

# What You Should Know About Sanctuary Cities



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While sanctuary cities have become a point of political tension in recent elections and on Capitol Hill, the issue isn't as black or white—or as red or blue—as it may appear at first glance. Cities across the country, in both Democratic and Republican states, have expressed unwillingness to take on immigration enforcement as a direct result of decades of Congressional failure to pass comprehensive reform.

According to *The New York Times*, there are five states and 633 counties that could be considered “sanctuary cities” by some definitions of that term. And tens of millions of people live in these areas. This includes not only large liberal cities like Los Angeles, New York, and Chicago, but also cities like Tucson, AZ, and Tuskegee, AL, and even counties in states like Georgia, Iowa, Kansas, Kentucky, Nebraska, North Dakota, and Wyoming.<sup>1</sup>

President Trump's recent executive order attempts to make good on his campaign promise to crack down on sanctuary cities by denying them federal funds. In this memo we examine what sanctuary cities really are, what Trump and his allies are attempting to do to punish them, and what those actions would really mean for their communities.

# What exactly is a sanctuary city?

Despite the ubiquitous use of the term “sanctuary city,” it has no clear legal definition. Immigration hardliners tend to define it as a jurisdiction that is acting in violation of federal immigration law, but that’s actually very rarely the case. A more expansive use of the term might refer to those jurisdictions that do not fully cooperate or assist in federal immigration enforcement efforts, often while still acting in full compliance with federal law. In practice, they don’t even need to be “cities” per se. Sanctuary cities can be cities, counties, states, and even local jurisdictions that offer certain services to immigrants (like providing an attorney for people facing deportation proceedings) or refrain from arresting a person based solely on their immigration status.

One of the most common sanctuary city practices is to deny federal Immigration and Customs Enforcement (ICE) requests to detain immigrants for extra time after they have completed a jail sentence. When a person is arrested and booked in a local or county jail, their fingerprints are sent to the FBI. The FBI then shares this information with ICE, who checks the individual’s immigration status—regardless of where they were arrested. If this check shows that the person is undocumented, ICE can detain the person once they have served their sentence so long as it has a warrant. If it doesn’t have a warrant, it can issue a “detainer request” asking the local jail to hold the person mostly on the jail’s dime for an additional 48 hours while it attempts to obtain one.<sup>2</sup> All compliance with detainer requests from ICE are—and must be—voluntary for local jurisdictions because federal courts have held that holding someone without a warrant or probable cause in these circumstances violates the Fourth Amendment of the Constitution. More and more courts are also ruling that complying with a detainer request by holding an individual for extra time itself violates the Fourth Amendment and that cities are liable for any harm suffered by that extra detention.<sup>3</sup>

Detainer requests don't just cause constitutional issues for cities, they also create a significant financial burden on local law enforcement agencies. In New York City, the cost of detaining an inmate is about \$460 dollars per day. It's \$145 in Chicago, and \$129 in Los Angeles.<sup>4</sup> The federal government's reimbursements for detaining an immigrant on their behalf fall drastically short of these costs. In 2016, the average daily detention reimbursement by ICE to local cities was \$47.10 per day.<sup>5</sup> New York City alone was reimbursed about \$10 million from the federal government in 2016 for holding immigrants.<sup>6</sup> When it's considered that New York City is only reimbursed for about 10% of its daily detention costs, it becomes clear that American cities are spending hundreds of millions of local tax dollars to detain immigrants for the federal government.

Given these challenges, sanctuary cities respond to detainer requests in a variety of ways—some accept detainer requests where the individual has prior felony convictions, gang ties, or is on the terrorist watch list, some remind ICE as the person's release date approaches but won't agree to hold them after their sentence has been completed, and some accept detainer requests but won't house an immigrant throughout the entire deportation process.<sup>7</sup> But all must adhere to existing federal law requiring they communicate with ICE about who is in their custody and when they will be released. And even where a jurisdiction will not comply with detainer requests, the immigrants in their custody still must face any criminal charges on which they were booked and serve out whatever jail sentence a judge hands down if they broke the law. And if ICE shows up to get someone when he or she is released, local officials cannot stop them.

