Applying the Youngstown three-scenario model to federalism conflicts

Overview

State officials would benefit from a clear analytical approach to combating the new presidential administration's onslaught of executive orders. We propose adapting Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer* as a model for evaluating how to deploy state power against attempts to impose policy by federal executive decree.[1] *Youngstown* was a horizontal separation-of-powers decision that analyzed federal executive action against congressional power; here we show how its framework applies equally well to vertical federalism conflicts between the federal executive and the states.

Analysis

A proposed model for approaching conflicts between states and the federal executive

In his *Youngstown* concurrence Justice Jackson proposed a three-part model for analyzing conflicts between the president's exercise of executive power and federal legislative power:

1. Where the president acts under "an express or implied authorization of Congress," the executive's "authority is at its maximum."
2. "When the President acts in the absence of either a congressional grant or denial of authority, he can only rely upon his own independent powers, but there is a zone of twilight" where the president "and Congress may have concurrent authority." In this zone of twilight the balance of power "is uncertain." Congressional "inertia, indifference or quiescence" may affect how a court settles the conflict.
3. "When the President takes measure incompatible with the express or implied

> will of Congress," the executive's "power is at its lowest ebb" — subtracted from its own constitutional powers are "any constitutional powers of Congress over the matter."[2]

The U.S. Supreme Court has since endorsed this model, which forms the modern view of federal separation-of-powers doctrine.[3]

This three-scenario framing is equally useful for analyzing conflicts between the states and the federal executive. Applying a *Youngstown* approach to federalism disputes permits courts to better navigate state–federal conflicts and to maintain the proper balance of power. Adopting this approach adds to existing federalism doctrines and improves on them by clarifying when the federal executive encroaches on state powers. Most state–federal conflicts have seen Congress attempting to impose its legislative power on the states. By contrast, there is scant authority on the federalism implications of states opposing federal executive power. Adopting the framework proposed here fills that gap.[4]

The *Youngstown* model is a broad, holistic approach that will bolster federalism challenges

A new approach like the one we propose is necessary because state attempts to invoke federalism principles against the federal executive have met with limited success. Those arguments apply only in a narrow set of cases, and courts often sidestep federalism questions. Federal courts interpreting federal law are prone to favoring federal interests over state concerns and frequently dismiss federalism objections in upholding executive actions. Even Tenth Amendment defenses (arguably a state's strongest shield against federal overreach) were largely ineffective until recently when the states notched a few anti-commandeering wins.[5] Even so, anti-commandeering violations are difficult to establish for many reasons; for example that doctrine does not apply "when Congress evenhandedly regulates an activity in which both States and private actors engage."[6]

Federalism arguments often fail because courts interpret executive actions in ways that superficially avoid infringing on state authority. For example, in *Mayes v. Biden*

a party challenged a federal executive order requiring employees of federal contractors and subcontractors to be vaccinated against COVID-19.[7] The Ninth Circuit rejected federalism and state sovereignty arguments and held that the federal government has the power to regulate performance of federal contracts even if the order is also motivated by the "health and safety concerns" that fall under state police powers. [8]

Federalism arguments may also fail because the federal government can avoid an anti-commandeering challenge by pressuring states to comply with federal programs — as long as the incentives fall short of coercion. States only need to have a "legitimate choice whether to accept the federal conditions in exchange for federal funds."[9] For example, in *South Dakota v. Dole* Congress passed a law to withhold a percentage of federal highway funds from states where the legal drinking age was not at least 21 years old. The high court concluded that a state's loss of only "5% of the funds otherwise obtainable under specified highway grant programs" was inadequate to turn "pressure" into "compulsion" to comply with the federal law.[10]

The upshot is that federalism is an unreliable tool for resisting federal overreach in general, and for executive power specifically federalism arguments are a weak check. That reality only reinforces the need for a more holistic framework like our proposed model. Adapting the *Youngstown* framework to help courts see where concurrent power exists can help courts identify encroachment on state power. Taking a broader view will help courts reach well-reasoned conclusions, comfortably providing a check on any federal overreach. The next sections detail our proposed three-scenario approach.

