

“Sanctuary Cities” and Community Policing

Introduction

The issue of “sanctuary cities” has been a hot topic in the news since Donald Trump became president. Trump promised a much harder line on enforcement of immigration laws, including punishment of jurisdictions that have adopted certain immigrant-friendly community policing tactics that limit cooperation with federal immigration enforcement agents. These communities have decided to have their police focus on public safety, and to leave federal immigration law enforcement to federal authorities. These communities are commonly included in the term “sanctuary cities,” but so are communities that have limited their cooperation with federal immigration authorities in order to limit potential liability incurred when individuals are detained without showing probable cause, in violation of the individual’s constitutional rights.

This issue brief describes some of the issues involved in the debate over “sanctuary cities.”

Executive Order on Interior Enforcement

On January 25, 2017, President Trump signed an executive order that would, in part, punish any local jurisdiction that has adopted certain community policing tactics designed to establish trust between local law enforcement and communities where there is a significant immigrant population.

The executive order included a section titled “Sanctuary Jurisdictions.”¹ The order stated in part: “It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with [federal law having to do with prohibiting jurisdictions from banning communication between local officers and federal immigration officers].”² The order directs the Attorney General (AG) to “take appropriate enforcement action against any entity ... which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law” and it directs the AG and Secretary of Homeland Security to ensure that jurisdictions that do not comply are not eligible for federal grants.³

On March 27, 2017, Attorney General Jeff Sessions announced that any jurisdiction applying for Department of Justice grants must certify compliance with 8 USC Sec. 1373. That provision bars local jurisdictions from adopting policies that prohibit local officials from sharing information with the federal government about the immigration status of any individual.⁴ Sessions said that such policies “make our nation less safe by putting dangerous criminals back on our streets.”⁵

Community Policing and Undocumented Immigrants

The term “sanctuary jurisdiction” has no legal or common definition, but states and localities that have some formal or informal policy limiting cooperation between their local law enforcement agencies and federal immigration authorities are often called “sanctuary” jurisdictions.

Many communities with significant immigrant populations have community policing policies to keep local law enforcement agencies out of the business of federal immigration enforcement. In doing so, they seek to build trust between local police and the community—including the immigrant community—so that community members feel they can safely approach police to report a crime or volunteer information about a crime. Public safety of the entire community is placed in jeopardy if immigrants fear the local police because they believe they will be deported.

A 2006 position paper by the Major Cities Chiefs states the problem for police:

Major urban areas throughout the nation are comprised of significant immigrant communities. ... Local agencies are charged with protecting these diverse populations.... The reality is that undocumented immigrants are a significant part of the local populations major police agencies must protect, serve and police. Local agencies have worked very hard to build trust and a spirit of cooperation.... If the undocumented immigrant's primary concern is that they will be deported..., then they will not come forward and provide needed assistance and cooperation.⁶

Limiting Liability: Honoring ICE Detainers Can Lead to Costly Lawsuits

There is another reason local law enforcement agencies are limiting their cooperation with the federal government: the possibility of paying damages to persons whose rights have been violated.

When an immigrant has been detained by local officials, Immigration and Customs Enforcement (ICE), the agency charged with removing noncitizens not authorized to be in the United States, may issue a request for the local agency to hold the individual beyond the time the individual is scheduled to be released, so that ICE agents can take the individual into custody at some later time. The request by ICE is called a detainer, and courts have determined that detainers are voluntary requests. If a detainer is honored by the local agency, the individual will be held up to 48 hours until ICE can assume custody of the individual.⁷

In recent years, however, a number of courts have found that if the local jurisdiction holds an individual beyond his or her scheduled release, the jurisdiction may be found liable for violating the individual's constitutional right not to be detained without probable cause. Jurisdictions have paid significant settlements to individuals who have sued after being held on ICE detainers. As a result, a growing number of jurisdictions have decided not to honor ICE detainers.⁸

State of Play: Community Safety vs. the Deportation Force

Today, scores of counties and local communities have policies limiting cooperation between the local law enforcement agency and ICE. Since the election of Donald Trump, many communities have gone further, strengthening their non-cooperation policies and passing additional measures. For example, the mayor of Washington, D.C., recently announced a \$500,000 fund to defend immigrants faced with deportation (and for other purposes).⁹ In

setting up this fund, Washington joins other large cities with sizable immigrant populations.¹⁰

The entire state of California already has policies placing limits on cooperation between local law enforcement agencies and ICE.¹¹ Legislation to do something similar has been introduced in Maryland.

