

Sanctuary Cities: Obstructing Immigration Enforcement

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Summary

Sanctuary cities—State and local jurisdictions with policies that obstruct immigration enforcement—pose a serious threat to the safety of the American people. Although some “sanctuary” policies were enacted ten or more years ago, they finally received national media attention this summer after Kate Steinle was tragically shot and killed in San Francisco. The shooter, Francisco Sanchez, is an illegal alien with seven convictions and five previous deportations. ([FAIR Legislative Update](#), July 8, 2015) Importantly, Sanchez admitted he went to San Francisco because he knew it is a sanctuary city that would protect him from Immigration and Customs Enforcement (ICE). (*Id.*)

While San Francisco is the most notable sanctuary city, there are now hundreds of them throughout the country. Tellingly, the overwhelming majority of sanctuary jurisdictions have emerged since President Obama took office in 2009. This, of course, corresponds with President Obama’s [systematic dismantling of immigration enforcement](#). Remarkably, Congress has stood on the sidelines for years, allowing these jurisdictions to defy federal immigration law with impunity. Congress must act now, using its power of the purse, to deny federal funds to these jurisdictions that refuse to comply with our duly enacted immigration laws.

The Importance of Federal-State Law Enforcement Collaboration

Cooperation with State and local governments is essential for enforcing federal immigration laws within the interior of the country. Congress clearly intended such cooperation in enacting Immigration and Nationality Act (INA) Section 287, which states that a formal agreement with the federal government is not necessary for “any officer or employee” of a state or local agency “to communicate with the [Secretary of the Department of Homeland Security] regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States,” or “to cooperate with the [Secretary] in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States.” (INA § 287(g)(10); 8 U.S.C. § 1357(g)(10)) Indeed, DHS published an official memorandum declaring it “has long viewed state and local governments as valuable partners that can serve a helpful role in assisting DHS in fulfilling its responsibilities with respect to immigration enforcement” and it “continues to welcome that participation.” ([DHS Guidance](#) at 1)

Beyond merely encouraging cooperation, Congress sought to compel compliance with interior enforcement goals through the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Section 642 reads, “Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the [Department of Homeland Security] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” (8 U.S.C. § 1373(a))

Logistically, DHS needs State and local assistance to enforce the law within the interior of the country. ICE has just 20,000 employees, only half of which are dedicated to the apprehension and removal of illegal aliens. The cooperation of state and local police forces, which number about 800,000, is vital to ferreting out criminal aliens in our communities.

Obstructing Immigration Enforcement

Sanctuary cities are primarily able to impede federal immigration law without repercussions because of a complicit Executive Branch that refuses to enforce the law. Consider the differing treatment from the Obama administration of California and Arizona. California enacted legislation, [A.B. 4](#)—known as the TRUST Act, that made the entire state a sanctuary jurisdiction. Rather than sue the state for its blatant violation of federal law (or even threaten to withhold federal funds), the Obama administration has enabled State and local obstruction of federal law. By comparison, when Arizona sought to simply enforce the federal law the Obama administration was failing to do, the Justice Department promptly initiated litigation to stop Arizona.

Another way sanctuary cities have persisted is through a creative interpretation of IIRIRA Section 642. As written, that provision prevents a prohibition on “**sending or receiving**” information on a person’s immigration status. (8 U.S.C. § 1373(a) emphasis added) However, many sanctuary cities refuse to **collect** immigration information on detained individuals to avoid having to share it with the Federal government.

The Cost of Inaction

State and local jurisdictions often justify their sanctuary policies by claiming that illegal aliens will be more likely to report crimes to police without fear of deportation. This assertion is patently false. In reality, law enforcement rarely, if ever, inquire about the immigration status of crime witnesses. Additionally, all police have the discretion to grant immunity to witnesses of crimes — regardless of their immigration status — and virtually all do. Finally, President Obama’s enforcement “priorities” exempt nearly all illegal aliens from deportation so the fear of removal lacks merit. (See [FAIR Legislative Update](#), June 30, 2015)

On the other hand, the serious threat that sanctuary cities pose to the safety of the American people is clear. In the months since Kate Steinle’s death (and Congress’s failure to send a bill to President Obama’s desk that would end sanctuary city policies), innocent Americans continue to lose their lives. (See [FAIR’s Sanctuary City Report](#))

Sanctuary policies also result in a needless waste of limited public resources, forcing the federal government to expend manpower and money to seek out and arrest deportable criminals who have already been arrested and taken into custody by local law enforcement for other crimes.

How Congress Can End Sanctuary City Policies

It is inexcusable for sanctuary jurisdictions to persist in their defiance of federal immigration law without consequence. Congress has plenary authority over immigration and any changes must come through the legislative process. (U.S. CONST. Art. I, Sec. 8, cl. 4) Throughout our nation’s history, Congress has

repeatedly used its power of the purse to compel the States to comply with federal prerogatives. Accordingly, Congress should:

- Deny certain federal funds to sanctuary jurisdictions until they resume adherence to immigration law.
- Amend IIRIRA Section 642 to require the collection of immigration information from all detained aliens. One bill that accomplishes this important goal is Sen. Jeff Sessions's (R-AL) "Protecting American Lives Act" ([S. 1842](#))