Scenario 1 (maximum federal power): states have little hope against an express constitutional provision or congressional authorization

When the federal constitution grants an express or necessarily implied power to the federal government, the states are generally defenseless against the Supremacy Clause. Because the U.S. Constitution makes itself and federal law "the supreme law of the Land," express constitutional powers win every time.[11] Thus, our approach posits that the federal government will win many conflicts with state governments.

Indeed, there is no shortage of federal court decisions invalidating state laws for conflicting with express federal constitutional provisions.[12] These examples serve as the clearest guideposts for identifying where state laws are the least likely to succeed against conflicting federal law in our three-scenario model: in this first scenario where federal power is at its maximum.

Expressly granted federal power explains decisions such as *Espinoza v. Montana Department of Revenue*, where the U.S. Supreme Court upheld a federal constitutional provision over a conflicting state constitutional provision.[13] In that case the Supremacy Clause made the U.S. Constitution's Free Exercise Clause superior to a state constitutional provision barring aid to a school controlled by a "church, sect, or denomination."[14] The state's "interest in separating church and State 'more fiercely' than the Federal Constitution" was inadequate "in the face of infringement of" the federal charter's protection of free exercise.[15]

The key principle here is that the U.S. Supreme Court's understanding trumps the state court's interpretation of federal constitutional law.[16] We emphasize this point to make clear its broader implications for the majority of states that interpret their state constitutions in lockstep with federal law.[17] In doing so those state courts have ceded control over their state constitutions.[18] This has the consequence of waiving any argument about independent state law grounds, which a state otherwise could use to insulate its decision from federal review.[19]

Federal authority can be at its maximum even when a federal statute or executive order is at issue, not a constitutional provision. For example, the Federal Arbitration Act not only "preempts any state rule discriminating on its face against arbitration" but also "displaces any rule that covertly accomplishes the same objective by disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements."[20] And federal courts generally assume that executive orders have the force of law.[21] Such orders are rarely invalidated.[22] Thus, for both federal statutes and executive orders the Supremacy Clause remains an unstoppable force.

Yet even when federal authority is at its maximum, states are not entirely helpless. The most common legal shield is states' ability to defend their legislative authority and avoid congressional preemption; these arguments apply equally to executive orders because they are federal laws for this purpose. One such argument is the presumption against preemption, which reflects the high court's assumption that the historic police powers of the states are not superseded by federal law unless Congress (or the executive) expresses a clear and manifest purpose to do so.[23] Another argument is that no conflict exists. "In the absence of irreconcilability, there is no conflict preemption," meaning that federal law does not automatically invalidate state law.[24] States can also argue that federal power does not apply to the issue or that the federal executive has exceeded its constitutional authority.

States can also challenge federal authority exercised in this scenario (and in the zone of twilight scenario discussed next) using the ultimate shield for states, the Tenth Amendment's anti-commandeering principle that bars the federal government from commandeering state resources to execute federal policy. Under that principle, the U.S. Supreme Court has recognized that "Congress cannot issue direct orders to state legislatures," and states can refuse to adopt preferred federal policies.[25] Although federal statutes may require states to provide information to the federal government, they cannot force states to participate "in the actual administration of a federal program" or policy.[26] States may "refrain from assisting with federal efforts."[27] States can also focus legal challenges wherever the federal government exercises power to regulate only state conduct, rather than evenhandedly regulating both state and private actors.[28] This argument applies even when the federal executive has clear federal power to execute a federal policy — because states cannot be compelled to execute federal policy.

