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Photo Credit: Make the Road New York

State Immigrant Rights Highlights 2021: Advancing Community Health and Well-Being

ACKNOWLEDGMENTS

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As Congress considers options for providing a pathway to permanent status or temporary relief to millions of immigrants in the U.S., states and localities have taken significant action to improve the lives of their community members, regardless of their immigration status. In response to effective local organizing, almost half the states adopted immigrant-inclusive laws and policies in 2021.

The COVID-19 pandemic has forced the country to confront longstanding racial and economic disparities in access to care and assistance, as well as the harmful consequences of policing and carceral systems. States and localities increasingly recognized the need to ensure that all residents have access to health care, financial support, and safe working conditions. Advocates pressed for new approaches to immigration, health care, economic justice, and public safety. In 2021, states adopted policies improving access to health care, higher education, and professional licenses for immigrants; protecting the rights of workers and tenants; investing in access to counsel; strengthening driver and consumer privacy; and limiting local entanglement in federal immigration enforcement efforts. States and localities also assisted individuals excluded by federal COVID relief legislation – by offering access to care, rental assistance, tax credits, or other economic support. And local governments continued to explore how to shift resources from life-threatening carceral and policing strategies to investments in health care, education, and economic opportunities that allow communities to thrive.

This report highlights the immigrant inclusive laws enacted in 2021, as well as some pending bills and campaigns.

States Adopt Inclusive Policies

California, Colorado, Illinois, Maryland, New Jersey, New Mexico, New York, Oregon, Virginia, and Washington enacted *several* immigrant-inclusive measures. And state legislatures across the political spectrum, including Arizona, Arkansas, Connecticut, Hawaii, Maine, Massachusetts, Minnesota, Nevada, Rhode Island, Utah, Vermont, and the District of Columbia, also passed at least one pro-immigrant law or policy. Only a couple of states countered this trend: Montana's governor signed an anti-sanctuary bill, as well as one requiring local law enforcement officers to hold individuals in their custody for up to 48 hours, if subject to a detainer request from a federal immigration agency; and Oklahoma enacted a measure requiring compliance with immigration detainers. Although a few anti-immigrant bills are still pending in other states, most did not pass.

Economic Justice

Since the beginning of the pandemic, immigrants and allies have urged states to support workers who were excluded from federal relief or unemployment insurance benefits. In 2020, states and localities – including Alabama, California, Colorado, Connecticut, Illinois, Massachusetts, Nevada, New Jersey, New Mexico, Oregon, Rhode Island, Vermont, and Washington, as well as cities and counties across the country – reacted quickly, offering short-term cash, rent, mortgage or utility assistance, using some combination of federal, state, local and private funds. California and Colorado expanded access to the state earned income tax credit (EITC) to persons who use individual taxpayer identification numbers (ITIN), inspiring

other states to adopt similar policies this year (see State EITC section below). See also [State and Local Immigrants' Rights Developments, December 2019–August 2020: Investing in Collective Health and Well-Being](#) (NILC, September 2020). Evaluations of these programs documented their many benefits. See, e.g., Colorado's [Left Behind Workers Fund Cash Assistance Impact Snapshot](#) (Omni Institute, May/June 2021); Stephen W. Manning & Stephanie Powers, [Narrowing the Gap: A Report from the Oregon Worker Relief coalition After a Year of Pandemic, Oregon Worker Relief](#) (May 2021).



Photo Credit: Make the Road New York

One-time Disaster Relief Payments – 2021

As a result of powerful organizing, including hunger strikes, rallies in front of legislators' and business executives' homes, and [shutting down two bridges](#), **New York** agreed to invest **\$2.1 billion** in a [fund for excluded workers](#). This amount, while significant, was [not enough to meet the need](#), and advocates urged the state's governor to expand the fund this year, as well as in next year's budget. **California** offered State Stimulus Payments to residents eligible for the state EITC, ITIN filing parents who earn under \$75,000, and recipients of certain public benefit programs. The budget signed in July provides a second round of stimulus checks to eligible taxpayers, including ITIN filers, bringing the total to [\\$12 billion](#) in tax rebates for citizens and immigrants. **Oregon's** legislature approved additional investments in its workers relief fund, quarantine fund and small business recovery fund, bringing the total state investment to about \$111 million. **Washington** allocated an additional \$12 million in disaster cash assistance, nutrition, and social services, and \$65 million in state funded grants to individuals ineligible for federal relief. The state's biannual budget also directs \$340 million in federal stimulus funding to relief for undocumented workers, bringing the total investment to [\\$467 million](#). **New Mexico** dedicated \$5 million to cash assistance for excluded workers in 2021, in addition to the \$5 million allocated at the end of 2020. And **Vermont's** economic stimulus payment for people ineligible for the federal payments was implemented on May 1. **New Jersey's** budget allocated [\\$40 million](#) in federal funds to a cash assistance program, the [Fund for Excluded New Jerseyans](#), and advocates [pushed for more](#). **The District of Columbia's budget** allocated \$41 million for a one-time payment of \$3,000 to assist about 13,000 excluded workers. This amount was higher than earlier proposals but not as much as [advocates](#) requested.

In response to a different disaster, Hurricane Ida, the governor of **New York** [announced](#) that the state will contribute \$20 million to a special relief fund for survivors who are ineligible for federal relief, while **New York City** will provide \$7 million.

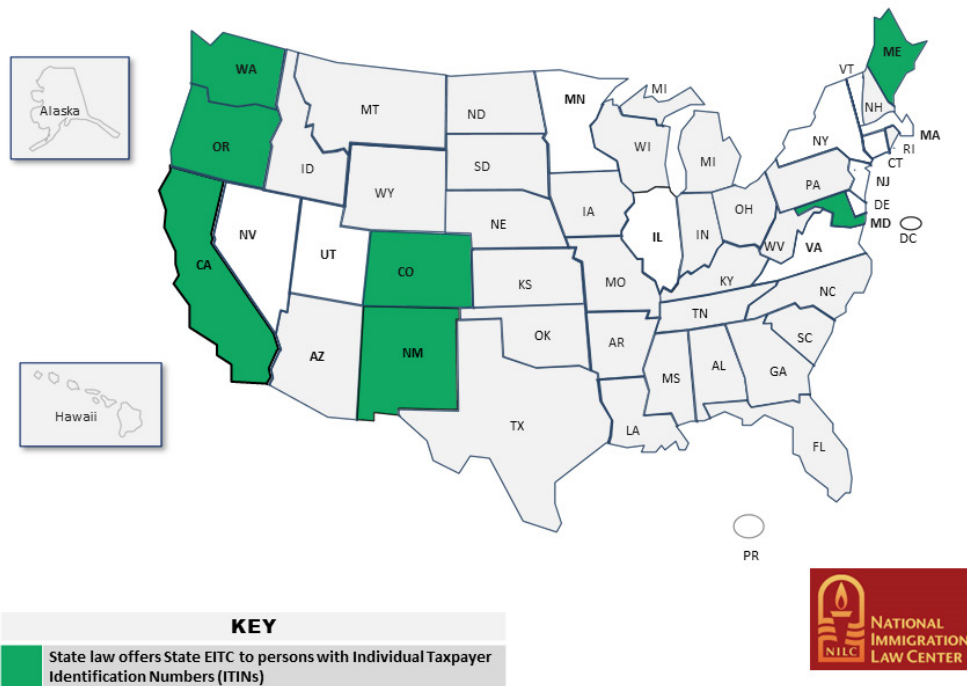
State EITC Expansions

Studies have [demonstrated](#) that the Earned Income Tax Credit reduces poverty, promotes educational success, improves child and maternal health, boosts local economies, and increases stability for families and individuals. Building on last year’s victories in Colorado and California, advocacy to expand access to State Earned Income Tax Credits yielded five new state laws in 2021. Maryland will make its state EITC available to ITIN filers for a three-year period, and **New**

