



Sanctuary Policy FAQ

State-Federal Relations Division

What's a Sanctuary Policy?

FAQ on Federal, State and Local Action on Immigration Enforcement

In the past few years, sanctuary policy has emerged as a point of tension between federal, state, and local authorities. On Jan. 25, 2017, President Donald Trump issued an executive order (EO), addressing immigration enforcement issues, including the use of state and local law enforcement.

The EO would, among other things, withhold funds from sanctuary jurisdictions; revive 287(g) immigration enforcement partnerships with the Department of Homeland Security (DHS); end the Priority Enforcement Program and reinstitute "Secure Communities." NCSL's summary can be found [here](#) and the blog can be found [here](#).

On May 22, 2017 the U. S. attorney general issued a [memo](#) stating that sanctuary jurisdictions are those that willfully refuse to comply with 8 U.S.C. 1373 and not eligible to receive federal grants administered by the Department of Justice or DHS. Section 1373 prohibits state and local jurisdictions from restricting communication to federal officials information regarding citizenship or immigration status. The attorney general, on July 22, 2017, posted a [solicitation with new grant conditions](#) for Edward Byrne Memorial Justice Assistance Grant Programs requiring federal immigration access to detention facilities and 48 hours advance notice of the release of immigrants wanted by federal authorities.

In October 2018, U.S. District Court Judge William Orrick issued a nationwide [permanent injunction](#) halting the implementation of Section 9(a) of the administration's EO, which would strip federal funding from sanctuary jurisdictions. This injunction resulted from the suit brought by the city and county of San Francisco and Santa Clara County.

See the FAQ below for an introduction to "sanctuary" policies.

Congress has also been working to address sanctuary policies. In 2015 and 2017, the House passed legislation—H.R. 3009 and H.R. 3003 respectively—that would terminate federal funding for states and localities that limit cooperation with federal enforcement agencies

(frequently called “sanctuary” policies). As of April 2019, ten states and the District of Columbia have enacted legislation to provide sanctuary for immigrant families and nine states passed legislation to prohibit state and local authorities from restricting and hindering federal immigration enforcement.

Proponents of bills to overturn sanctuary jurisdictions argue that a partnership between local law enforcement and the DHS facilitates the removal of potential criminals who are present without authorization in the country.

Opponents argue that enacting these bills undermines the relationship between local law enforcement agencies and the communities they serve. Such policies would threaten the cooperation that currently exists between immigrant communities and local law enforcement.

Finally, some courts have ruled that Immigration and Customs Enforcement (ICE) detainers violate the Fourth and Fifth Amendments.

What Is a Sanctuary Policy?

While there is no legal definition for sanctuary policies, the term is applied to jurisdictions that limit cooperation with federal immigration authorities, such as information about immigration status and limiting the length of immigration detainers. States and localities often cooperate with federal law enforcement, particularly in criminal investigations, for example under voluntary agreements such as the [287\(g\) program](#). Some state and local governments have policies that limit cooperation in *civil* investigations to support public safety and community policing goals, such as encouraging witnesses and victims of crime to come forward.

What Is the History of Sanctuary Policies?

In the 1980s, an estimated one million Salvadorans and Guatemalans fled their countries due to civil war and came to the U.S. to seek asylum. President Ronald Reagan’s administration characterized them as “economic migrants” and [granted asylum](#) for only a small percentage of applicants. A network of religious organizations launched a sanctuary movement, providing assistance such as food, medical care, employment and legal aid.

Cities started to adopt sanctuary policies in 1989. San Francisco was the first to enact policies with “[Ordinance No. 12-h](#).” The policy prohibits the “use of City funds or resources to assist in the enforcement of federal immigration law or to gather information regarding the immigration status of individuals in the city and county of San Francisco, unless such assistance is required by federal or State statute, regulation or court decision.”

What Is a Detainer?

Under information-sharing among the Department of Justice, DHS, and state and local law enforcement, when an individual is arrested, biometric data is sent to ICE to screen for those

who should be deported. ICE reviews the data for potential matches and checks the arrestee's records for immigration violations and criminal history. A detainer is a request by ICE to hold an arrested individual or convicted criminal being released from state or local jails until ICE can pick them up for deportation. Individuals can be held for no more than 48 hours.