And state sovereignty still provides states with some room to maneuver even in areas of exclusive federal power — the military, for example. States have significant residual police powers that overlap with Congress's power over the military. On that basis, the high court dismissed the claim that "all power of legislation regarding" military matters "is conferred upon Congress and withheld from the States," and

upheld state legislation on enlistment in the U.S. Army and Navy.[29] The court rejected the idea "that a State has no interest or concern in the United States or its armies or power of protecting them from public enemies," eschewing "[c]old and technical reasoning" that "insist[s] on a separation of the sovereignties" in the army-raising context.[30] Similarly, the court held that "there is no clause of the Constitution which purports, unaided by Congressional enactment, to prohibit" states from exercising their police powers in ways that arguably burden congressional power to raise and support armies.[31]

Finally, there is no general prohibition on state action that affects federal zones of control — that is not "implied from the relationship of the two governments established by the Constitution."[32] On the contrary, state regulations often and perhaps inevitably impose some burdens on the federal government — those are the "normal incidents of the operation within the same territory of a dual system of government," and they may persist "save as Congress may act to remove them."[33] Accordingly, even if a provision of the federal constitution grants the federal government "exclusive" authority over something, that does not necessarily rule out state action.

Still, in this first scenario all these are low-percentage, long-shot plays. States are on stronger ground in the second scenario of concurrent authority.

Scenario 2 (concurrent authority): states have a fighting chance in the zone of twilight

The federal constitution grants some powers to the states and federal government and bars others. For example, the federal charter expressly denies states the ability to coin money and instead expressly gives that power to Congress.[34] And organizing the militia is an expressly shared responsibility.[35]

But the U.S. Constitution does not attempt to distribute every power or assign responsibility for every facet of American life. This has the practical effect of leaving many public policy issues open to regulation by both state and federal governments.

For example, because the federal charter is silent on establishing a system of common schools and regulating education, under the Tenth Amendment that is left to the states and their police power. Thus, the high court has long recognized that state school boards have broad discretion in managing school affairs.[36] In general, "public education in our Nation is committed to the control of state and local authorities,"[37] so the court "has repeatedly emphasized . . . the comprehensive authority of the States and of school officials . . . to prescribe and control conduct in the schools."[38]

With education left to the states, California has much law in this area. California's constitution mandates free and public education and creates an elected state executive constitutional office of the Superintendent of Public Instruction.[39] The state has an entire statutory Education Code.[40] And when Congress established a federal Department of Education it took care to respect this division of responsibility: "The establishment of the Department of Education shall not increase the authority of the Federal Government over education or diminish the responsibility for education which is reserved to the States and the local school systems and other instrumentalities of the States."[41]

Under the background principles of our federal system, many areas are supervised by the states using their police power.[42] In fact, the areas traditionally left to state control are too numerous to list; they include regulating professions, the practice of medicine, education, licensing, contracting, birth, marriage, divorce, and death. To encroach on those areas the high court requires Congress to "make its intention clear and manifest [that] it intends to pre-empt the historic powers of the States."[43] Yet a statement of intent to preempt is inadequate on its own if Congress infringes on areas of traditional state control. For example, Congress lacks a general power over domestic relations, and therefore responsibility for regulating marriage and child custody remains primarily with the states.[44] The broad state police power is not limited by the mere existence of enumerated federal powers because "Article I gives Congress a series of enumerated powers, not a series of blank checks."[45]

In this zone of potentially overlapping powers, states can win where the president or Congress overreaches, especially when federal authority is unclear. For example, the federal constitution withholds from Congress a plenary police power that would authorize Congress to enact every type of legislation.[46] The absence of a general federal police power should cabin both congressional and presidential power to lanes defined by the express textual powers granted to the federal government. But that interpretation better states theory than reality, and the chief antagonist in this context has been the federal constitution's commerce clause; in the executive context the analogous problem is the Take Care clause.

The commerce clause has proved to be a mousehole that admitted an elephant. It empowers Congress "[t]o regulate commerce . . . among the several states."[47] It is ripe for abuse: if one defines *commerce* expansively it could be overextended so far as to justify the federal police power that Congress lacks. The executive equivalent in our proposed *Youngstown* adaptation would be, for example, national security acts under the Take Care clause, both in the sense that such powers fit within this second scenario and that the power could be over-expanded into national police powers.

