28] *See, e.g.*, CAL. GOV'T CODE § 7284.6 (c), (d) (West 2023) (prohibiting California law enforcement agencies from using agency money or personnel to provide "information regarding a person's release date or respond[] to requests for

If the Supreme Court were to find that Congress had preemptive intent, that intent would be invalid because it would violate anti-commandeering principles.[29] For a preemption provision to be valid and enforceable, it must regulate private actors, not state actors as §§ 1373 and 1644 do.[30] Additionally, forcing states to comply with §§ 1373 and 1644 intrudes upon the Tenth Amendment's state sovereignty protections.[31] The doctrine regarding state sovereignty and anti-commandeering is well established. The Court in *Printz v. U.S.* held that Congress cannot "compel the [s]tates to enact or enforce a federal regulatory program" nor can it "circumvent that prohibition" by directly conscripting state officers.[32] In *City of Chicago v. Sessions*, the Northern District of Illinois tackled the question of whether conditioning law enforcement grants on local certification of compliance with § 1373 (and later § 1644) violates the Tenth Amendment.[33] It held that § 1373 was facially unconstitutional under the Tenth Amendment's anti-commandeering principle because it took away local legislators' discretion to decline to administer federal immigration programs.[34] Similarly, interpreting § 1373 to require states and localities to comply with *all* information-sharing requests from federal immigration officers would violate anti-commandeering principles by blocking local policymakers' ability to decide how to communicate with federal authorities. Although the Seventh Circuit subsequently declined to rule on the facial constitutionality of § 1373, finding

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notification by providing release dates or other information" unless authorized by another statutory provision).

[29] *Murphy*, 584 U.S. at 474.

[30] *See generally Murphy*, 584 U.S. at 479 (2018) (explaining that for federal law to preempt state law, it must regulate private actors); *see also* McHenry Cnty. v. Raoul, 44 F.4th 581, 588, 592 (7th Cir 2022) (emphasizing that valid preemption provisions must be read as regulating private actors, not as direct commands to states, as the latter would violate anticommandeering principles).

[31] *See* U.S. CONST. amend. X.

[32] 521 U.S. 898, 935 (1997).

[33] *See* 321 F. Supp. 3d 855, 866 (N.D. Ill. 2018) (citing *New York v. U.S.*, 505 U.S. 144, 177 (1992) (applying the anti-commandeering doctrine to claims involving New York's forced participation in a federal program)).

[34] *See id.* at 872 (citing *California I*, 314 F. Supp. 3d at 1101; then citing City of Philadelphia v. Sessions, 309 F. Supp. 3d 289, 328–331 (E.D. Pa. 2018)).

other grounds sufficient to strike down the grant conditions,[35] the unsettled question of the statute's constitutionality should weigh heavily against giving it preemptive effect, because only constitutional federal statutes can preempt state law.[36] The District of New Jersey has also held that broad interpretations of §§ 1373 and 1644 are unconstitutional as they violate the anti-commandeering principles of the Tenth Amendment.[37] Whether the statutes are construed as forcing states to do something or prohibiting them from doing something, the statutes still effectively commandeer states for federal objectives.[38] The Supreme Court has ruled that attempts to draw a line between federal laws that command state action and those that prohibit state action are "empty."[39] Both are impermissible.

For similar reasons, §§ 1373 and 1644 cannot preempt state laws because they target state rather than private actors. Federal law only has a preemptive effect if it regulates private individuals;[40] otherwise, it would raise the anti-commandeering concerns discussed above. The Third Circuit ruled directly on this issue, holding that §§ 1373 and 1644 have no preemptive effect because they do not regulate private actors.[41] Those seeking to save the preemptive effect may argue that Section 1644 is unclear on who

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[35] *See City of Chicago II*, 961 F.3d at 909 ("[W]e need not consider the alternative argument that § 1373 cannot be considered 'applicable federal law' . . . because it is unconstitutional under the anticommandeering doctrine of the Tenth Amendment" (citing *Pearson v. Callahan*, 555 U.S. 223, 241 (2009))).

[36] *See Worm v. Am. Cyanamid Co.*, 970 F.2d 1301, 1304 (4th Cir. 1992) (reflecting on the "well-established principle that federal legislation, *if enacted pursuant to the Congress'[s] constitutionally delegated authority*, can nullify conflicting state or local actions" (emphasis added)).

[37] *See Grewal,* 475 F. Supp. 3d at 376–77 ("If the Court were the accept the broad reading of sections 1373(a) and 1644 . . . and find preemption, these particular provisions would run afoul of the anticommandeering doctrine of the Tenth Amendment.").

[38] *See Murphy*, 584 U.S. at 474–75 (finding that there is no distinction between Congress compelling a state to enact legislation and prohibiting a state from enacting new laws).

[39] *Id*.

[40] *See id*. at 477 (noting that all types of preemption require that Congress pass a law that "imposes restrictions or confers rights on private actors").