Mexico extended its Working Families Tax Credit (the state’s EITC) to ITIN filers permanently. And, with bipartisan support, Washington ended the exclusion of ITIN filers from its Working Families Tax Credit – becoming the fifth state to make this credit available to all eligible state residents. In July, **Maine** and **Oregon** made ITIN filers eligible for the state’s EITC, bringing the total to seven. Similar efforts are ongoing in Illinois, Massachusetts, and Minnesota.

31% of foreign-born individuals now live in a state that offers state EITCs to taxpayers who use ITINs.

States that Offer State Earned Income Tax Credits (EITC) to ITIN filers | August 2021



CAMPAIGN SPOTLIGHT

HB 291: Expanding EITC in New Mexico

This year, New Mexico's governor signed HB 291, which expands the state's Earned Income Tax Credit (EITC), also known as the Working Families Tax Credit (WFTC), to reach ITIN filers and other low-income New Mexicans. Research demonstrates that equitable tax policies are effective in providing relief to families harmed by the COVID-19 pandemic, reducing poverty, and re-circulating money in local economies. HB 291 also expands the Low-Income Comprehensive Tax Rebate (LICTR) to accommodate the current cost of living, making more lower-income residents eligible for support.

Background

The Working Families Tax Credit aids low-wage workers, improves outcomes for children, and bolsters local economies. However, thousands of immigrant workers were excluded from this credit despite the fact that they pay income taxes, make meaningful contributions to local economies, and many have children born in New Mexico. In fact, undocumented immigrants in New Mexico pay nearly \$68 million in state and local taxes and close to 28,000 New Mexican children have at least one immigrant parent.

Strategies for Success

Somos Un Pueblo Unido (Somos) is a statewide immigrant rights organization, working for racial and worker justice. Their advocacy efforts were instrumental in the campaign to expand the Working Families Tax Credit. A key strategy for passing HB 291 was strengthening partnerships with other organizations from across the state. The larger coalition, which included other immigrant rights organizations and child policy advocates, was able to achieve one of their collective goals: ending the exclusions in New Mexico's tax code. The campaign was formed and built around the community most affected by the unfair exclusion: families with mixed immigration status. This centering of mixed-status families, paired with the dedication of a proactive policy organization willing to follow the community's lead, was instrumental in securing bipartisan support for the tax credit expansion. Access to the Working Families Tax Credit for ITIN filers will begin on January 1, 2022.

Basic Income and Alternatives to Unemployment Insurance

More than twenty localities have piloted basic income programs, targeting selected residents or population groups to study the benefits to individuals and communities. In 2021, California's budget invested \$35 million in a universal basic income pilot program, prioritizing former foster youth and

pregnant individuals. Los Angeles will offer \$1,000 per month for one year to 3,000 randomly selected low-income parents or pregnant persons, regardless of their immigration status, who experienced economic or medical hardship related to COVID, as part of the “Big: Leap” Guaranteed Income Pilot. The momentum for guaranteed income is building.

Advocates, state legislators, and agencies also are exploring alternatives to unemployment insurance benefits. **Colorado** enacted [SB 233](#), directing the governor and state labor agencies to study the feasibility of contracting with a non-profit organization to administer a wage replacement program for individuals whose immigration status makes them ineligible for unemployment insurance benefits. The legislature appropriated \$75,000 for the study, which will explore potential sources of funding, compliance with federal unemployment insurance laws, privacy implications, and input from stakeholders. The state allocated \$20 million to the Left Behind Workers Fund, in part to provide direct cash aid to individuals who lost their job through no fault of their own but are not work authorized – and to explore possibilities. The data from the program will inform the study, which is due on December 1, 2021. Washington’s [SB 5438](#) would have created a temporary alternative to unemployment insurance for undocumented and newly authorized workers affected by COVID. Although the bill did not pass this year, the legislature formed a working group, which will examine alternatives and produce a report to set the stage for debate in 2022.



Photo Credit: Gabrielle Lessard

Access to Health Care

The pandemic underscored the urgency of addressing individual and community health, and efforts to expand access to care gained significant momentum in the states. In 2021, several states considered proposals to cover all or a subset of income-eligible residents, regardless of their immigration status.

Health Care for All

Oregon's governor signed [HB 3352](#), “Cover all People,” which will offer health coverage to adults, regardless of their immigration status, effective July 1, 2022. The law appropriates \$100 million over two years and allows the state health authority to limit eligibility to certain categories or groups if needed to

stay within spending allocation. **Colorado** is [implementing](#) the first phase of its [law](#) enacted last year, which expands access to affordable coverage for residents, regardless of their immigration status, beginning with those eligible to enroll in the health care marketplace.

Health Care for Older Adults

Illinois became the first state to offer medical assistance to seniors 65 years or older, regardless of their immigration status, when it implemented a law passed in 2020. The state has enrolled over 8,000 undocumented seniors in the program, despite barriers caused by the pandemic and immigration-related concerns. In June 2021, the governor signed [SB 1017](#), which will offer Medicaid-like health coverage to low-income Illinois residents ages 55 to 64, regardless of their immigration status, by May 30, 2022. Advocates expect that 11,000 individuals will be eligible to receive coverage under the new program. **California's** [AB 133](#) will extend Medi-Cal to residents *50 years and older*, regardless of their immigration status, as soon as May 1, 2022. The coverage, which includes In-Home-Supportive Services, is expected to benefit an estimated 235,000 individuals each year. The governor also signed [AB 570](#), which allows dependent parents, regardless of their immigration status, to be added to individual health insurance plans.

Health Care for Children and Pregnant People

States made significant progress in expanding access to care for children and pregnant people this year. **Vermont's** governor signed [H 430](#), which will cover children and pregnant individuals regardless of their immigration status, beginning on July 1, 2022. During the interim year, the legislature made grants available to providers of care for children and pregnant persons who are ineligible for Medicaid based on their immigration status. Similarly, **Maine's** budget ([LD 221](#)) offers health coverage to children, regardless of immigration status, and prenatal care under the Children's Health Insurance Program (CHIP) option, regardless of the pregnant person's status, effective July 1, 2022. **Connecticut's** governor signed [HB 6687](#), which will provide health coverage to children under 9 years old by January 1, 2023, and by April 1, 2022, prenatal care regardless of immigration status under the CHIP program's option, and on or after April 1, 2023, 12 months of post-partum care regardless of immigration status. The bill also directs state agencies to study the feasibility of offering coverage to children 9 to 18 years old, regardless of immigration status, and adults up to 200% of the federal poverty level.

