



The Role of State & Local Law Enforcement in Immigration Matters and Reasons to Resist Sanctuary Policies

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Background

With over 11 million illegal aliens currently residing in the United States, and hundreds of thousands more unlawfully crossing the border and overstaying visas each year, states all around the country are subject to the problems caused by unchecked illegal immigration. What were once traditionally only thought of as issues dealt with by border states such as Arizona or Texas, are now impacting states from Oregon to Georgia. Illegal immigration affects all facets of society, from the cost of education, to healthcare, to public benefits, and safety and national security. Although the federal government is responsible for regulating immigration into the United States, state and local law enforcement and communities play an important role in helping to ensure that immigration law is effectively enforced.

Communication and cooperation by state and local law enforcement with federal officials is essential to combating the negative effects of illegal immigration. State and local law enforcement act as force multipliers, increasing the eyes and ears of federal immigration agents in their jurisdictions. Despite the importance of state and local cooperation, some jurisdictions nonetheless implement “sanctuary polices” that restrict or all together prohibit such cooperation. While there is no firm definition of the term, generally, **sanctuary policies** bar state and local officials, including law enforcement, from asking lawfully stopped or detained individuals about their immigration status, and reporting or otherwise cooperating with federal immigration officers. Sanctuary policies are varied in nature, and are enacted through a variety of means such as local ordinances, executive orders, and internal law enforcement agency policy, making them even more difficult to identify and define.

One of the more recent and pervasive forms of sanctuary policies are those that prevent or otherwise limit state and local officers’ ability to cooperate with U.S. Immigration and Customs Enforcement (ICE) **detainer requests**. Detainers are used to request that state and local law enforcement either notify ICE that it is about to release a criminal alien, or to maintain custody of

the alien for up to 48-hours for ICE pick-up. ICE detainers are a critical tool created by the federal government to address threats by criminal aliens picked up by state and local law enforcement. Under the Obama Administration, however, ICE detainers are only issued to a very narrow class of criminal aliens, who the Administration determines to be a national security threat or have already been *convicted* of a crime.

Regardless of how they are enacted or what form they take, **sanctuary policies place a greater emphasis on the interests and welfare of criminal aliens than citizens and legal residents**. Implementing sanctuary policies is not only reckless to the safety of residents in a community, but in many cases, also constitutes a breach of obligations to the constituents public officials swore to protect when taking office. Rather than obstruct the enforcement of federal law, law enforcement should work cooperatively with the federal government to ensure a uniform system of law that protects public safety.

Why should state and local governments cooperate with federal immigration officials?

COOPERATION WITH FEDERAL IMMIGRATION OFFICIALS PROMOTES PUBLIC SAFETY. State and local law enforcement are often on the front lines in dealing with crime involving transnational gang activity, human trafficking, smuggling, drug related offenses, and other serious crimes often tied to illegal immigration. When state and local law enforcement fail to contact federal immigration officials, criminal aliens are able to reenter communities and engage in further criminal activity at the expense and safety of citizens and lawful aliens. For example, in July of 2015, 32 year-old Kate Steinle was shot and killed on Pier 14 in San Francisco by an illegal alien who had seven convictions and five previous deportations. The suspect had previously been in local law enforcement custody, but was released by the county sheriff's office after it refused to honor a detainer request that ICE put on the suspect. Tragically, Steinle is just one of countless victims of preventable crimes committed by illegal aliens.

Following a spike in jurisdictions refusing to cooperate with the federal government in 2014, ICE analyzed the effect of noncooperation nationally. A Center for Immigration Studies review of these ICE records revealed that roughly 340 jurisdictions across the nation have some form of sanctuary policy (i.e. refused to honor ICE detainer requests or otherwise obstructed federal immigration officials). The ICE data further revealed:

- Between January 1, 2014 and September 30, 2014, sanctuary jurisdictions released 9,295 aliens that ICE had sought to remove;
- Of those 9,295 aliens, nearly 6,000 had significant prior criminal histories or other public safety concerns;
- Of those with a prior history of concern, 58 percent had prior felony charges or convictions; and
- 2,320 of the total number of released offenders were re-arrested within that 10-month period, and ICE has not been able to re-apprehend those individuals.