Some communities are also strengthening their welcoming policies unrelated to enforcement. For example, the Chicago City Council passed a budget for 2017 that included \$1 million for a municipal ID program, which will help undocumented immigrants access city services.¹²

All of these communities may come into the crosshairs of Congress and the new administration.

Are “Sanctuary Cities” More Crime-Ridden?

Opponents of immigrant-friendly community policing strategies make the claim that “sanctuary jurisdictions” are dangerously crime-ridden as a result of such policies. Statistics do not support such claims. A recent report comparing crime in sanctuary vs. non-sanctuary counties found that crime is statistically significantly lower in sanctuary counties compared to non-sanctuary counties.¹³

Limits to Federal Coercion

The Trump administration is proposing to cut federal grants to sanctuary jurisdictions. However, [there may be limits](#) to what Congress and the president can do to force states and localities to enforce immigration laws. The 10th Amendment to the Constitution protects states and localities from being forced by the federal government to enforce federal laws. That principle was recently upheld in a recent Supreme Court decision written by the late Justice Scalia in a gun control case.¹⁴

Threats to cut off federal funding to communities that refuse to abandon their immigrant-friendly community policing policies may also be limited, due to previous Supreme Court rulings that the funds must be related to the particular federal interest or program.¹⁵

Still, there are ways that Congress and the president may try to get around the legal precedents limiting their power. If they pass new laws to force cities to abandon their community policing policies, there will no doubt be years of legal action in the courts.

About the Author: Maurice Belanger is an analyst and writer with more than 25 years experience working in the field of immigration policy.

Contact: <http://www.mauricebelanger.com>.

Endnotes

¹ The White House, “Executive Order: Enhancing Public Safety in the Interior of the United States,” January 25,

² *Ibid.*, Sec. 9.

³ *Ibid.*

⁴ Most so-called “sanctuary jurisdictions” have policies that bar local officials from collecting information on immigration status, and so they have nothing to share with federal officials. Such jurisdictions are therefore not in violation of 8 USC Sec. 1373.

⁵ Department of Justice, “Attorney General Jeff Sessions Delivers Remarks on Sanctuary Jurisdictions,” March 27, 2017, <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions>.

⁶ Major Cities Chiefs Immigration Committee, *M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Police Agencies*, Adopted by Major Cities Chiefs, June 2006, https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf.

⁷ Law Enforcement Immigration Task Force, *A Path to Public Safety: The Legal Questions around Immigration Detainers*, (undated), <http://immigrationforum.org/wp-content/uploads/2017/03/The-Legal-Questions-around-Immigration-Detainers-3-2017.pdf>

⁸ *Ibid.*

⁹ Executive Office of the Mayor, “Mayor Bowser Announces Immigrant Justice Legal Services Program,” January 9, 2017, <http://mayor.dc.gov/release/mayor-bowser-announces-immigrant-justice-legal-services-grant-program>.

¹⁰ Dakota Smith and Cindy Carcamo, “Responding to Trump, L.A. proposes \$10-million legal defense fund for immigrants facing deportation,” *Los Angeles Times*, December 19, 2017, <http://www.latimes.com/local/lanow/la-me-ln-lafund-20161219-story.html>

¹¹ Elise Foley and Roque Planas, “Trust Act Signed in California to Limit Deportation Program,” *The Huffington Post*, October 5, 2013, http://www.huffingtonpost.com/2013/10/05/trust-act-signed_n_4050168.html.

¹² City of Chicago, Office of the Mayor, “City Council Passes Budget Which Includes \$1 Million for Municipal ID Program,” November 16, 2016, <https://www.cityofchicago.org/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2016/November/MunicipalIDProgram.pdf>.

¹³ Tom Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, Center for American Progress, January 26, 2017, <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.

¹⁴ Hugh Spitzer, “‘Sanctuary Cities’ to Find Sanctuary in the Rehnquist and Roberts Courts,” *Jurist Twenty*, December 30, 2016, <http://www.jurist.org/forum/2016/12/Hugh-Spitzer-sanctuary-cities.php>.

¹⁵ *Ibid.*