Virginia now offers prenatal care, regardless of the pregnant person's immigration status. **Minnesota's** omnibus health bill, [HF 33](#), will provide 12 months of post-partum care, regardless of immigration status. **Washington's** [SB 5068](#) similarly provides for 12 months of post-partum coverage, regardless of immigration status. **California** plans to continue providing 12 months of post-partum care to people with certain conditions, and by next April will offer 12 months of post-partum care to all individuals, regardless of their immigration status or condition. In September, **Illinois** received approval of its Health Service Initiative to provide comprehensive coverage during a 12-month post-partum period, regardless of immigration status. **New Jersey's** FY 2022 budget invests \$19 million in a Reproductive Health Care Fund, which (compared to the more limited fund allocated in the past) should cover the costs of contraceptive

and prenatal care, regardless of immigration status throughout the year. New Jersey's Department of Human Services also will [explore options](#) for covering children who are ineligible due to their status or their family's income, including an expansion of a [buy-in program](#), NJ FamilyCare Advantage, potentially by FY 2023. And the **District of Columbia's** budget ([B24-0285](#)) offers medical assistance to children under 18 in families earning up to 319% of the federal poverty level and 19- and 20-year-olds in families earning up to 216% of the federal poverty level, regardless of their immigration status.

Other Health Care Expansions

New Mexico removed a longstanding barrier to indigent care in public and university hospitals by enacting a [law](#) that such services are available regardless of immigration status. The state enacted [SB 317](#), to create a health care affordability fund to reduce the cost of coverage for New Mexico residents and small businesses, including coverage purchased in the marketplace, and to fund health care initiatives for uninsured residents, beginning in July 2023. **Colorado** enacted [SB 9](#), improving access to reproductive health care, including contraceptives and counseling for residents, regardless of their immigration status. **Washington's** governor signed [SB 5399](#), which establishes a commission on universal health care and [SB 5052](#), which creates health equity zones. **Illinois** enacted two laws addressing hospital costs for uninsured patients, regardless of immigration status: [HB 3803](#) requires hospitals to inform patients of charity care options available to them, regardless of their immigration status; and [SB 1840 improves access](#) to hospital financial assistance and requires reporting on steps taken to address health disparities, promote health equity and improve community health. **Virginia** opened access to Medicaid for lawful permanent residents who lack credit for 40 quarters of work history. When the Health Resources and Service Administration (HRSA) [funding stream](#) to reimburse health care providers is depleted, Virginia will cover COVID testing, treatment, and vaccinations under its emergency Medicaid program.

See [Medical Assistance Programs for Immigrants in Various States](#) (NILC, July 2021) and [NILC Health Coverage Maps](#). *74% of foreign-born residents live in a state that offers or plans to offer health coverage to some residents, regardless of their immigration status (pregnant people, children, older adults or a broader group of residents).*

Access to Housing, Nutrition Assistance and Other Benefit Programs

Many states have allocated federal, state, or private funds to programs that offer rental, utility, or mortgage assistance to residents regardless of their immigration status, including the implementation of the new Emergency Rental Assistance Program (ERAP). Some states and localities that initially restricted access to these programs changed their position in response to [litigation](#) or effective advocacy.

Colorado's governor signed a [law](#) removing the lawful presence requirement for state and local housing benefits,

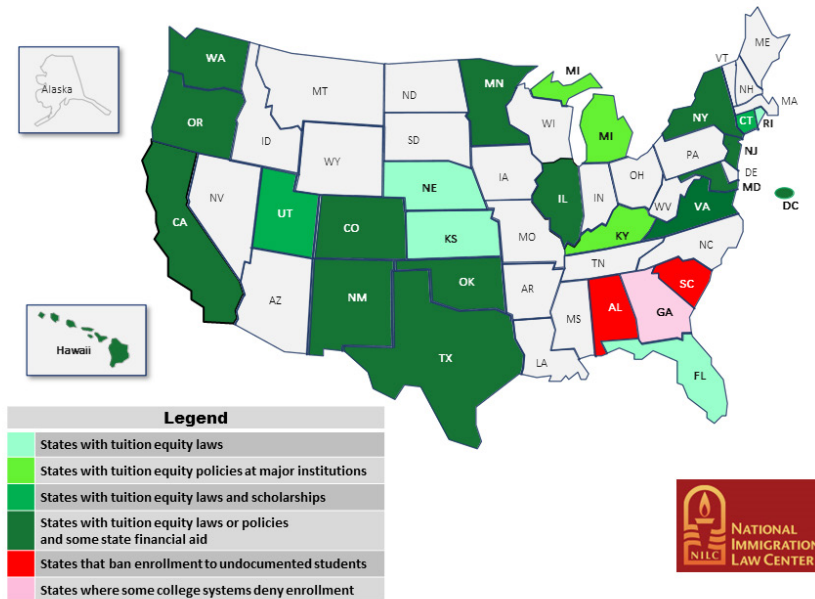
74% of foreign-born residents live in a state that offers or plans to offer health coverage to some residents, regardless of their immigration status (pregnant people, children, older adults or a broader group of residents).

and [SB 199](#) which repeals the lawful presence requirement for all state and local public benefits, and prohibits verification of immigration status in benefits offered pursuant to federal stimulus laws, unless required by law, ordinance or regulation. **Illinois** enacted [HB 2877](#), which offers emergency rental assistance to residents in need, regardless of their immigration status. The governor signed [SB 506](#), making permanent the law providing access to state benefits to survivors of trafficking, serious crimes and persecution. Finally, the state enacted [SB 265](#) which makes energy assistance available regardless of immigration status. **California** will begin the process of making nutrition assistance available regardless of immigration status, anticipating an age-based expansion of the California Food Assistance Program (CFAP), subject to appropriation, beginning in 2023. California will also provide free school meals to the state's [6.2 million public school students](#), regardless of their income. The state extended the eviction moratorium to September 30, 2021, and will [pay the back rent](#) owed by many low-income tenants who were harmed by the pandemic. **New York** enacted the "Housing Our Neighbors with Dignity Act" ([S 5257](#)), which subject to appropriation, creates a mechanism for financing affordable housing that would be available without regard to status. And **Hawaii's** House of Representatives adopted a resolution requesting a state agency to convene a working group aimed at improving access to services for immigrants.

Access to Higher Education

At least 21 states and the District of Columbia offer access to in-state tuition for students who meet certain criteria, regardless of their immigration status. Close to 80 percent of the foreign-born residents in the U.S. live in a state with a tuition equity law or policy. This year, **Washington's** governor signed [SB 5194](#), which expands its tuition equity law to reach students who received a high school diploma, or equivalent, and have lived in the state continuously for at least a year prior to being admitted to college. **Rhode Island's** governor signed [S 990](#), which codifies the state's longstanding tuition equity policy.