[41] *See* Ocean Cnty. Bd. of Comm'rs v. Att'y Gen. of N.J., 8 F.4th 176, 182 (3d Cir. 2021) ("A federal statute that does not regulate private actors cannot serve as a basis for preemption, so Appellants' claim must fail.").

or what it intends to regulate, because Congress wrote it in the passive voice, but the Third Circuit expressly found that the best reading of the statute excludes private actors.[42] This is because a private actor could neither prohibit nor restrict state action in the way § 1644 envisions.[43] The Seventh Circuit in *McHenry County. v. Raoul* reached the same result when deliberating on a state statute that prohibited counties from entering into federal contracts to house detained immigrants.[44] Since only federal law regulating private actors can preempt state law, federal statutes that do not regulate private actors cannot support field and conflict preemption arguments.[45]

Critics may argue that federal statutes even marginally related to immigration enforcement should preempt state law due to concern over undocumented immigration and public safety.[46] These concerns are unfounded. Public policy is better served by allowing state and local control over the level of proactive communication with federal immigration enforcement. Local policymakers are in the best position to judge what their communities need to maintain public safety and social cohesion.[47] Preemption is necessarily a limited measure because of the respect for local lawmakers and their ability to tailor legislation to local issues.

Sanctuary policies that limit non-required information sharing with federal enforcement officers protect immigrant communities and preserve the valuable crime reporting function they serve. Without such policies, undocumented immigrants would be discouraged from cooperating with law enforcement to report violent crime or serve as witnesses, for fear that any

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[42] *Id*. ("[W]e conclude that § 1644, like § 1373, regulates states, not private actors.").
[43] *Id*.
[44] *See* 44 F.4th at 588.
[45] *Id*.
[46] John Fabbricatore, *Sanctuary Cities Pose an Unacceptable Risk to Public Safety*, HERITAGE FOUND. (Feb. 14, 2025), https://www.heritage.org/border-security/commentary/sanctuary-cities-pose-unacceptable-risk-public-safety.
[47] *See* City & Cnty. of San Francisco v. Trump, 783 F. Supp. 3d 1148, 1186 (N.D. Cal. 2025) (noting that San Francisco and Santa Clara's sanctuary policies "reflect their local judgement about the policies and practices that are best suited to maintaining public safety and community health and cohesion").

communication with the authorities would result in their detention and deportation.[48] Rather than increasing crime, sanctuary laws can decrease crime by encouraging immigrants to report crime and aid in apprehending individuals who may harm others.[49] These policies also have beneficial public health and economic effects. Sanctuary laws bolster public health by encouraging immigrants to seek medical services that prevent the spread of communicable diseases.[50] They also provide economic benefits by attracting businesses to these cities.[51] Finding §§ 1373 and 1644 to have a preemptive effect would not only be doctrinally unsound, but it would also have negative policy ramifications.

Finally, courts deciding such a preemption question should "refer to basic principles of federalism embodied in the Constitution to resolve ambiguity in a federal statute."[52] Federal directives requiring states to use state resources to pursue federal objectives undermine constitutional adherence to federalism.[53] Recognizing the importance of safeguarding state autonomy and the founding principles of federalism, courts have routinely held that even withholding or conditioning funds based on compliance with federal immigration enforcement objectives is impermissible.[54]

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[48] Michael J. Wishnie, *Immigrants and the Right to Petition*, 78 N.Y.U. L. REV. 667, 669 (2003).

[49] *See* City of Philadelphia v. Sessions, 280 F. Supp. 3d 579, 623 (E.D. Pa. 2017) (noting how Philadelphia's sanctuary policies encourage immigrants to "report crime, and apprehend criminal suspects who may recidivate and harm other residents").

[50] *Id*.

[51] *See City & Cnty. of San Francisco*, 783 F. Supp. 3d at 1185 (noting how some cities adopted sanctuary policies to "attract families and businesses from around the world to build an inclusive regional culture").

[52] *Bond*, 572 U.S. at 859; *accord* Keller v. U.S., 213 U.S. 138, 144 (1909) (holding that jurisdiction over charging crimes of prostitution, even when involving immigrants, was within the state's police power).

[53] *See e.g.*, Galarza v. Szalczyk, 745 F.3d 634, 644 (3d Cir. 2014) (finding that "the command to detain federal prisoners at state expense is exactly the type of command that has historically disrupted our system of federalism").

[54] *See e.g.*, City of Providence v. Barr, 954 F.3d 23, 35–36 (1st Cir. 2020) (finding that the DOJ lacked authority to impose conditions on Byrne JAG funding); *City & Cnty. of San Francisco*, 783 F. Supp 3d at 1202 (finding that "[t]he Government's actions threaten to irreparably damage the relationship the Cities and Counties have built with their immigrant communities in reliance on their sanctuary policies"); City of Chicago v. Sessions, 888 F.3d 272, 277

Should the Court face the preemption question on information-sharing statutes in the future, it should extend the same deference to the states.

Sections 1373 and 1644 do not preempt local and state laws limiting information sharing with federal immigration enforcement. Preserving state and local discretion does not interfere with the federal government's authority over immigration law; it recognizes the distinction between federal enforcement power and the federal commandeering of state resources. Courts should therefore resolve ambiguity in favor of federalism and permit states and localities to determine how their law enforcement agencies communicate with federal immigration authorities.

(7th Cir. 2018) (striking down the Attorney General's conditions and noting that "Congress repeatedly refused to approve of measures that would tie funding to state and local immigration policies").