



February 28, 2017

Dear Colleagues,

The relationship between state and local entities and Federal Immigration enforcement has a long, complex history. In broad terms, the 10<sup>th</sup> Amendment prevents the Federal government from interfering with sovereign entities at the state and local level, including prison and police jurisdictions. There are, of course, exceptions, but in general, this restriction has meant that States have not historically played a significant role in immigration enforcement. In the last 37 years, numerous state, county, and municipal jurisdictions have gone even further, enacting policies against active engagement in immigration enforcement matters by local law enforcement entities. Such jurisdictions have come to be known as “sanctuary jurisdictions,” though the term is poorly defined.

In this letter, students enrolled in the Cornell Law School Legal Research Clinic have compiled information regarding sanctuary jurisdictions in the United States, attempting to provide a “snapshot” to interested parties.

**Background: Landmark Laws and Events Which Led to “Sanctuary Jurisdictions”**

In general, state and local jurisdictions have established policies around immigration enforcement, not proactively, but in response to federal policies and laws, as immigration enforcement is a responsibility constitutionally delegated to the federal government. The four major laws and events discussed below are directly referenced in many policies, statutes, resolutions.

In 1981, [refugees from El Salvador and Nicaragua were denied asylum](#) as a secondary consequence of Cold War policies toward the Central American governments. Originally led by religious organizations, numerous jurisdictions adopted policies to shield the refugees from Federal law enforcement. The use of the word “sanctuary” to describe noncompliance with federal immigration policy dates to this movement.

In 2001, following the September 11<sup>th</sup> terrorist attacks, the [USA PATRIOT Act](#) expanded federal law enforcement agencies’ domestic security operations. One aspect of this included greater information-sharing and communication with local law enforcement. However, numerous jurisdictions viewed this expansion of federal power into local affairs with suspicion, and adopted policies limiting information-sharing with Federal law enforcement.

In 2009, the Department of Homeland Security (DHS) debuted the [Secure Communities Program](#), under which State and Local jurisdictions could opt to share information with Immigration and Customs Enforcement (ICE), including immigration status of detainees, and biometric data. Based on that information, ICE could issue detainer requests, instructing a jurisdiction holds a prisoner, for transfer to Federal custody, sometimes for long periods of time if the jurisdiction contracted to serve as an contract immigration detention facility. Alternatively, some jurisdictions agreed to issue ICE alerts, informing the federal agency when an undocumented immigrant was about to be released

from custody. Numerous jurisdictions chose not to participate in the program, and others went further, and resolved not to actively aid ICE in any way. In 2014, the program’s expansion was halted, and detainer requests were replaced with notification requests, in response to several successful Fourth Amendment suits. However, it has recently been reinstated, as discussed below.

On January 25, 2017, President Trump signed [executive order 13768](#), entitled Enhancing Public Safety in the Interior of the United States (“the order”). Among other immigration measures, the order discussed sanctuary jurisdictions, describing them as any jurisdiction which “willfully refuse[es] to comply with [8 U.S.C. 1373](#),”<sup>1</sup> and vesting in the Secretary of Homeland Security the power to “designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction.” Further, the order states that cities with such designation are not eligible to receive federal grants. As a result, numerous jurisdictions are currently examining local resolutions, ordinances, laws, and police policies, to determine what, if any, effect the order will have. In addition, the order directed DHS to reinstate the Secure Communities Program.

### Defining ‘Sanctuary Jurisdictions’

As a result of the range of events which prompted adoption of local non-cooperation policies, there is no single definition of sanctuary city, nor is there a clear answer as to what constitutes a violation of 8 U.S.C. 1373. Categorization is further complicated because so-called sanctuary policies are not binary—there are degrees of cooperation between local law enforcement and ICE. The Immigrant Legal Resource Center has identified key policy decisions<sup>2</sup> at the city and county level, any combination of which could be chosen by a jurisdiction, which would arguably make it a sanctuary jurisdiction :

<b>Table 1: Common ICE Non-Cooperation Policies</b>	
<b>County-Level</b>	<b>City-Level</b>
Refusal to honor ICE detainers	Self-Identification as a Sanctuary Jurisdiction
Prohibition on inquiries into immigration status by law enforcement officers	Prohibition on inquiries into immigration status by law enforcement and city agencies
Prohibition on use of local resources to assist immigration enforcement efforts	Prohibition on use of local resources to assist immigration enforcement
No ICE detention contract, formalizing payment and relationship with local law enforcement	Limits on immigration-based detentions, including ICE holds, by local law enforcement

<sup>1</sup> 8 U.S.C. 1373 was passed as an amendment to the [1996 omnibus federal budget](#). Notably, it does not impose an affirmative duty on jurisdictions to collect or share information with the federal government, but instead prohibits state and local entities from prohibiting such communication. Since its passage, the Federal Government has not brought action against any state or local entities for violation of the law, though in [City of New York v. United States](#), 179 F.3d 29, 33-35 (1999), the City of New York failed in a suit to overturn the law on purely constitutional grounds.