States also adopted measures that help make college more affordable and assist students in navigating this process. In March 2021, **Virginia** became the 13th state to offer [financial and institutional aid](#) to students eligible for its tuition equity policy. **California** allocated funding for the "[Californians for All College Service Program](#)," offering service opportunities to students regardless of their immigration status with stipends of up to \$7,000 and scholarships of up to \$3,000. The state also invested \$5.8 million in Dreamer Resource liaisons at community colleges. **Oregon's** governor signed [SB 553](#), which offers in-state tuition and financial aid to newly arriving COFA migrants (from Micronesia, Palau and the Marshall Islands), refugees, and Special Immigrant Visa holders who have not previously established residence in other states. And **Illinois** enacted [HB 3438](#), requiring public colleges and universities to designate an undocumented student liaison, and encouraging them to establish an Undocumented Student Resource Center on each campus.



The **Arizona** legislature set the stage for 2022, by passing a [resolution](#) asking voters to consider repealing in-state tuition restrictions and adopting a tuition equity policy. The measure will appear on the ballot in November 2022.

Professional And Occupational Licenses

Several states removed one of the barriers that prevent immigrants who complete their education or training from practicing their profession. **Colorado** enacted [SB 77](#), expanding access to professional and occupational licenses to eligible applicants regardless of their immigration status. **Arkansas'** governor [approved](#) offering access to professional and occupational licenses to eligible individuals with an employment authorization document (EAD). The measure secured near unanimous bipartisan support, passing the Senate by a vote of 34-1 and the House 88-9. A couple weeks earlier, the governor signed [HB 1594](#), which makes teaching licenses available to eligible DACA grantees with a valid EAD. **New Mexico**, which had expanded access to most professional licenses to eligible individuals regardless of status last year, opened access to some remaining [professional and occupational licenses](#), including optometrists, physical therapists, real estate agents, home inspectors, and bail bondspersons. **Washington's** governor signed [HB 1129](#), which will issue a limited license to certain graduates of international medical schools.

In total, six states—California, Colorado, Illinois, Nevada, New Jersey, and New Mexico—home to 35% of the foreign-born individuals in the U.S., have enacted laws making professional and/or occupational licenses available to eligible applicants regardless of their immigration status.



Photo Credit: NILC

Workers' Rights

During the pandemic, an increasing number of states considered bills that offer paid sick leave and/or family leave, and that protect against retaliation based on a worker's immigration status. This year, for example, **New Mexico** enacted [HB 20](#), "Healthy Workplaces," which offers earned sick leave to most employees. **Virginia's** [HB 2137](#) provides paid sick leave to home health workers. Dozens of jurisdictions now offer paid sick leave to their employees, rights that extend beyond the current crisis. For resources on paid sick leave available in various states and localities, see [A Better Balance](#) and [the National Partnership for Women and Families](#).

Measures introduced in numerous states adopt health and safety standards or offer other protections to workers, including low-income immigrants who often experience dangerous or inequitable working conditions. **Virginia** enacted [HB 2032](#), codifying a domestic workers' bill of rights. **Connecticut's** budget bill, [SB 1202](#), similarly included protections for domestic workers, as well as paid family and medical leave. **Washington** enacted [SB 5172](#), which provides a right to overtime pay for agricultural workers. **Colorado's** governor signed [SB 87](#), which protects [farmworkers' rights](#), by limiting the use of short-handled tools, providing the state's minimum wage of \$12.32 per hour, overtime, meal and rest breaks, and permitting them to join unions. **Maryland** enacted [HB 581](#), which requires employers to provide safe working conditions and standards for essential workers. And **New York's** [S 1034](#) establishes health and safety protections for essential workers during COVID.

In total, six states—California, Colorado, Illinois, Nevada, New Jersey, and New Mexico—home to 35% of the foreign-born individuals in the U.S., have enacted laws making professional and/or occupational licenses available to eligible applicants regardless of their immigration status.

States passed other measures that protect workers' rights. Illinois enacted HB 121 which prohibits discrimination or retaliation against employees based on the type of work authorized status they present. Rhode Island's governor signed [HB 5855](#), which prohibits an employer from reporting a worker's immigration status in retaliation for whistleblowing. California's governor signed several workers' rights measures, including [SB 62](#) which facilitates wage theft claims for garment workers, and HB 321, which creates an advisory committee to recommend policies that protect domestic workers and develop health and safety guidance to educate employers and employees in the industry. He also signed [AB 628](#), the "Breaking Barriers to Employment Initiative," which prioritizes workforce development efforts that address racial, ethnic, and socioeconomic disparities, and [AB 73](#) which helps protect farmworkers from wildfire smoke. The governor vetoed [AB 616](#), which would have allowed farmworkers to vote by mail in union elections. The bill was intended to address a [Supreme Court decision](#) overturning a state law that allowed union organizers to meet with farmworkers on growers' property. He asserted that the bill "contained various inconsistencies," and directed his administration to work with the legislature to develop alternatives to consider in the future.

