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FEDERATION FOR AMERICAN IMMIGRATION REFORM

What Did DOJ Really Promise on Sanctuary Cities?

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Summary

Several weeks ago Rep. John Culberson (R-TX), chairman of the House Appropriations subcommittee that oversees the Justice Department, wrote a letter to Attorney General Loretta Lynch threatening to exercise his budget authority if she does not take steps to shut down sanctuary cities—State and local jurisdictions with policies intended to impede the enforcement of immigration law by federal immigration officials. Ahead of the February 24 Subcommittee hearing on DOJ's fiscal year 2017 funding, Assistant Attorney General Peter Kadzik provided a response that the media is reporting as a major shift in policy by the Obama administration to enforce the law against sanctuary cities.

However, a review of the actual letter reveals that the Obama administration's response is not being accurately reported by the media. Instead, the letter is a carefully worded response that is intentionally designed to mislead the public about the administration's handling of sanctuary cities. Below is FAIR's analysis of what DOJ really said about its approach to sanctuary cities.

- "We can advise that all applicants for Byrne JAG, COPS, and SCAAP funds already are required to assure and certify that they are in compliance with all applicable federal laws, and will continue to do so in FY2016 (and presumably thereafter)."
    - The key phrase here is "applicable federal laws" which DOJ fails to specify or define. One relevant statute is 8 U.S.C. § 1373 which, as written, prevents a prohibition of **"sending or receiving"** information on a person's immigration status. However, many sanctuary cities refuse to **collect** immigration information on detained individuals to avoid having to share it with the Federal government. Thus, by intentionally not collecting the information they are technically in compliance with "applicable" law but clearly violate the **intent** of law.
    - It is untrue that "all applicants" who receive these federal grants are not sanctuary jurisdictions. For example, San Francisco—the most prominent sanctuary city in the country—received approximately $450,000 in Byrne JAG grants last year. If "all applicants" are already "required to assure and certify" that they are not sanctuary jurisdictions, why are so many able to benefit from these federal grant programs?
- "Where the Department of Justice (the Department) receives a credible allegation that an entity receiving funds under a Department grant or reimbursement program has, after assuring or certifying compliance with applicable federal laws, violated a specific applicable federal law, the Department can potentially seek criminal or civil enforcement options against the entity."
    - This sentence reveals that DOJ has the discretionary authority ("can seek") to pursue criminal or civil "enforcement options" rather than establishing a mandatory ("shall") authority to go after all sanctuary jurisdictions.

  - "Enforcement options" is vague creating even more discretion for DOJ should they actually pursue a sanctuary jurisdiction.
  - The qualifier of a "credible allegation" is unclear and appears redundant since Attorney General Lynch announced that the Inspector General was going to provide DOJ with a list of sanctuary jurisdictions. Is the IG's list not inherently "credible"?
- "In addition, we are actively considering ways in which we may most effectively carry out our public safety mission as it regards enforcing the nation's criminal and immigration laws."
  - The phrase "public safety mission as it regards enforcing the… laws" is a clear reference to the Obama administration's enforcement "priorities" where they unilaterally exempt nearly all illegal aliens from deportation. If DOJ was truly serious about combating illegal immigration, they would simply focus on enforcing the law and not "our public safety mission."
- "Now BOP offers ICE, instead of the states and municipalities, the first opportunity to take into custody and remove an individual."
  - This statement is being incorrectly reported as a mandatory custody transfer from BOP to ICE. This is not true. Instead, ICE has the "first opportunity" to take custody which means they have the discretion to decline assuming custody.
  - This statement also does not **require** ICE to actually begin removal proceedings. Instead, ICE will continue to follow the Obama administration's "enforcement priorities" and likely release from custody all illegal aliens who do not meet those priorities.
- "ICE's decision to exercise this right of first refusal is informed, in part, by the state or municipality's willingness to cooperate with federal authorities on ICE detainers."
  - This statement does not prohibit ICE from transferring custody to sanctuary jurisdictions. Indeed, Kate Steinle's killer was in ICE custody but they ceded custody to San Francisco knowing full well of the city's "[un]willingness to cooperate with federal authorities on ICE detainers."
  - This sentence does not repeal the Obama administration's interpretation that ICE detainers are discretionary rather than mandatory.
  - This statement appears to undermine the supposed intent of the letter. If the Obama administration is truly cracking down on sanctuary jurisdictions, it should be compelling a "willingness to cooperate" rather than allow State and local policies to dictate sanctuary policies.

While FAIR is encouraged that the Obama administration finally admitted that sanctuary cities are a problem, it is inaccurate to claim that the administration has announced a new policy to stop sanctuary jurisdictions.