Sanctuary Cities:
A Civil Liberties Briefing

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What is a Sanctuary City?

"Sanctuary cities" are largely undefined, but cities that adopt this designation generally seek to offer political, social and economic support to undocumented immigrants. A city can also create policies which restrict city officials' and law enforcement's cooperation with the Department of Homeland Security (DHS) and its subsidiary, the U.S. Immigration and Customs Enforcement (ICE) agency. These policies vary across municipalities, but they can prohibit city officials and police from inquiring into a person's immigration status and sharing personal information—such as work and home addresses and telephone numbers—of immigrants.

Additional Restrictions Placed on Law Enforcement

Under the Obama and Trump Administrations, ICE contracted with state and local authorities to enforce federal immigration law. Two programs, Secure Communities, or the 287(g) program, and the Priority Enforcement Program, allowed ICE to create shared agreements or partnerships with local law enforcement, whereby localities would voluntarily share the fingerprints and personal data of immigrants who were suspected of being in the country illegally or without documentation. The Secure Communities program was designed to identify immigrants in U.S. jails who were deportable under immigration law. Under Secure Communities, participating jails (or localities) could submit arrestees' fingerprints to criminal (FBI) and immigrant databases, allowing ICE access to information on individuals held in jails. In the event of a database "hit," meaning the arrested person is matched to a record indicating a potential immigration violation, ICE is notified. ICE will then ask local law enforcement to place a "detainer hold" on the individual.

A *detainer* is a written request sent to local law enforcement to detain an individual for an additional 48 hours after he or she would otherwise be released, a violation of an individual's fourth amendment right to due process.

The Problem With Detainers

Detainers are not subject to scrutiny in the same way as judicial warrants. They are typically issued without a judicial warrant supported by probable cause and permit the detention of individuals, when they should otherwise be released. Allowing a person to be jailed for an additional 48 hours while an ICE agent assumes custody denies the incarcerated individual a right to due process and encourages local law enforcement to abuse individuals' constitutional rights. These policies also lead to racial profiling and tensions with communities of color. Additionally, many individuals identified and deported under the Secure Communities program, and previously under President Obama's Priority Enforcement Program, have had no prior criminal history or have been jailed for minor offenses such as traffic violations. The Secure Communities program, which was recently brought back by the Trump administration after it was rescinded by President Obama in 2014, creates distrust between communities and local police, is subject to wide abuse by individual ICE agents who send detainers to local authorities, and diverts scarce resources away from fulfilling local law enforcement duties. Because of these concerns, localities have passed laws which prohibit local law enforcement and public officials from sharing immigrants and citizens' fingerprints and personal data with ICE.

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Why are "Sanctuary Cities" being targeted?

Sanctuary cities have drawn the ire of federal enforcement agencies and President Trump because they are protecting the civil rights of undocumented immigrants, who deserve the same rights to due process as all residents of the United States. Opponents of Sanctuary Cities have argued these localities should be banned from receiving federal grant funding and be subjected to substantial financial penalties. Though federal law prohibits cities from setting policies that conflict with federal immigration law, it does not require municipalities to enforce it. In fact, local authorities sharing immigrants' personal data or detaining people who are eligible for release has led to unconstitutional practices in local jails and denied individuals of their Constitutional right to due process.

Can the President Defund "Sanctuary Cities"?

President Trump has threatened to have the Attorney General and the Homeland Security Secretary restrict funds to sanctuary cities if jurisdictions fail to cooperate with federal immigration law, or with section 8 U.S.C. 1373 of his executive order, "Enhancing Public Safety in the Interior of the United States." These localities would be ineligible to receive various federal grants unrelated to law enforcement purposes. Trump has little authority to eliminate federal funding that is unrelated to law enforcement projects. His order would also be in direct violation of the Tenth Amendment; the president and the federal government cannot impose conditions on grants to states and localities unless the conditions are "unambiguously" stated in the text of the law. Changes in grants or funds must be passed by Congress, and such changes only apply to new grants, not those which have already been appropriated. Furthermore, such actions would violates the separation of powers by circumventing Congress' authority to set conditions on federal funds and commandeer state and local authorities to enforce federal law. The federal government cannot force state and local authorities to report to immigration officials people who are in their custody and are eligible for deportation.

What Legal Precedents Affect "Sanctuary Cities"?

The federal government cannot threaten state and local governments with a loss of federal funds when they fail to administer or implement a program. In 1997, the Supreme Court ruled that the federal government could not force states to do background checks prior to gun sales (Printz v. United States) and in a 2012 ruling on the Affordable Care Act, the court decided that the federal government could not threaten states with loss of money for failing to comply with a Medicaid requirement (National Federation of Independent Business v. Sebelius).

Where are these "Sanctuary Cities"?

Notable "Sanctuary Cities" include Los Angeles and San Francisco, California; Chicago, Illinois; New York City, New York; Boston, Massachusetts; Seattle, Washington; and Columbus, Cincinnati and Dayton, Ohio. There are over 400 jurisdictions with sanctuary policies.