Indeed, expansive reading of the commerce clause by federal courts in the 1900s spawned a vast federal administrative state. That continued until 2000, when the high court began to retreat from its broad commerce clause reading: it held that Congress cannot simply "conclude that a particular activity substantially affects interstate commerce" to justify legislation that has nothing to do with economic activity, much less interstate commerce.[48] The court recognized that reading *commerce* broadly makes it "difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign." The court cautioned that when extending the concept of commerce to its logical extreme it is "hard pressed to posit any activity by an individual that Congress is without power to regulate."[49] That raises concerns that "Congress might use the Commerce Clause to completely obliterate the Constitution's distinction between national and local authority."[50] Similar concerns exist about executive power against the states expanding through federal

administrative agencies.

Even so, federal reliance on the commerce clause to pass laws in the zone of twilight is often effective because the zone's boundaries are unclear — both because historically the high court often allowed federal regulation and because the doctrine is now in flux.[51] Thus, challenging federal commerce clause authority requires states to frame the regulated act as non-economic activity and ring the federalism bell with all their might. In the same way, doing so can allow states to attack federal executive overreach by showing that Congress overreached in authorizing the federal executive to act. Just as the high court has recently constrained commerce clause authority, these same arguments apply to restricting federal executive authority that flows from overly broad congressional action.

Where state and federal authority overlap, as in law enforcement, states can also resist executive interpretations of federal law as preempting state law based on an implied conflict. Where a federal authority may demand obedience, states can rely on their own law (bolstered by the anti-commandeering principle) to say "no." Even where a federal statute requires states to disclose certain information to the federal government, states can still enact their own laws to protect informational privacy not expressly required under that statute.[52] And states can argue against overbroad interpretations of federal statutes to constrain federal executive overreach.[53] Ensuring that federal authorities operate within the actual scope of federal law enables states to implement their own policies without conflicts that could invalidate their legislative efforts.[54]

Finally, state governments must still exercise caution within the zone of twilight because the doctrine of intergovernmental immunity shields federal government activity "from regulation by any state."[55] The doctrine prevents discrimination against the federal government and its contractors; a state law may not treat or regulate the federal government in a less favorable way than others, nor impose a burden exclusively on the federal government.[56] But generally applicable state laws that do not interfere with federal functions are not barred by intergovernmental immunity.[57] Here, to save their law from invalidation, states should argue for

narrowly construing their own law. They can argue that the law does not compel any additional requirements beyond those applied to other non-federal facilities or entities.[58]

Scenario 3 (lowest ebb): states should always win

States have maximum power in a scenario where the federal executive lacks an express or necessarily implied constitutional power. In such cases the police power, a state's "broad authority to enact legislation for the public good," is constrained only by the limits of the state's own constitution or the federal charter.[59] By contrast, the federal constitution creates a federal government of only certain enumerated powers.[60] Thus, when a federal power is not explicitly granted, the Tenth Amendment vests those powers in the states.[61] This reservation of all things not expressly granted gives states free rein to act wherever the federal government's power is absent. Absent a constitutional provision barring a power from the states, powers that are not delegated to the federal government are state powers.[62]

To effectively use this principle of enumerated and reserved powers, states should argue that the Tenth Amendment creates a rebuttable presumption that states have the power. States should challenge the federal actor to prove that an express or necessarily implied federal constitutional power exists. In this burden-shifting approach the state's obligation to show a countervailing interest arises only after the federal actor has made its preliminary showing. States can strengthen their position by aligning their laws with areas where courts have already recognized state authority. For example, when states ground their actions in their "historic police power," the federal government must show that the state law is "clearly superseded by federal statute," rather than relying on implied or conflict preemption to invalidate state law.[63]

This respect for state sovereignty also includes court protection from federal pre-approval or veto of state laws, something that "was considered at the Constitutional Convention, but rejected in favor of allowing state laws to take effect, subject to

later challenge under the Supremacy Clause."[64] Outside of "the Supremacy Clause, States retain broad autonomy in structuring their governments and pursuing legislative objectives."[65] Thus, states can act first, then defend against any federal attack from Congress or the executive. This leaves states with entire areas of law where they remain free from federal encroachment.