<sup>2</sup> Graber et al, [Searching for Sanctuary](#), December 2016, Immigrant Legal Resource Center, available online at [https://www.ilrc.org/sites/default/files/resources/sanctuary\\_report\\_final\\_1-min.pdf](https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf)

Refusal to issue ICE alerts, informing federal agencies when undocumented prisoners will be released.	Acceptance of non-governmental or municipal-issued identification by law enforcement and city agencies
Refusal to participate in 287(g) program, deputizing law enforcement to enforce federal immigration law.	Refusal to participate in 287(g) program, deputizing law enforcement to enforce federal immigration law.
Limits on ICE's physical presence in local jails.	

The above policies may be implemented in an informal or de facto manner, through formal unwritten guidance, as written law enforcement policy, as local ordinance or law, as a resolution of an executive body, or by voter referendum. The fact that these forms differ in terms of binding authority and uniform implementation within a jurisdiction makes a single definition of sanctuary status even more difficult.

### Methodology

In order to assess the current state of Sanctuary Jurisdictions, students researched existing published lists of sanctuary jurisdictions, assessing their criteria for inclusion. This review focused primarily on the following resources:

<b>Resource</b>	<b>Last Updated</b>	<b>Inclusion Criteria</b>
<a href="#">Center for Immigration Studies</a>	Feb 2017	<ul style="list-style-type: none"> <li>Unclear-includes jurisdictions which “have laws, ordinances, regulations, resolutions, policies, or other practices” against ICE cooperation.</li> </ul>
<a href="#">Ohio Jobs and Justice PAC</a>	Mar 2017	<ul style="list-style-type: none"> <li>Reports from local activists, including those suggesting the existence of a <u>de facto</u> policy</li> <li>News stories, including those suggesting a <u>de facto</u> policy</li> <li>Inclusion in the ICE Declined Detainer Report</li> <li>Any written policy</li> <li>Removal from the list only if a written policy against Sanctuary-type operations exists</li> </ul>
<a href="#">Federation for American Immigration Reform</a>	Nov 2016	<ul style="list-style-type: none"> <li>Existence of a written document, including resolutions, statutes, and department policies</li> <li>Publicly declared unwritten policies</li> </ul>
<a href="#">ICE Declined Detainer Report</a>	Aug 2014	<ul style="list-style-type: none"> <li>Rejection of an ICE detainer request</li> </ul>
<a href="#">National Immigration Law Center Policy Chart</a>	Dec 2008	<ul style="list-style-type: none"> <li>Existence of a written document, including resolutions, statutes, and department policies</li> </ul>
<a href="#">Immigrant Legal Resource Center Map</a>	Dec 2016	<ul style="list-style-type: none"> <li>Each county in the United States is scored according to the criteria listed above in <b>Table 1</b>.</li> </ul>

As a result of the diverse criteria in the above table, the total number of jurisdictions considered to be sanctuaries vary widely between sources. For the purposes of this letter, Cornell students narrowed their criteria to include only those jurisdictions which have written documentation of their policies, including laws, resolutions, and published police memoranda (written police memoranda referenced in press releases, but not readily available were excluded). Therefore, the list attached to this letter is not exhaustive—it does not include jurisdictions with informal or unpublished policies, nor does it include jurisdictions where a commitment not to cooperate with ICE is solely verbal.

### **Currentness**

The information provided in this document and the attached table is based upon the laws of the United States and the state of New York, and is valid as of February 28, 2017. As this area of law is highly dynamic, state, county, and local policies regularly change.

Sincerely,

Michael Hodess  
*Clinical Student*  
*Cornell Legal Research Clinic*

APPROVED:

Jonathan Feldman, Esq.  
*Cornell Legal Research Clinic*

NOTE: The following law students worked on the accompanying table:

Krsna Avila, Thomas Caruso, Michael Hodess, Carrie Montgomery, Gerard Salvatore, Jay Wexler

*This response is based upon the laws of the United States and the state of New York, and is valid as of the above date. It expresses the clinic's professional judgment, but does not guarantee that a court will reach a particular legal result.*