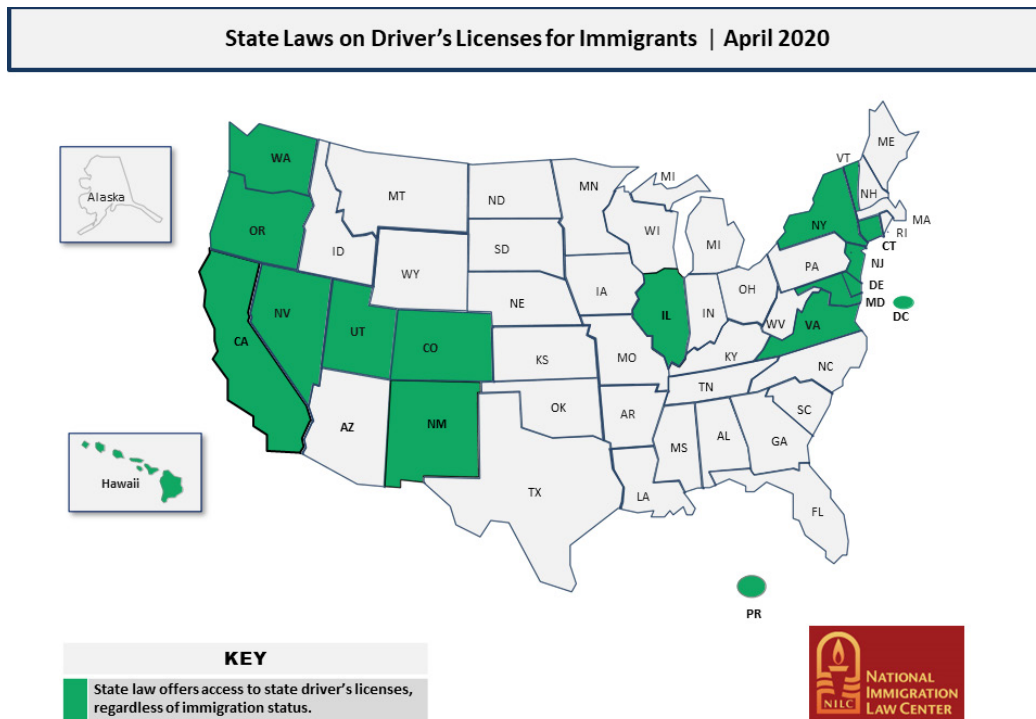


Photo Credit: NILC

Driver's Licenses and Identity Documents

Oregon, Virginia, and New Jersey began implementing their laws expanding access to driver's licenses to eligible residents, regardless of their immigration status, this year. Virginia advocates secured a [law](#) protecting drivers' privacy, as well as one offering access to [state identification cards](#) regardless of immigration status. Colorado's [SB 131](#) protects privacy of drivers and other consumers; and Illinois' [SB 225](#) bans facial recognition searches or photos obtained in issuing a driver's license or identification card for immigration enforcement purposes. (See "Protecting Privacy" section below). See also [Protecting State Driver's License Information](#) (NILC, Dec. 2021). Arizona's [law](#) now requires states and localities to recognize consular identification documents that use biometric verification, repealing an earlier prohibition.

Advocates in **Maryland** persuaded the state legislature to override the governor’s veto of the Maryland Driver Privacy Act, [HB 23](#). The new law prohibits disclosure of personal information, facial recognition searches, photo image searches, or access to state or local law enforcement databases by federal agencies for immigration enforcement purposes in the absence of a valid judicial warrant; and requires reports of any such requests, searches or disclosures by the departments of motor vehicles, state or local law enforcement, department of public safety or corrections.



56% of foreign-born residents live in a state that offers driver’s licenses regardless of immigration status. For more details, see [State Laws Providing Access to Driver’s Licenses, Regardless of Immigration Status](#) (NILC, Sept. 2021)

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Limiting State and Local Entanglement In Immigration Enforcement

Legislators in at least 15 states (Arizona, Arkansas, California, Florida, Illinois, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New York, Oregon, Rhode Island, and Texas) introduced measures that seek to limit state and local entanglement in federal immigration enforcement activities. The **District of Columbia’s [Sanctuary Values Amendment Act of 2020](#)**, which took effect in May 2021, prevents individuals ordered released pre-trial from being transferred directly into U.S. Immigration and Customs Enforcement (ICE) custody upon release from court, instead

allowing individuals to request a transfer to the custody of the D.C. Department of Corrections. The Act also limits the District of Columbia's cooperation with federal immigration agencies, by restricting interviews by federal immigration officials, the use of District facilities to hold individuals for ICE, and compliance with detainer requests in the absence of a judicial warrant or order.

Illinois' governor signed [SB 667](#), the New Way Forward Act, representing a significant victory for immigrant advocates. The law strengthens the state's TRUST Act, facilitates access to U visas, and phases out the use of county jails by ICE. Since Illinois already bans private detention, this law could [end immigration detention](#) in the state by January 2022. Oregon's governor signed [HB 3265](#), which [strengthens](#) its existing sanctuary laws by limiting the collection of information about immigration or citizenship status and prohibiting: the civil arrest of persons in or near courthouses in the absence of a judicial warrant or order; the denial of services and benefits by public entities based on known or suspected immigration status or the presence of an immigration detainer; the use of public funding, property or facilities for immigration enforcement; the entry into or renewal of immigration detention contracts by public entities; and the operation of private immigration detention facilities. The law also requires public entities to decline requests from immigration officials unless required by a judicial subpoena or order and requires agencies to report any such requests. Finally, the law creates a private right of action, allowing individuals to sue to block an agency from violating the law.

Advocates also challenged policies that require or encourage entanglement in federal immigration enforcement. In September 2021, a district court judge in Florida [ruled](#) that key sections in the state's 2019 anti-sanctuary law, [SB 168](#), violate the U.S. Constitution and must be permanently enjoined. This includes the provisions that require law enforcement agencies to use their "best efforts" to cooperate with federal immigration enforcement efforts, ban local governments from adopting "sanctuary" policies, and allow state and local law enforcement agencies to transport detained persons to federal custody. In striking these provisions, the court found that "SB 168 has discriminatory or disparate effects on racial and ethnic minorities, and these discriminatory effects were both foreseeable and known to the Legislature at the time of SB 168's enactment." *City of South Miami et al. v. DeSantis et al.*, 2021 WL 4272017, at *39 (S.D. Fla. Sept. 21, 2021).

In response, Florida's governor not only appealed the ruling, but also issued an [executive order](#) that targets unaccompanied minors and other vulnerable children, and intimidates immigrant communities in the state. Among other requirements, the order directs law enforcement and executive agencies to collect data about and use investigative means to determine the number and identities of undocumented immigrants. Thus, despite the initial legal victory, continued advocacy will be necessary to monitor the extent of collaboration between state, local and federal law enforcement, counter anti-immigrant rhetoric and defeat restrictive policies.

Protecting Privacy

Measures in at least a dozen states sought to limit information sharing with ICE and to protect the privacy of consumers, drivers, or other residents interacting with state or local agencies. **Colorado's** governor signed [SB 131](#), which prohibits state agencies from disclosing or making accessible personal identifying information (PII) to third parties for the purpose of investigating, participating, cooperating with, or assisting in immigration enforcement, except as required by law or to comply with court-issued subpoena, warrant, or order; reduces PII collected by state agencies; requires third parties to certify that information obtained from databases or automated networks will not be used for immigration enforcement; requires the recording of third party requests for PII; imposes a civil penalty of \$50,000 for intentional violations; and amends the open records law to ensure compliance when releasing public records. **Connecticut's** [SB 1202](#) incorporates consumer privacy protections, and protects sensitive information (including about immigration status) on applications for admission to higher education institutions, FAFSA, or state financial aid forms from disclosure to immigration authorities. It requires that any data sharing agreements with higher educational institutions or private occupational schools, prohibit the use of information for immigration enforcement.

CAMPAIGN SPOTLIGHT

SB 21-131: The Colorado Privacy Act

On July 8, Colorado became the third state to pass a comprehensive data privacy bill known as the Colorado Privacy Act ([SB 21-131](#)). The Colorado Privacy Act prohibits state agencies from sharing applicants' information and data, for the purpose of immigration enforcement.

Background

In 2013, the Colorado State Legislature passed [SB 13-251](#), ensuring that all eligible individuals, regardless of their immigration status, could obtain a driver's license. In turn, hundreds of thousands of undocumented Coloradans provided the state's Division of Motor Vehicles (DMV) the documents and information needed to obtain their licenses. However, community members shared concerns and anecdotes with groups like the Colorado Immigrant Rights Coalition (CIRC) that ICE was using DMV records to detain and deport Coloradans. In 2020, through a Colorado Open Records Act (CORA) investigation, CIRC obtained hundreds of emails, which revealed a pervasive culture and practice of collaboration between the DMV and ICE. Emails demonstrated that staff within the DMV were helping ICE identify and detain individuals – without ICE having presented a criminal warrant. The investigation found that other state departments also were

Continued...