Even an attempt by Congress to express "clear intent to abrogate" (and provide power to the federal executive) is not conclusive.[66] For example, "[t]he Eleventh Amendment restricts the judicial power under Article III," preventing Congress from using Article I "to circumvent the constitutional limitations placed upon federal jurisdiction."[67] In such areas of exclusive federal authority, states retain constitutional protections that neither Congress nor the federal executive can disregard. For example, state sovereign immunity under the Eleventh Amendment exists even when the subject of the suit is an area that is under the federal government's exclusive control.[68]

In this third scenario, states have powerful structural and textual arguments to resist federal encroachment. To supersede state law, federal actors must first overcome the presumption favoring state action, establish a clear federal power to act, and overcome judicial respect for state police powers. And where the federal government exercises power against state actors differently from private actors, states may also argue anti-commandeering.

Finally, states can make a systemic preservation argument that federal courts should rebalance the federalist structure by reducing overextended federal power. This is a historical and originalist argument that reminds federal courts of their obligation to prevent the national government from devouring essential principles of state sovereignty.[69] In recent decades, even the U.S. Supreme Court has reversed longstanding precedent in favor of state sovereignty.[70] States seeking to protect themselves from federal overreach can appeal to originalist sympathies and argue for rebalancing the federalist structure.

Conclusion

Our proposal to adapt the *Youngstown* three-scenario model to federalism questions provides courts with a needed structure for analyzing state and federal executive power conflicts. Applying this model can help states preserve their sovereignty, which is necessary if states are to serve their federalism function of counterbalancing federal authority.[71] Unlike narrow constitutional challenges with questionable outcomes, our *Youngstown* model offers a broader view that makes no distinction between types of federal actions. It thus applies across a wider range of cases, enabling courts to address these questions more efficiently by applying a single framework to federal invasions of state sovereignty.

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1. (1952) 343 U.S. 579. ↑

2. *Id.* at 635–38 (Jackson, J., concurring in judgment). ↑

3. See, e.g., *Medellin v. Texas* (2008) 552 U.S. 491, 524–25. ↑

4. States may of course try to wield the actual *Youngstown* framework by arguing that the federal executive has exceeded its claimed authority because Congress did not authorize that use of executive power. See, e.g., *Louisiana v. Biden* (5th Cir. 2022) 55 F.4th 1017, 1033. But that argument only works in certain situations, and this article focuses on more broadly adapting the *Youngstown* framework to state–federal conflicts. ↑

5. Under the anti-commandeering doctrine, "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Printz v. United States* (1997) 521 U.S. 898, 935. "That is true whether Congress directly commands a State to regulate or indirectly coerces a State to adopt a federal

regulatory system as its own." *Nat'l Fed'n of Indep. Bus. v. Sebelius* (2012) 567 U.S. 519, 576. ↑

6. *Murphy v. National Collegiate Athletic* (2018) 584 U.S. 453, 475–76; see also *Brackeen v. Haaland* (5th Cir. 2021) 994 F.3d 249, 322–23, *aff'd in part, vacated in part, rev'd in part,* 599 U.S. 255 (2023). ↑

7. (9th Cir. 2023) 67 F.4th 921, 943–44. ↑

8. *Id.* at 943. ↑

9. *Nat'l Fed'n of Indep. Bus.,* 567 U.S. 578. ↑

10. (1987) 483 U.S. 203, 211. In contrast, *Cnty. of Santa Clara v. Trump* (N.D. Cal. 2017) 250 F.Supp.3d 497 is an example of a state win in this context: the court upheld a local challenge to a federal executive order withholding federal grants from counties that did not comply with immigration enforcement efforts, finding that was an attempt to enforce a federal regulatory program through means so coercive that it amounted to commandeering. ↑

11. U.S. Const. art. VI, cl. 2. ↑

12. See, e.g., *Am. Tradition P'ship, Inc. v. Bullock* (2012) 567 U.S. 516, 516–17 (applying federal law to invalidate state law). ↑