According to immigration advocacy stakeholders, detainers violate the Fourth and Fifth Amendments because ICE does not have probable cause before issuing detainers, and because individuals may not know when detainer forms are issued because they change addresses and/or change telephone numbers. (This position has been upheld by courts. See below for more detail.)

Immigration advocates say communities are much safer when unauthorized immigrants trust local law enforcement, serving as witnesses and reporting criminal activities, thus reducing crime rates. For example, a domestic violence victim can report a crime by cooperating with the police without being afraid of their immigration status.

Opponents of limiting law enforcement cooperation with ICE believe communities are less safe because individuals are living unlawfully in the U.S. Although unlawful status is usually a civil violation, opponents are concerned that noncooperation with federal authorities protects those who may be violent offenders. Critics also argue that “[sanctuary](#)” jurisdictions ultimately encourage more illegal immigration.

How Do Federal and State Law Enforcement Work Together?

DHS operates voluntary programs between the federal government and state and local law enforcement agencies on immigration enforcement. For example, [287\(g\)](#) was created in 2002 as a federal program which permits local law enforcement to perform immigration law enforcement functions, under the proper training and supervision of ICE officers. In 2008, [Secure Communities](#) “was created with the goal of improving the removal of unauthorized immigrants convicted of crime, with a priority on removing violent offenders.”

In 2015, DHS transitioned from Secure Communities to the [Priority Enforcement Program \(PEP\)](#). The program ran from 2015 to 2017; in that time, ICE focused on transferring removable individuals who had been convicted of a priority offense, intentionally participated in an organized criminal gang, or posed a national security threat. The Trump administration reversed course in 2017 and re-implemented Secure Communities. Homeland Security Secretary John Kelly implemented [EO 13768](#) to prioritize the removal of those who have violated immigration laws, including those who have failed to comply with a final order of removal and/or have engaged in fraud regarding official government matters.

What Has Congress Done?

Congress has introduced several proposals to prohibit sanctuary policies. The “Enforce the Law for Sanctuary Cities Act” ([HR 3009](#)), passed the House on July 23, 2015. This legislation would have withheld federal funding, including the State Criminal Alien Assistance Program, from any state or local subdivision that restricted communication with the Immigration and Naturalization Service or other government entity regarding an individual's citizenship or immigration status. On July 29, 2017, the House passed the “No Sanctuary for Criminals Act” ([HR 3003](#)). This legislation would have prohibited federal, state, and local government entities from obstructing or restricting law enforcement activities related to information regarding the citizenship or immigration status, inadmissibility or deportability, or custody status of any individual. Neither bill was considered in the Senate.

Pending in Congress in 2019 are “Help Ensure Legal Detainers Act” ([HR 438](#)), “Ending Sanctuary Cities Act of 2019” ([HR 516](#)), “No Federal Funding to Benefit Sanctuary Cities Act” ([HR 1885](#)), and “No Sanctuary for Criminals Act of 2019” ([HR 1928](#)). These bills would deny federal funding to any state or locality that prevents or impedes immigration enforcement. “No Funding for Sanctuary Campuses Act” ([HR 768](#)) would prohibit federal funding for institutions of higher education that violate federal immigration law.

What Bills Are States Introducing Regarding Sanctuary Policies?

In 2017 at least 36 states and the District of Columbia considered legislation regarding sanctuary jurisdictions or noncompliance with immigration detainers. Of these states, 33 states would prohibit sanctuary policies, and 15 states and the District of Columbia would support.

Twelve states have legislation on both sides of the issue. Bills have been introduced in Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Idaho, Indiana, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia, and the District of Columbia. More than [120 bills](#) were introduced on the issue of sanctuary jurisdictions and immigration detainers.

- [California SR 22](#), enacted March 6, 2017 calls upon Trump and Kelly to publicly reaffirm the principles of the ICE policy memorandum dated Oct. 24, 2011, regarding enforcement actions at sensitive locations such as courthouses, hospitals and houses of worship.
- [Mississippi S 2710](#), enacted March 27, 2017 bars state or local jurisdictions or college institutions from prohibiting cooperation with federal agencies or officials to verify or report the immigration status of any person.