CAMPAIGN SPOTLIGHT (CONTINUED)

SB 21-131: The Colorado Privacy Act

receiving and responding to requests for information from ICE. This confirmation of what immigrant community members suspected prompted CIRC to launch the campaign to protect all Coloradans' data privacy.

Strategies for Success

I Drive Colorado, a campaign led by CIRC, is made up of over 40 community groups and organizations from across the state working to improve Colorado's Driver's License for All program. To build a strong coalition, the organizations leveraged I Drive Colorado's collective power as well as policy expertise from the ACLU, FWD.us, and the Meyer Law Office. A broad group of stakeholders expressed support for SB 21-131, helping to secure bipartisan votes. Advocates for privacy communicated frequently with the governor's office as well as state agencies.

Reflecting on their privacy campaign, CIRC offers some thoughts and tips for organizations hoping to launch similar campaigns in their own state:

- “The responsive records from our open records requests gave us the hard proof we needed to convince our legislators and state agencies that data privacy issues are critical for immigrant community members. We were able to use the records and community stories to launch a powerful campaign. The records were of special concern during the pandemic, when we saw undocumented community members forgoing care and resources out of fear of sharing their information.”
- “Our original bill faced a very expensive fiscal note and we had to get creative to reduce the fiscal impact of our legislation, without diluting the protections...We found creative ways to reduce the fiscal impact of the bill by having direct conversations with state agencies about the desired impact of our legislation.”
- “It was important to our members that the public launch prioritized transparency and communication with the immigrant community. We relied on a trusted Spanish-speaking reporter to break the story, ensuring that directly affected community members were the first to hear about the data breach. English media followed, launching our legislative campaign, and pushing our governor and Democratic leadership to support the legislation.”



Advocates celebrate the passing of SB 131, Colorado's Privacy Act | Photo Credit: Colorado Immigrant Rights Coalition

States also took steps to limit the sharing of biometric data this year. **Utah's** governor signed [SB 34](#), which bans government entities from using facial recognition technology to scan driver's license databases, with certain exceptions for local law enforcement, and prohibits the use of facial recognition systems for civil immigration enforcement. **Illinois'** governor signed [SB 225](#), which bans facial recognition searches or photos obtained in issuing a driver's license or identification card for immigration enforcement purposes. And **Virginia's** [HB 2031](#) prohibits local law enforcement agencies and campus police departments from purchasing or using facial recognition technology unless expressly permitted by the General Assembly. The state also enacted [HB 2307](#), the Consumer Data Protection Act, this year.

At the local level, the **Capital Region** Facial Recognition Investigative Leads System pilot program covering Maryland, Virginia and the District of Columbia was [halted](#) this year. **King County, Washington**, also [banned](#) the use of facial recognition technology this year. [Baltimore](#) imposed a moratorium on private and city governmental use of facial recognition technology, but [police](#) are not subject to the moratorium. [Minneapolis](#) banned use of the technology by police and other city agencies. **Portland, Oregon's** [ban](#) on the use of facial recognition technology took effect in 2021.

By contrast, **Washington's** governor *vetoed* [HB 1127](#), which would have protected the privacy of COVID related health data collected by entities other than public health agencies. It would have prohibited the disclosure of COVID-related health data to any law enforcement or federal immigration authority, or the use of such data to enforce immigration, criminal or civil law. In his [veto message](#), the governor applauded the goal of protecting data collected during contact tracing, but expressed concern about the bill's breadth, including its potential effect on public and private efforts to offer incentives to become vaccinated or to make opportunities available to vaccinated individuals.

New Mexico advocates were disappointed when a privacy bill failed to become law this year. [SB 75](#) would prohibit the intentional disclosure of sensitive personal information held by state agencies or contractors, with exceptions including when necessary to carry out state agency function, comply with a court order, subpoena, or federal statute. Although it passed both houses of the legislature, the governor issued a “pocket veto” of the measure. Efforts to strengthen privacy protections for New Mexico’s residents will continue next year.

Despite the protective state laws and policies, there is an ongoing need to monitor and challenge unlawful information-sharing practices and emerging technologies. Community activists in **Marin County, California** [filed a lawsuit](#) against the Marin County Sheriff for illegally sharing location information of millions of drivers with ICE, CBP and other state and federal agencies. The information was obtained through automated license plate readers (“ALPR”), a surveillance technology that automatically scans license plates and records locations of cars and visible drivers through high-speed cameras. The lawsuit’s [complaint](#) highlights the safety and privacy impacts of license plate surveillance on immigrants, communities of color, and religious minorities, and their role in the detention and deportation of immigrants.

For more information on privacy policies, see NILC’s [Resource List](#) on Immigration Enforcement-related Information Sharing and Privacy Protection (last updated December 2021). For reports on how information is shared with ICE, including violations of policies that aim to protect immigrants’ personal information, see [Take Back Tech Fellowship reports](#).

Access to Counsel and Facilitating Access to Status

Universal representation campaigns gained momentum across the country this year. Several states launched new investments in access to counsel. **Nevada’s** governor signed [AB 376](#), which allocates \$500,000 to the University of Nevada Las Vegas law school for deportation defense. It also establishes a task force to strengthen the immigrant work force; requires the state’s attorney general to develop model policies limiting immigration enforcement at schools, colleges, health care facilities, courthouses; and encourages other organizations that provide services related to physical or mental health and wellness, education, or access to justice to adopt similar policies. **Colorado’s** governor signed [HB 1194](#), which establishes an Immigration Legal Defense Fund, with an initial investment of \$100,000. **Washington** removed its restriction on the use of civil legal aid funding to represent individuals in the U.S. without legal authority.



Photo Credit: NILC

And **Illinois** enacted [HB 2790](#), authorizing Cook County’s public defender to represent noncitizens in immigration cases, under certain circumstances.

States also extended or increased their initial investment in access to counsel. **California** will provide close to \$75 million for legal services to immigrants, including students and families in the state’s public higher education systems as well as \$25 million to help applicants for DACA and naturalization. **New York’s** budget allocates \$10 million to its Liberty Defense Project, and \$5.1 million to the New York Immigrant Family Unity Program (NYIFUP) for the representation of immigrants. **New Jersey’s** budget dedicates \$8.2 million for representation of immigrants facing removal or detention and \$3 million for representation and case management for unaccompanied minors. Although **Oregon’s** universal representation bill, [HB 3230](#), did not make it through the legislature this year, the governor signed HB 5006, which allocates \$2 million to the Innovation Law Lab for immigration defense. Oregon’s Worker Relief fund launched the [Immigrant Justice Program](#) to provide these services. Campaigns to establish an immigrant legal defense fund or for universal representation continue in numerous states, including Arizona, Connecticut, Hawaii, Maryland, Minnesota, and Rhode Island.

