



February 21, 2020

## “Sanctuary” Jurisdictions: Policy Overview

### Overview

Jurisdictions with “sanctuary” policies have been controversial for decades, highlighting a tension between federal agencies charged with immigration enforcement, and states and localities (e.g., counties, cities) that limit their cooperation in this regard. The prominence of immigration enforcement for the Trump Administration, and the publicity surrounding certain crimes committed by some non-U.S. nationals (in statute, “aliens”), particularly those without legal immigration status, have reignited debates over appropriate levels of immigration enforcement within the United States. In 2017, President Trump issued Executive Order 13768 (EO), which included provisions that aim to deter certain “sanctuary” policies and promote cooperation with federal immigration enforcement agencies.

### Who handles immigration enforcement?

The Department of Homeland Security (DHS) is the primary federal agency responsible for immigration enforcement. Within DHS, Customs and Border Protection (CBP) primarily handles immigration enforcement at U.S. borders and ports of entry, and Immigration and Customs Enforcement (ICE) handles immigration enforcement within the U.S. interior. Some state and local law enforcement agencies (LEAs) may choose to assist ICE by identifying and temporarily detaining removable aliens so that ICE may take them into custody. Such cooperation benefits ICE’s mission by acting as a “force multiplier” that extends the agency’s reach from the roughly 5,300 deportation officers in its Enforcement and Removal Operations (ERO) division to LEAs throughout the United States.

### What are sanctuary jurisdictions?

Although some states or municipalities expressly self-identify as “sanctuary” jurisdictions, the term is not defined in statute. While policymakers and observers disagree as to the range of measures that constitute “sanctuary policies,” two categories of measures have received particular attention from the Trump Administration:

1. restricting the sharing of information about aliens with immigration authorities; and
2. barring LEAs from complying with ICE requests to notify immigration authorities when an alien identified for removal is to be released from LEA custody and, in some cases, temporarily hold that alien beyond the scheduled date of release so that he or she can be taken into federal custody.

### How numerous are they?

In part because there is no agreed-upon classification of sanctuary jurisdictions, different entities enumerate these jurisdictions using different criteria. For instance, the Center for Immigration Studies identifies 10 states and 172 localities with sanctuary policies (as of February 2020). The Immigrant Legal Resource Center, on the other hand, does not currently enumerate jurisdictions, and instead presents county-level involvement with ICE as a continuum. An exact count of sanctuary jurisdictions also remains imprecise because jurisdictions regularly create, change, or eliminate such policies.

### How did they emerge?

In the past decade, sanctuary jurisdictions have largely emerged as a response to efforts by DHS to foster federal-state-local cooperation on immigration enforcement. In 2008, DHS created “Secure Communities,” an information-sharing program between the Department of Justice (DOJ) and DHS that uses biometric data (i.e., fingerprints) to screen for removable aliens who have been booked into jails. Initiated in a dozen jurisdictions, Secure Communities currently covers all U.S. state and local law enforcement jurisdictions. The expansion of Secure Communities contributed substantially to increased immigration enforcement and greater numbers of alien removals during the past decade, prompting a backlash in some states and localities, particularly those with large foreign-born populations.

Jurisdictions have enacted sanctuary policies for many reasons. Some object to ICE’s removal of aliens who, apart from either entering and/or remaining in the United States unlawfully, have relatively minor or no criminal records. Others are concerned about family separation—sometimes affecting U.S. citizen children—resulting from removal. States and localities may not necessarily be motivated by disagreement with federal policies. Some jurisdictions that establish sanctuary policies reportedly are concerned that complying with ICE requests to detain individuals might subject them to legal liability. Others, concerned about costs, object to using local resources for immigration enforcement, which they consider a federal responsibility.

### What are some key legal issues?

The conflict between federal immigration objectives and state laws and policies has arisen when a state or locality prohibits information sharing with federal immigration authorities, raising anti-commandeering and other federalism and preemption concerns. For further discussion, see CRS Legal Sidebar LSB10386, *Immigration Enforcement & the Anti-Commandeering Doctrine: Recent Litigation on State Information-Sharing Restrictions*, by

Kelsey Y. Santamaria. Additionally, states and localities have challenged the use of “immigration detainers,” which ICE uses to take custody of aliens who are in the criminal custody of state and local LEAs. Some courts have ruled that ICE’s practice of issuing detainers violates the Fourth Amendment. For further discussion, see CRS Legal Sidebar LSB10375, *Immigration Detainers: Background and Recent Legal Developments*, by Hillel R. Smith.