13. *Espinoza v. Montana Dept. of Revenue* (2020) 591 U.S. 464, 468, 488–89. ↑

14. *Id.* ↑

15. *Id.* at 484–85 (citations omitted). ↑

16. *Furman v. Georgia* (1972) 408 U.S. 238, 239–40 (reversing the Georgia Supreme Court's holding that imposing and carrying out the death penalty constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments); *Obergefell v. Hodges* (2015) 576 U.S. 644 (overruling multiple state supreme court cases that deprived same-sex couples of the right to marry under the due process and equal protection

clauses of the Fourteenth Amendment). ↑

17. Williams, The Law of American State Constitutions (Oxford University Press, 1st ed. 2009) at 194. ↑

18. See, e.g., *Florida v. Riley* (1989) 488 U.S. 445, 448 (U.S. Supreme Court's interpretation bound the Florida state courts in reading their state constitution's Fourth Amendment analogue). ↑

19. *Michigan v. Long* (1983) 463 U.S. 1032, 1040–41 (state court decisions are final, and the U.S. Supreme Court has no jurisdiction to review them, when they are based on an adequate and independent state law ground such as the state constitution). ↑

20. *Kindred Nursing Centers Ltd. v. Clark* (2017) 581 U.S. 246, 251. ↑

21. Federal executive orders have the force of law because they must — absent that status, federal courts would arguably lack jurisdiction because no question of federal law would exist. Thus, courts will assume that the order is issued under congressional statutory mandate or delegation, or find an implied basis for the order. See, e.g., *Independent Meat Packers Ass'n v. Butz* (8th Cir. 1975) 526 F.2d 228, 234 ("Presidential proclamations and orders have the force and effect of laws when issued pursuant to a statutory mandate or delegation of authority from Congress."). Otherwise no statutory basis exists and the order has no effect at all, so federal courts "have repeatedly held or noted in dicta that executive orders issued pursuant to statutory mandate have the 'force and effect of law.'" Anderson, *Executive Orders, The Very Definition of Tyranny, and the Congressional Solution, the Separation of Powers Restoration Act* (2002) 29 Hastings Const. L.Q. 589, 592. See also Duncan, *A Critical Consideration of Executive Orders: Glimmerings of Autopoiesis in the Executive Role* (2010) 35 Vt. L.Rev. 333, 366 (courts have recognized presidential orders as an acceptable means for executive agencies to issue substantive rules, a process which endows them with the force of law) and 374 (the president may indeed make laws, and whatever those laws may be, they have the force and power of the national government behind them). ↑

22. Sterling, *Above the Law: Evolution of Executive Orders* (Part Two) (2000) 31 Univ.W.L.A. L.Rev. 123, 123. ↑

23. *Cipollone v. Liggett Group, Inc*. (1992) 505 U.S. 504, 516. ↑

24. *United States v. California* (9th Cir. 2019) 921 F.3d 865, 882. ↑

25. *Murphy,* 584 U.S. at 475. See *New York v. United States* (1992) 505 U.S. 144, 161–62. ↑

26. *Printz,* 521 U.S. at 917–18. ↑

27. *United States v. California* (9th Cir. 2019) 921 F.3d 865, 891. ↑

28. *Id.* at 890. ↑

29. *Gilbert v. Minnesota* (1920) 254 U.S. 325, 327–28 ↑

30. *Id.* at 328–29. ↑

31. *Penn Dairies, Inc. v. Milk Control Comm'n of Pa*. (1943) 318 U.S. 261, 269. ↑

32. *Ibid.* ↑

33. *Id.* at 271. ↑

34. U.S. Const. Art. I, section 8, cl. 5; art. I, section 10, cl. 1. ↑

35. U.S. Const. Art. I, section 8, cl. 16. ↑

36. *Board of Ed., Island Trees Union Free School Dist. No. 26 v. Pico* (1982) 457 U.S. 853, 863–64. ↑

37. *Epperson v. Arkansas* (1968) 393 U.S. 97, 104. ↑

38. *Tinker v. Des Moines Independent Community School Dist*. (1969) 393 U.S. 503, 507. ↑

39. Cal. Const., art. IX, section 5; art. V, section 14(f). ↑

40. Cal. Education Code sections 1–101460. ↑

41. 20 U.S.C. section 3403. ↑

42. See *Gonzales v. Oregon* (2006) 546 U.S. 243, 274. ↑

43. *Gregory v. Ashcroft* (1991) 501 U.S. 452, 461 (internal quotation marks and citation omitted). ↑