Local universal representation campaigns similarly made progress. **San Diego County, California**, approved \$5 million for Universal Representation. **Indianapolis, Indiana**, invested \$150,000 in an [immigrant defense fund pilot](#). **Los Angeles County** adopted a permanent program, with an initial investment of \$2 million. Advocates are asking for more funding since the program covers wraparound services. The **Los Angeles City Council** approved \$6 million for the Los Angeles Justice Fund over the next three years and will likely vote on a program structure in January 2022. **Santa Ana, California**, made its \$300,000 fund [permanent](#). **St. Paul, Minnesota**, established a [new loan program](#), offering \$2,000 to residents needing help with naturalization or immigration benefits, and adding \$100,000 to its ongoing legal defense program; **Ramsey County, Minnesota**, is adding \$75,000 to the program. **Clark County, Nevada**, voted unanimously to allocate \$500,000 over two years to free legal assistance for people in removal proceedings; the program will be funded by cannabis tax revenues. *See also* Vera Institute of Justice’s September 2021 [fact sheet](#), citing examples of local jurisdictions that have committed to use federal COVID-relief funding to provide legal services to immigrants.

States also adopted measures that help survivors of trafficking, serious crimes, abuse, or abandonment, who are seeking immigration relief. **Virginia** ([SB 1181](#)) **Oregon** ([SB 572](#)) **Illinois** ([HB 369](#)) and **Colorado** ([HB 1094](#)) enacted laws facilitating access to Special Immigrant Juvenile Status (SIJS) or other relief for immigrant youth. **Virginia’s** [SB 1468](#) and **Colorado’s** [HB 1060](#) facilitate access to U status for survivors of serious crimes. **Connecticut’s** [SB 1091](#) facilitates access to U status, and orders of protection if a family or household member is compelled by force, threat or intimidation—including based on actual or suspected immigration status—to engage in conduct from which they have a right to abstain, or to abstain from conduct they have a right to pursue. **Minnesota’s** omnibus public safety bill ([HF 63](#)), signed in June, includes provisions facilitating access to U status and criminalizing sexual extortion, including threats to report an individual’s immigration status. Similar bills are pending in Massachusetts and New Jersey. **California’s** [AB 829](#) requires counties to make their “best effort” to provide undocumented minor or nonminor dependents in foster care under the jurisdiction of juvenile court access to immigration legal services, and to develop a process to identify and track individuals in need of these services.



Photo Credit: Isobel Mohyeddin

Divesting from Mass Incarceration, Detention and Policing

Advocates continued to press state and local governments to divest from mass incarceration, address discrimination and abuses in policing, and invest in measures that protect public health, safety, and well-being. In addition to [Illinois' SB 667](#), and [Oregon's HB 3265](#) (described above), several other states moved to limit or end immigrant detention. [Washington's HB 1090](#), signed on April 14, 2021, bans the operation of, and ends, new or renewed contracts with private detention facilities, including immigration detention facilities in the state. In August, [New Jersey's](#) governor signed [A 5207](#), which prohibits state or local government agencies or private detention facilities operating in the state from entering into, renewing or extending immigration detention agreements. However, in the interim period between the bill's passage and enactment, a privately-owned New Jersey jail renewed its [contract](#) with ICE, to avoid the law's requirements and intent.

CAMPAIGN SPOTLIGHT

A5207: New Jersey's Anti-Detention Bill

New Jersey became the fifth state to limit or ban detention contracts with U.S. Immigration and Customs Enforcement (ICE) after Governor Murphy signed [A5207](#) on August 20. The law prohibits state and local governments and private corrections companies from entering new, renewed, or expanded immigration detention contracts with ICE. The ban went into effect immediately upon signature.

Continued...

CAMPAIGN SPOTLIGHT (CONTINUED)

A5207: New Jersey's Anti-Detention Bill

Background

The anti-detention fight in New Jersey has been a decades-long movement involving advocates on the outside and coordinated strikes and protests from inside detention. The Anti-Detention Bill became a priority for advocates in 2021 due to increasingly high-profile abuses and arrests, deadly conditions during COVID-19, and the threat of ICE expansion in the region. New Jersey's Hudson County Jail contract was renewed in 2018, despite a promise that the facility would close in 2020. Communities and advocates were stunned by the Hudson decision and started thinking about strategies for preventing the expansion of immigrant detention in the state. It was in this environment that the anti-detention bill was born.

Strategies for Success

The New Jersey Alliance for Immigrant Justice (NJAIJ) brings together over 45 member organizations from faith, labor, policy, advocacy, direct service, community-based, and grassroots groups. The coalition works closely with emerging grassroots groups and well-established coalition partners across the state. Police and prison watchdog groups also were instrumental in the fight against deplorable conditions and abuses in New Jersey's jails and prisons.

Centering the voices of people in detention was critical to the success of this campaign. "One of my personal favorite practices of the protests in New Jersey was timing rallies so that people inside can call protestors on the outside," says Amy Torres, Executive Director of NJAIJ. "Outside protestors would use a cell phone held up to a bull horn to literally amplify the voices of people protesting inside. This was not only healthy for the movement, but it delivered the voices who rarely get to speak outside the walls of detention straight to press." Another major contribution to the campaign's success was the persistence and efforts that protestors who continued strikes, vigils, marches, and rallies to sustain visibility on the issue — outside of digital organizing made necessary by the COVID-19 pandemic. "Far too many people, both in detention centers and outside of them, were willing to put their bodies and safety at risk to continue fighting against New Jersey's complicity with ICE detention and to free people through release," Torres shared. "But it was through their continued fight that pressure was maintained."

The last remaining county-level detention facilities in New Jersey (Essex, Bergen, and Hudson) have announced that they will close their immigration detention facilities and will no longer detain immigrants. These closures are a testament to community organizing, thoughtful strategizing, public pressure on officials, and the collective power of advocates across the state. With these closure announcements and the ban on new and renewed contracts, New Jersey will not have any ICE detention centers in 2023, when the last private contract in Elizabeth ends.

States faced other efforts to undermine decarceration measures. The Trump administration and the private prison operator, GEO Group, Inc., challenged California's AB 32, a state law banning private detention facilities. In October, a divided panel of the Ninth Circuit Court of Appeals reversed a lower court's decision, and concluded that the law conflicts with federal immigration powers. See *GEO Group, Inc. v. Newsom*, 15 F.4th 919 (9th Cir. 2021). The state attorney general continues to defend the law and has [asked](#) a broader Ninth Circuit panel to reconsider this case.

In a special session held in December, advocates in **Maryland** persuaded the legislature to override the governor's veto of [HB 16](#), the "Dignity not Detention Act." The new law prohibits state and local entities from operating or contracting with private entities for immigration detention. The law also prohibits law enforcement inquiries regarding citizenship, immigration status or place of birth; detention based on status or suspected status; transfers to federal immigration facilities unless required by federal law; and coercion, intimidation or threats based on actual or perceived immigration status or citizenship; detention based on status or suspected status; transfers to federal immigration facilities unless required by federal law; and coercion, intimidation or threats based on actual or perceived immigration status or citizenship.