## **What does President Trump want to do about sanctuary cities?**

President Trump, joined by immigration hardliners in Congress, has promised to “get rid of” sanctuary cities by

defunding them and cutting off access to new federal funding streams. One of President Trump's first executive orders blamed sanctuary cities for causing "immeasurable harm to the American people and to the very fabric of our Republic," and multiple defunding bills have been introduced by his allies on Capitol Hill.<sup>8</sup>

President Trump's executive order directs the Secretary of Homeland Security to officially designate "sanctuary jurisdictions," requires the Administration to "ensure that... sanctuary jurisdictions are not eligible to receive Federal grants," and authorizes the Attorney General to take "appropriate enforcement action" against them.<sup>9</sup> Though the order first defines sanctuary cities as only those failing to comply with federal reporting requirements—which virtually none do—it also refers to any entity that "has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law"—which could easily be read to apply to jurisdictions that choose not to accept every ICE detainer request to hold immigrants longer than their sentence. However, because Congress typically sets the eligibility requirements for federal grants, the President can't unilaterally or retroactively change them. That makes it unclear how much funding could actually be withheld on the President's authority alone.

In Congress, those supportive of a Trump-style immigration crackdown have introduced several pieces of legislation targeting sanctuary cities in recent years. These proposals provide a much more explicit picture of what defunding could look like, and they generally target either federal development grants or law enforcement grants. Congressional plans to withhold federal funds to sanctuary cities include:

- The *No Sanctuary for Criminals Act* (115th Congress): Sponsored by Representative Bob Goodlatte (R-VA), the bill prevents cities from limiting their compliance or cooperation with federal immigration authorities “in any way,” effectively compelling them to accept all detainer requests.<sup>10</sup> Those that don’t would become ineligible for any law enforcement grants from the Department of Justice or Department of Homeland Security, as well as for their grants related to terrorism, national security, immigration, or naturalization.
- The *Stop Dangerous Sanctuary Cities Act* (115th Congress): Sponsored by Senator Pat Toomey (R-PA), the bill would deny grants from the Department of Housing and Urban Development to any sanctuary city.<sup>11</sup> These grants total hundreds of billions of dollars annually and help cities expand and improve infrastructure.
- The *Enforce the Law for Sanctuary Cities Act* (114th Congress): Sponsored by Representative Duncan Hunter (R-CA), the bill would withhold Department of Justice law enforcement assistance grants to any city that refuses to notify ICE when they arrest an undocumented immigrant (which cities are already legally prohibited from doing).<sup>12</sup>
- The *Mobilizing Against Sanctuary Cities Act* (115th Congress): Sponsored by Representative Lou Barletta (R-PA), it would prevent cities from receiving “federal financial assistance,” including any grant, loan, property, or insurance, for a one-year period if the Attorney General declares them a sanctuary city.<sup>13</sup>
- The *No Transportation Funds for Sanctuary Cities Act* (115th Congress): Sponsored by Representative Jason Smith (R-MO), the bill would deny Transportation Investment Generating Economic Recovery (TIGER) grants to any city that refuses to hold undocumented immigrants until DHS can transfer them to federal custody.<sup>14</sup> TIGER grants account for roughly \$500 million annually.<sup>15</sup> Chicago alone received \$25 million in 2016 from this program.<sup>16</sup>

# **What would punishing sanctuary cities actually mean?**

Cracking down on sanctuary jurisdictions is harder than it looks—and not only because the label is extremely difficult to define. Constitutional principles of federalism dictate that the federal government cannot “hold a gun to the head” of states financially—which means that when the federal government offers money to the states, it has to be actually voluntary for states to accept it. The money can’t be so important or so much of the state’s budget that the state is left with no choice but to take the money and comply with the federal demands. Moreover, when the federal government denies funding to a state, the reason for denying the funding has to be related to the funding. The federal government for example, can’t deny education dollars to punish a state for polluting too much. Nor can the federal government commandeer state and local officials to do its own bidding. It’s the right and responsibility of each state to control their own public servants—the federal government cannot barge into a state and tell them what their own state and local police forces must do. But there are some things the President or Congress could do to punish cities and states they consider to be sanctuary jurisdictions that could possibly survive judicial review:

## **Cutting off discretionary executive agency funding**

President Trump could use his presidential authority to deny cities funds whose distribution is at the discretion of federal agency heads.<sup>17</sup> This could include funding streams for equipment for first responders, sewer and water grants from the Environmental Protection Agency, or transportation infrastructure support.<sup>18</sup> Cutting off this money likely would not be enough to pressure states or cities into submission, though—these discretionary federal grants alone simply don’t make up enough of a state or city’s budget to be coercive. As such, it is nearly certain that President Trump

would need Congressional action to really make cities feel it in their wallets.

## **Denying access to future Congressionally-allocated development funds**

In 2015, the federal government provided roughly \$630 billion in grant money to state and local governments.<sup>19</sup> Community Development Block grants (CDB) —a program targeted in some of the previous defunding bills—distributed about \$3.26 billion in grants to states and cities in 2016 alone. Going forward, Congress could predicate eligibility for these funds on cooperation with all ICE activities. This action would cut off sanctuary cities from federal development funding that allows communities to create affordable housing, fund legal assistance services, and open food banks.<sup>20</sup> Denying sanctuary cities access to this money would make life more difficult for low- and moderate-income families and hurt city development efforts—including in some of the country’s largest and most economically important cities. Philadelphia, for example, received roughly \$47 million from 2014-2015 in CDB grants.<sup>21</sup> The city of Los Angeles (not including the county or surrounding cities in the metropolitan area) received \$52 million.<sup>22</sup> And New York City received \$203 million.<sup>23</sup> On the campaign trail, President Trump frequently vowed to “fix” and “rebuild” America’s inner cities, which he called a “disaster.”<sup>24</sup> But cutting off access to millions of dollars’ worth of federal affordable housing grants won’t “bring hope and opportunity to our inner cities” like he promised—in fact, it would hurt the very communities he professes to want to help.<sup>25</sup>

## **Reducing law enforcement funding**

Another popular target of defunding proposals are law enforcement funds—especially Department of Justice grants to state and local police forces. These formulations would prohibit designated cities from receiving State Criminal Alien Assistance Program (SCAAP) funding—which reimburses state and local law enforcement agencies for incarcerating

immigrants convicted of felonies or multiple misdemeanors —as well as Department of Justice (DOJ) law enforcement grants.<sup>26</sup> DOJ grants totaled roughly \$3.5 billion in 2016 and allowed local police departments to acquire needed equipment.<sup>27</sup> The grants also help provide training programs on issues like de-escalation, active shooter response, and prisoner reentry. Houston, Texas for example, received a roughly \$750,000 grant in 2016 to combat human trafficking.<sup>28</sup> And Charlotte, North Carolina received \$1.25 million for sexual assault kits.<sup>29</sup> DOJ grants are vital in expanding local police professionalism and capacity, and withholding these dollars won't make communities safer or do anything to improve our immigration system.

## Conclusion

Efforts to punish sanctuary cities don't just come with fiscal consequences. Law enforcement officers across the country have found that they are most effective and that their communities are safer when residents trust the police and believe that they can turn to them when in need.<sup>30</sup> That may explain why sanctuary cities actually have lower crime rates than other jurisdictions.<sup>31</sup>

The President's plans to deny federal funds to hundreds of cities, counties, and states will do nothing to solve our immigration problems. Nor will it improve city infrastructure, make urban-dwellers safer, or help President Trump deliver on his campaign promises to make cities great again. Local police forces have limited resources, and they shouldn't be punished for prioritizing serious crime prevention over immigration enforcement. Immigration policy is the responsibility of the federal government. And cities and states cannot fix our broken immigration system. Only Congress can do that, and its failure to act means that cities will continue to have to muddle along until federal policymakers step up and take on their responsibility.



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