44. *Haaland v. Brackeen* (2023) 599 U.S. 255, 276. ↑

45. *Id.* at 276–77. ↑

46. *United States v. Lopez* (1995) 514 U.S. 549, 566. ↑

47. U.S. Const. Art. I, section 8, cl. 3. ↑

48. *United States v. Morrison* (2000) 529 U.S. 598, 614 (addressing federal law providing a federal civil remedy for victims of gender-motivated violence). ↑

49. *Lopez,* 514 U.S. at 564. ↑

50. *Morrison,* 529 U.S. at 615. ↑

51. *Gonzales v. Raich* (2005) 545 U.S. 1, 15. ↑

52. See, e.g., *City and County of San Francisco v. Garland* (9th Cir. 2022) 42 F.4th 1078, 1085. ↑

53. See, e.g., *City and County of San Francisco v. Bar* (9th Cir. 2020) 965 F.3d 753, 763–64 (concluding that statute requiring states to provide immigration status does not extend to contact information and release status information). ↑

54. See *id.* at 764 (upholding state laws that "restrict some information that state and local officials may share with federal authorities" in part because "they do not apply to information regarding a person's citizenship or immigration status," the "only information" that the federal statute covered). ↑

55. *United States v. California* (9th Cir. 2019) 921 F.3d 865, 878. ↑

56. *North Dakota v. United States* (1990) 495 U.S. 423, 434–35. ↑

57. *Ibid.* ↑

58. *United States v. California* (9th Cir. 2019) 921 F.3d 865, 882–85 (upholding most of a state law while finding one provision included a "novel requirement" on federal detention facilities that required reversal and remand to the lower court to reconsider). ↑

59. *Bond v. United States* (2014) 572 U.S. 844, 854 (in our federal system the national government possesses only limited powers and the states and the people retain the remainder; the federal government has no analogue to states' broad authority to enact legislation for the public good and instead "can exercise only the powers granted to it"); *Oklahoma v. Castro-Huerta* (2022) 597 U.S. 629, 636 (a state is generally "entitled to the sovereignty and jurisdiction over all the territory within her limits"). ↑

60. *Lopez,* 514 U.S. at 552; *Bond*, 572 U.S. at 863 (citations omitted). ↑

61. *Nevada v. Hall* (1979) 440 U.S. 410, 425 (given Tenth Amendment's reminder that powers not delegated to the federal government nor prohibited to the states are reserved to the states or to the people, courts should not assume that unstated limitations on state power were intended by the Framers) overruled in other respect by *Franchise Tax Bd. of California v. Hyatt* (2019) 587 U.S. 230. ↑

62. *Trump v. Vance* (2020) 591 U.S. 786, 799. ↑

63. *United States v. California* (9th Cir. 2019) 921 F.3d 865, 886–87 (concluding there was no preemption for law that restricted state law enforcement from transferring an individual to immigration authorities without "a judicial warrant or judicial probable cause determination"). ↑

64. *Shelby County, Ala. v. Holder* (2013) 570 U.S. 529, 542–43. ↑

65. *Id.* at 543. ↑

66. *Seminole Tribe of Fla. v. Florida* (1996) 517 U.S. 44, 56. ↑

67. *Id.* at 72–73. ↑

68. *Id.* (Indian Commerce clause did not authorize Congress to override state immunity from lawsuits under the Eleventh Amendment) ↑

69. *Garcia v. San Antonio Metropolitan Transit Authority* (1985) 469 U.S. 528, 547 (citation omitted, modifications in original). ↑

70. *U.S. v. Lopez* (1995) 514 U.S. 549; *United States v. Morrison* (2000) 529 U.S. 598; *Dobbs v. Jackson Women's Health Organization* (2022) 597 U.S. 215; *Seminole Tribe of Fla. v. Florida* (1996) 517 U.S. 44. ↑

71. See *Bond*, 564 U.S. at 221. ↑