**United States Jurisdictions with Written Policies Against ICE Cooperation  
Current as of February 28, 2017**

<b>Jurisdiction</b>	<b>Jurisdiction Type</b>	<b>State</b>	<b>Rule Type</b>	<b>Document Link</b>
Alaska	State	AK	Resolution	<a href="#">Link</a>
Fairbanks	City	AK	Resolution	<a href="#">Link</a>
Haines Borough	City	AK	Resolution	Not Online
Sitka	City	AK	Resolution	<a href="#">Link</a>
Birmingham	City	AL	Resolution	<a href="#">Link</a>
Tuskegee	City	AL	Resolution	<a href="#">Link</a>
Chandler	City	AZ	Other	<a href="#">Link</a>
Mesa	City	AZ	Other	<a href="#">Link</a>
Phoenix	City	AZ	Other	<a href="#">Link</a>
Tucson	City	AZ	Resolution	<a href="#">Link</a>
Berkeley	City	CA	Resolution	<a href="#">Link</a>
California	State	CA	Ordinance	<a href="#">Link</a>
East Palo Alto	City	CA	Resolution	<a href="#">Link</a>
Los Angeles	City	CA	Other	<a href="#">Link</a>
Oakland	City	CA	Resolution	<a href="#">Link</a>
Richmond	City	CA	Resolution	<a href="#">Link</a>
San Francisco	City	CA	Ordinance	<a href="#">Link</a>
San Jose	City	CA	Resolution	<a href="#">Link</a>
Santa Ana	City	CA	Resolution	<a href="#">Link</a>
Aurora	City	CO	Other	<a href="#">Link</a>
Denver,	City	CO	Other	<a href="#">Link</a>
Durango	City	CO	Resolution	<a href="#">Link</a>
Hartford	City	CT	Ordinance	<a href="#">Link</a>
New Haven	City	CT	Other	<a href="#">Link</a>
Washington D. C.	City	DC	Ordinance	<a href="#">Link</a>
			Other	<a href="#">Link</a>
Miami Dade County	County	FL	Other	<a href="#">Link</a>
Chicago	City	IL	Ordinance	<a href="#">Link</a>
Cook County	County	IL	Ordinance	<a href="#">Link</a>
Evanston	City	IL	Ordinance	<a href="#">Link</a>

Urbana	City	IL	Resolution	<a href="#">Link</a>
Amherst	City	MA	Resolution	<a href="#">Link</a>
Boston	City	MA	Ordinance	<a href="#">Link</a>
Cambridge	City	MA	Ordinance	<a href="#">Link</a>
Lawrence	City	MA	Resolution	<a href="#">Link</a>
Newton	City	MA	Pending	<a href="#">Link</a>
			Resolution	<a href="#">Link</a>
				<a href="#">Link</a>
Northampton	City	MA	Resolution	<a href="#">Link</a>
Somerville	City	MA	Ordinance	<a href="#">Link</a>
Baltimore	City	MD	Resolution	<a href="#">Link</a>
Takoma Park	City	MD	Ordinance	<a href="#">Link</a>
Portland	City	ME	Ordinance	<a href="#">Link</a>
Ann Arbor	City	MI	Resolution	<a href="#">Link</a>
Detroit	City	MI	Ordinance	<a href="#">Link</a>
Minneapolis	City	MN	Ordinance	<a href="#">Link</a>
St. Paul	City	MN	Ordinance	<a href="#">Link</a>
Jersey City	City	NJ	Other	<a href="#">Link</a>
Newark	City	NJ	Other	<a href="#">Link</a>
Albuquerque	City	NM	Resolution	<a href="#">Link</a>
Rio Ariba County	County	NM	Resolution	<a href="#">Link</a>
Albany	City	NY	Resolution	<a href="#">Link</a>
Ithaca	City	NY	Resolution	<a href="#">Link</a>
New York City	City	NY	Resolution	<a href="#">Link</a>
			Resolution	<a href="#">Link</a>
			Resolution	<a href="#">Link</a>
Rochester	City	NY	Resolution	<a href="#">Link</a>
Syracuse	City	NY	Other	<a href="#">Link</a>
Painesville	City	OH	Resolution	<a href="#">Link</a>
Ashland	City	OR	Resolution	<a href="#">Link</a>
Beaverton	City	OR	Resolution	<a href="#">Link</a>
Corvallis	City	OR	Resolution	<a href="#">Link</a>

Oregon	State	OR	Other	<a href="#">Link</a>
Portland	City	OR	Resolution	<a href="#">Link</a>
Philadelphia	City	PA	Resolution	<a href="#">Link</a>
Providence	City	RI	Other	<a href="#">Link</a>
Austin	City	TX	Resolution	<a href="#">Link</a>
Travis County	County	TX	Other	<a href="#">Link</a>
Alexandria	City	VA	Resolution	<a href="#">Link</a>
Virginia Beach	City	VA	Other	<a href="#">Link</a>
Montpelier	City	VT	Resolution	<a href="#">Link</a>
Burien	City	WA	Ordinance	<a href="#">Link</a>
King County	County	WA	Ordinance	<a href="#">Link</a>
Olympia	City	WA	Resolution	<a href="#">Link</a>
San Juan County	County	WA	Resolution	<a href="#">Link</a>
Seattle	City	WA	Ordinance	<a href="#">Link</a>
Spokane	City	WA	Ordinance	<a href="#">Link</a>
Madison	City	WI	Resolution	<a href="#">Link</a>
Milwaukee	City	WI	Resolution	<a href="#">Link</a>