### How has the Trump Administration responded?

The President’s 2017 EO aims to withhold certain streams of federal funding from states and localities that do not comply with 8 U.S.C. §1373. That provision prohibits federal, state, and local government entities from restricting the flow of information to or from DHS regarding an individual’s citizenship or immigration status. The EO grants DHS authority to designate any state or locality as a sanctuary jurisdiction and take “appropriate enforcement action” against a jurisdiction that violates 8 U.S.C. §1373 or otherwise limits federal immigration enforcement. The EO states that sanctuary jurisdictions are ineligible to receive federal grants, which are not specified in the EO. Then-Attorney General Jeff Sessions subsequently indicated that non-compliant jurisdictions would face restrictions on funds from the Edward Byrne Memorial Justice Assistance Grant (JAG) program. JAG grants support LEAs, and total roughly \$450 million annually. For more information, see CRS InFocus CRS In Focus IF10691, *The Edward Byrne Memorial Justice Assistance Grant (JAG) Program*, by Nathan James.

Several states and localities have brought lawsuits, challenging the withholding of certain federal funds. For more information, see CRS Legal Sidebar LSB10386, *Immigration Enforcement & the Anti-Commandeering Doctrine: Recent Litigation on State Information-Sharing Restrictions*, by Kelsey Y. Santamaria. For background information, also see CRS Report R44789, *Sanctuary Jurisdictions and Select Federal Grant Funding Issues: In Brief*, by Natalie Keegan.

On February 5, 2020, Acting DHS Secretary Chad Wolf announced a policy blocking New York residents from enrolling or re-enrolling in federal expedited travel programs after New York passed a state law known as the “Green Light Law.” That law permits unlawfully present aliens to secure a driver’s license. Of particular relevance to DHS, the New York law prohibits the sharing of state Department of Motor Vehicle records with DHS. DOJ has also filed lawsuits against California, New Jersey, and a Washington-state county to challenge sanctuary laws and policies that limit cooperation with immigration authorities.

### What do critics of sanctuary laws and policies argue?

Critics contend that sanctuary laws and policies impede immigration enforcement and create public safety hazards. They cite, among other actions, releasing convicted criminals into U.S. communities rather than facilitating their custody transfer to federal immigration authorities

through information sharing and detention. Critics posit that cooperation with ICE permits ICE agents to take custody of such individuals efficiently in low-risk settings (e.g., jails, prisons). ICE maintains that, absent such cooperation, its agents must use multi-person teams to locate and remove released individuals under more hazardous circumstances. Other critics contend that sanctuary jurisdictions encourage aliens to illegally enter or remain in the United States by protecting them from immigration enforcement.

### What do defenders of sanctuary laws and policies argue?

Defenders maintain that states and localities should not use their resources for federal immigration enforcement efforts, and particularly on foreign residents who have relatively minor or no criminal records, and whose removal in some cases leads to family separation. They contend that state and local LEA cooperation with ICE confounds the perceived relationship between criminal law enforcement and immigration enforcement, inhibiting crime victims and potential witnesses from reporting crimes for fear of possible immigration-related consequences. Defenders also cite legal and constitutional arguments to maintain that sanctuary policies are appropriate.

### What has Congress proposed?

In the 116<sup>th</sup> Congress, legislation has been introduced—such as the No Federal Funding to Benefit Sanctuary Cities Act (H.R. 1885) and the Ending Sanctuary Cities Act of 2019 (H.R. 516)—that would prohibit sanctuary jurisdictions (defined as either violating 8 U.S.C. §1373 or not complying with ICE detention or notification requests) from receiving all federal financial assistance. Similarly, the No Funding for Sanctuary Campuses Act (H.R. 768) would prohibit federal funding for institutions of higher learning that have sanctuary policies.

Some bills, such as H.R. 1885, contain provisions allowing states and localities to comply with detainers while sheltering them from legal liability for doing so. The Justice for Victims of Sanctuary Cities Act of 2019 (H.R. 3964/S. 2059) would provide a civil remedy for individuals harmed by sanctuary jurisdiction policies. Other legislation, such as the No Sanctuary for Criminals Act of 2019 (H.R. 1928) and the Immigration Detainer Enforcement Act of 2019 (H.R. 4948/S. 2739), would expand ICE’s authority to issue detainers.

In contrast, bills that defend sanctuary policies, such as the End Mass Deportation Act (S. 1591), would rescind EO 13768. The PROTECT Immigration Act (H.R. 2729/S. 1440) would limit ICE’s authority to issue detainers.

---

**William A. Kandel, Coordinator**, Analyst in Immigration Policy

**Abigail F. Kolker**, Analyst in Immigration Policy

IF11438

---

## Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS’s institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.