- [Georgia H 37](#), enacted April 27, 2017 prohibits postsecondary institutions from adopting sanctuary policies and adds penalties for violations.
- [Indiana S 423](#), enacted May 2, 2017 added secondary educational institutions to its law prohibiting localities from limiting communication about immigration status with federal law enforcement.
- [Texas S 4](#) was signed by the governor on May 7, 2017. The law prohibits localities, institutions of higher education, police departments, sheriffs, municipal or county attorneys from adopting policies that prohibit enforcement of state and federal immigration laws. Violations can result in civil penalties. The law does not apply to hospitals, public health departments, or school districts. Law enforcement must comply with federal detainer requests.
- [Vermont S 79](#), signed on March 28, 2017, prohibits state and local government officials from sharing information with the federal government regarding the religion, immigration status or national origin, among other personal information, of the residents of Vermont. The law does not prohibit compliance with 8 USC Sections 1373 and 1644.

In 2018, twenty-five states considered legislation regarding sanctuary jurisdictions or noncompliance with immigration detainers. The number of bills considered decreased from 100 in 2017 to 66 in 2018. Only three states—California, Iowa, and Tennessee—enacted laws related to sanctuary policies.

- [California A 110](#) prohibited law enforcement agencies from contracting with the federal government to house individuals as federal detainees for purposes of civil immigration custody.
- [Iowa S 481](#) required state law enforcement to comply with federal immigration requests, and
- [Tennessee H 2315](#) barred state or local government entities or officials from adopting or enacting sanctuary policies.
- In Oregon, a [ballot initiative](#) to repeal the state’s sanctuary laws failed 2 to 1.

California and Oregon are joined by eight other states and D.C. that have implemented policies in favor of providing sanctuary for immigrants. In contrast, nine states (including Iowa and Tennessee) now legislatively require state and local government entities to enforce federal immigration laws.

Previous to 2018, three states and the District of Columbia have enacted legislation to prohibit compliance with detainers unless certain conditions are met, including conviction of specified crimes: The “Transparency and Responsibility Using State Tools (TRUST) Act” was enacted in Connecticut in May 2013 ([H 6659](#)), in California in October 2013 ([A 4](#)), in Washington DC ([R 75](#)) in March 2017, and in Illinois ([S 31](#)) in August 2017.

What Do the Courts Say?

Because of civil lawsuits claiming unreasonable search and seizure, courts have ruled that ICE detainers violate the Fourth and Fifth Amendments. The Fourth Amendment is violated because ICE fails to demonstrate probable cause before issuing detainer forms. Fourth and Fifth Amendments are also violated because ICE fails to provide a notice of the detainer before it is issued. Such was the case in *Jimenez v. Napolitano* where Jimenez (plaintiff) sued DHS for unlawfully detaining him without having probable cause or providing him with a notice. Ultimately, the court's decision stated that immigration detainers are voluntary, not mandatory.

On March 7, 2018, the Trump administration filed a [lawsuit](#) against California for passing three state laws—Assembly Bill 450, Senate Bill 54, and Assembly Bill 103—that the U.S. Department of Justice argues are preempted by federal law and violate the Supremacy Clause of the United States Constitution.

This issue brief was made possible by a grant from the John D. and Catherine T. MacArthur Foundation. The statements made and views expressed are solely the responsibility of NCSL.

Prepared by:

Ann Morse, program director, Immigrant Policy Project
Chesterfield Polkey, 2019 fellow, Bill Emerson National Hunger Fellowship
Lydia Deatherage, fall 2017 fellow, Immigrant Policy Project
Veronica Ibarra, spring 2016 fellow, Immigrant Policy Project

Additional Resources

- [NCSL Summary of Executive Orders on Immigration](#), Jan. 26, 2017
- William A. Kandel and Lisa Seghetti, [Sanctuary Jurisdictions and Criminal Aliens: In Brief](#). Washington, D.C.: Congressional Research Service, Jan. 10, 2017.
- [Jimenez v. Napolitano](#)
- [U.S. v. California](#)
- Zamara, Lazaro. [Sanctuary Cities and Immigration Detainers: A Primer](#). Washington, D.C.: Bipartisan Policy Center, April 2017.
- City and County of San Francisco. [San Francisco Administrative Code Chapter 12H: Immigration Status](#). San Francisco, 1989.
- National Conference of State Legislatures. [Immigration and State Law Enforcement: Federal 287\(g\) Cooperative Agreements](#). Washington, D.C.: NCSL.