



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 10th 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 11th 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](#),”¹ 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 decisions² at the city and county level, any combination of which could be chosen by a jurisdiction, which would arguably make it a sanctuary jurisdiction :

County-Level	City-Level
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

¹ 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.

² 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

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:

Table 2: Resources Reviewed by Cornell Law Students

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

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,

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APPROVED:

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

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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**

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

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

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