As Jennifer Chacon, one of our participants has noted:

“This is an era of unprecedented immigration enforcement. Never before in the history of the United States has the government removed so many noncitizens in so short a time frame. Between 2003 and 2008, the U.S. government removed 1,446,338 noncitizens from the United States . . . For every noncitizen who receives a formal order of removal, another four depart “voluntarily” as a result of their encounters with the immigration enforcement bureaucracy. At the same time, federal prosecutions of immigration crimes in criminal courts have reached an all-time high. Over the past five years, immigration crimes have risen to the top of the list of federal prosecutions, and now make up more than half of the federal criminal docket.” Jennifer M. Chacon, 40th Annual Administrative Law Issue: Immigration Law and Adjudication: A Diversion of Attention? Immigration Courts and the Adjudication of Fourth and Fifth Amendment Rights, 59 DUKE L.J. 1563 (2010).

Notwithstanding the federal focus on immigration enforcement, in the past decade, states have sought to play a more active role in immigration enforcement and, in particular, in deterring or punishing undocumented or unauthorized migration. To some extent, federal immigration law facilitates cooperative state initiatives in law enforcement undertaken under federal supervision. Federal immigration law also depends heavily on state criminal law in determining who is deportable and who is not. Many state legislatures or municipalities, however, have gone further and enacted statutes that regulate immigration related activities or the status of being an undocumented or unauthorized noncitizen. One example is the ordinance adopted by the City of Hazleton, which among other things prohibited landlords from knowingly letting, leasing or renting a dwelling unit to an “illegal alien” and prohibited employment of undocumented aliens. That ordinance has been enjoined as preempted by federal law. See Lozano v. City of Hazleton, 2010 U.S. App. LEXIS 18835 (3d Cir. Sept. 9, 2010). Previously, the Ninth Circuit Court of Appeals had concluded that a statute that prohibited employment of undocumented noncitizens by denying employers a license to do business in the state was not preempted. Chicanos Por La Causa, Inc. v. Napolitano, 558 F. 3d 856 (9th Cir. 2009), and the United States Supreme Court granted certiorari. Chamber of Commerce v. Candelaria, 2010 U.S. LEXIS 5321 (June 28, 2010). More recently, states have enacted statutes that impose criminal sanctions on a variety of immigration related activity. Perhaps the most famous of these initiatives is Arizona SB 170. At least, one Louisiana legislator has promised to introduce a similar statute for adoption in Louisiana.
This symposium examines the role that state criminal law has or should have in the context of immigration, immigration related activities and unauthorized or undocumented migration. Speakers on the first panel will address the use of state criminal law to heighten, complement or independently accomplish state immigration related goals, with state initiatives such as the Hazleton ordinance or Arizona’s SB 170. Speakers will also consider what role state initiatives may play in ameliorating the draconian effects of the heightened immigration enforcement at the federal level, such as using executive pardons as a way to avoid or impact the deportation of noncitizens whose state conviction may result in their deportation. Speakers will discuss, as well, the interaction between the federal and state governments, exploring the issue of preemption, an issue likely to be settled by the Supreme Court this term, at least with regards the type of state regulation at issue in the Candelaria case.

The second panel features law professors with expertise in immigration, criminal justice and constitutional law, and with practice expertise. In addition, some of the panelists are well versed in how these issues have played a role in Louisiana law enforcement and in the Louisiana legislature.

The keynote speaker, Professor Bill Ong Hing, will explore the ways in which race, ethnicity and national origin intersect with state criminal law enforcement of immigration related activity and undocumented immigrants.