Beyond the efforts to end detention, states have adopted measures to protect the health and safety of individuals in detention and residential settings. **California's** governor signed [SB 334](#), which requires private prisons and detention facilities, including those detaining immigrants, to comply with basic health and safety standards and to maintain insurance coverage related to medical liability and liability for civil rights violations, and [AB 263](#), which requires private detention facilities to comply with state and local public health orders and state workplace safety rules.

California enacted [AB 1140](#), which ensures that the Foster Care Ombudsperson can exercise oversight of the welfare of unaccompanied immigrant children in state-licensed childcare settings. **Colorado's** [HB 21-1313](#) similarly permits the Office of Child Protection Ombudsperson to initiate investigations on behalf of unaccompanied immigrant children in state licensed residential childcare facilities.

States also took steps to address abuses in policing. At the end of last year, **Massachusetts** enacted [S 2963](#), a police reform measure that adds immigration status to prohibited forms of racial profiling. The law prohibits school personnel from disclosing any information about immigration status, neighborhood of residence, religion, national origin, ethnicity, language, or suspected gang affiliation, to law enforcement or to databases or systems that track gang affiliation. It provides exceptions for when the information is related to a specific unlawful incident or prospect of unlawful activity that the school is otherwise required to report. **Maryland** [repealed](#) the Law Enforcement Officer's Bill of Rights (LEOBR) and adopted several police accountability measures this year. The legislature overrode the governor's veto of bills that establish new rules for the use of force, and how officers are investigated and disciplined, and that provide for civilian participation in police disciplinary proceedings. Illinois enacted the Pretrial Fairness [HB 3653](#), which, among other things, abolishes cash bail, and requires police officers to use body cameras. **Washington** enacted a [dozen police reform laws](#), including [SB 5051](#), which establishes a police oversight commission, new requirements for becoming a police or corrections

officer, conduct that would lead to revocation of an officer’s certification, and a policy of public disclosure of complaints, investigations, and disciplinary actions against officers.

States and localities took steps to address the disparate or discriminatory effects of citations, convictions or sentences on immigrants and citizens of color. **California** enacted [AB 1259](#), which allows individuals who are no longer in criminal custody to move to vacate a conviction or sentence where prejudicial error damaged their ability to meaningfully understand, defend against or knowingly accept the adverse immigration consequences of a conviction or sentence. After [years of concerted work](#) by a broad coalition of advocates, who highlighted the disproportionate impact on Black and Brown communities of fines, fees, criminal prosecutions and even incarceration that flows from traffic violations, **Nevada** enacted [AB 116](#), which decriminalizes traffic tickets in the state. [Berkeley, California](#) has also moved to shift the role of law enforcement in traffic stops.



Photo Credit: NILC

Strengthening Civil Rights and Civic Participation

The **New Mexico** Civil Rights Act, [HB 4](#), signed on April 7, establishes a right to sue public bodies for civil rights violations, and eliminates qualified immunity as a defense. **Colorado** enacted [HB 1057](#), which makes it a crime of extortion to threaten to report a person’s immigration status to law enforcement officials – to make the person perform or refrain from performing a lawful act. And **New York’s** [A 3412](#) adds the threat to cause the initiation of removal proceedings to the state’s penal code for extortion. Illinois enacted [SB 1596](#) which amends the list of hate crimes to include criminal actions based on perceived or actual immigration status. **California’s** [AB 600](#) similarly makes it a hate crime to commit a criminal act, in whole or in part, because of the person’s actual or perceived immigration status. And **Arkansas’** governor signed HB 1724, which makes orders of protection available for threats based on suspected or actual immigration status.

States adopted measures that increase non-citizen participation in civic life. **California** enacted [SB 714](#), which allows non-citizens to be appointed or elected to serve on county central committees. The **Vermont** legislature overrode the governor’s vetoes of bills approving the city charters of Winooski ([HB 227](#)) and Montpelier ([HB 177](#)) to allow legal resident [non-citizens](#) to vote. The governor had explained that he favored a more comprehensive state-wide approach. The **New York City** Council passed the “Our City, Our Vote” legislation ([Int. No 1867](#)) on December 9 by a vote of 33 to 14, which would make New York City the largest municipality in the county to grant non-citizen residents the right to vote in local elections. [Other jurisdictions](#), including Illinois ([SB 1565](#)) and Washington, D.C. ([B24-0300](#)) are considering measures that would authorize non-citizen voting in certain local elections. Conversely, a ballot initiative in **Maine** that would have blocked non-citizens from voting in state and local elections [failed](#) to gain enough signatures to appear on the 2022 ballot.



Photo Credit: NILC

General Pro-Immigrant and Pro-Refugee Measures

States increasingly have created offices dedicated to promoting access to services and advancing the rights of immigrants. **Colorado** enacted [HB 1150](#), establishing an Office of New Americans. **Oregon’s** [SB 778](#) creates an Office of Immigrant and Refugee Advancement, with an initial investment of [\\$1.3 million](#). **Illinois** enacted [SB 2665](#), reinstating the Illinois Immigrant Impact Task Force, as well as [HB 709](#) which requires the Department of Human Services, in consultation with other agencies, to inform immigrants about their rights and available resources. Illinois’ governor issued an [Executive Order](#) creating a Welcoming Illinois office. **Maryland** enacted [SB 85](#), establishing an Office of Immigrant Affairs. And **Massachusetts** appropriated \$2.1 million for citizenship services provided by its Office for Refugees and Immigrants.

States adopted an array of other inclusive measures this year. **Colorado's** [HB1075](#) strikes “illegal alien” from the statute books. **Illinois** [HR 318](#) urges the administration to pass legislation that advances and protects the human rights of immigrants; [HR 215](#) calls upon the administration to reverse the prior administration’s immigration policies and Congress to enact laws offering a pathway to status and address root causes. The **New York** budget allocates \$3 million for refugee resettlement. And **Washington** invested \$2 million in the Washington New Americans program to ensure that immigrants residing in the state have access to free citizenship services. California’s budget allocates \$105.2 million for a Rapid Response Program to support entities providing critical assistance and services to immigrants during emerging situations, to bridge the gap when federal funding is not available. The governor also signed [AB 941](#), which creates a grant program for counties to establish farmworker resource centers that provide information about rights and access to services for farmworkers and their families.

Conclusion

The public health and economic crisis created openings to forge new ground at all levels of government. Federal funding for states and localities, and in some states, tax revenue from industries and wealthy individuals who prospered during this period, offer opportunities to invest in housing, childcare, public health, education, and basic income programs that aid in a community’s recovery. The pandemic underscored the need to shift resources from harmful policing practices to programs that improve the lives of Black, Indigenous, immigrants and communities of color. Many jurisdictions recognized that they cannot protect the health and safety of their residents unless everyone in the community has access to health care, safe working conditions and economic support. Proposals to offer health coverage regardless of immigration status gained momentum; a growing number of states are making tax credits available to ITIN filers; and some are exploring guaranteed income or alternatives to unemployment insurance. State and local governments also took steps toward divesting from mass incarceration, including immigrant detention. The groundwork developed during the pandemic, if applied effectively, could advance more sustainable policies that enable all of us to thrive.

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