Similar trends are also found in state records. Data compiled by the Texas Department of Public Safety over recent years provides strong support for state cooperation with federal immigration officials. According to the Department's statistics, 952 criminal aliens were arrested on homicide charges between June 2011 and November 2015. Additionally, the Texas Department of Public Safety recorded:

- 55,894 assault charges;
- 14,191 burglary charges;
- 55,213 drug charges;
- 583 kidnapping charges;
- 34,532 theft charges;
- 37,441 obstructing police charges;
- 3,170 robbery charges;
- 4,948 sexual assault charges; and
- 7,049 weapons charges committed by criminal aliens.

In total, the 176,000 criminal aliens were booked into Texas jails in this time period were collectively responsible for the commission of 472,000 crimes. Many of these crimes could have been prevented had local law enforcement effectively transferred deportable criminal aliens to federal custody.

Even the average illegal alien, who some claim is "otherwise law-abiding," violates numerous other state and federal laws, including, but not limited to, those prohibiting identity theft, forgery, and driving without a license or insurance, creating real victims through their behavior. State and local law enforcement become complicit in such law-breaking when they come across an illegal alien and refuse to act.

[COOPERATION WITH FEDERAL IMMIGRATION OFFICIALS IS ESSENTIAL TO THWARTING NATIONAL SECURITY THREATS](#). It is no secret that Americans face serious threats from terrorist organizations. With an incredibly porous border, interior enforcement is needed to pick up where border security leaves off. The House of Representatives' Homeland Security Committee has recorded that since September 11, 2001, at least 149 terrorism plots or arrests have been linked to the Islamic State of Iraq and Syria (ISIS), with 900 active extremist investigations currently being pursued by the FBI. With such widespread threats to our safety, federal agents' efforts are stretched thin and depend heavily on intelligence provided by state and local law enforcement to detect and ultimately remove deportable aliens of national security concern.

The role of immigration enforcement cannot be minimized in dealing with terrorists with foreign or transnational ties. For example, immigration violators participated in the first attack on the World Trade Center, the Los Angeles Millennium bombing plot, and the New York subway bombing conspiracy. Three of the 9/11 hijackers were here illegally; two had previous immigration violations. Two of the hijackers with immigration violations—Mohammed Atta and Hani Hanjour—came into contact with state and local police *before* the attacks for speeding. Had the local law enforcement agents that came into contact with these terrorists inquired into

their immigration status and subsequently cooperated with federal immigration officials, the attacks on 9/11 may have been prevented or at least mitigated.

COOPERATION WITH FEDERAL IMMIGRATION OFFICIALS SAVES TAXPAYER MONEY. In 2013, the estimated costs of illegal immigration nationally totaled over \$113 billion, with \$84 billion being absorbed by state and local taxpayers (this estimate includes taxpayer money contributed by unauthorized workers). Some states bear more of the weight than others, often due to sanctuary policies. For instance, California taxpayers spent more than \$25 billion in 2014 to subsidize illegal immigration, and Texas taxpayers spent just over \$12 billion. Such costs come in the form of educational, healthcare, welfare, and law enforcement resources. Additionally, job displacement and wage depression caused by large populations of unauthorized workers inevitably add to taxpayer expenses as more citizens and legal residents require assistance from public services.

Public resources are best utilized when the federal government can obtain custody of wanted criminal aliens at the time they are apprehended by law enforcement. It is very expensive and makes little sense to release deportable aliens back onto the streets and force federal officials to pursue their cases independently. A recent study conducted by a researcher from Texas Tech University School of Law estimated that American taxpayers spent \$1.87 billion in costs just related to the incarceration of illegal aliens in 2014. Cooperation prevents redundant enforcement actions for recidivist criminal aliens and prevents wasteful and often dangerous use of taxpayer resources. Because the federal government and many state and local governments refuse to collect or maintain data on the immigration status of inmates in their jails and prisons, exact figures are difficult to calculate.

COOPERATION WITH FEDERAL IMMIGRATION OFFICIALS PROVIDES ICE WITH CRITICAL ASSISTANCE TO ACCOMPLISH ITS MISSION. ICE has roughly 20,000 officials and only 6,000 of these officials are active in enforcing immigration law in the interior of the country. That means, given current estimates, illegal aliens outnumber ICE agents by 2,000 to 1. Thus, the cooperation and assistance of over 900,000 state and local law enforcement agents currently working in our country allows immigration enforcement to operate much more efficiently and as intended by Congress. Without such cooperation, ICE officials alone can only hope to make small dents in the country's vast illegal alien population.

Is state and local cooperation lawful?

FEDERAL LAW CONTEMPLATES AND ENCOURAGES COOPERATION FROM STATE AND LOCAL AUTHORITIES IN THE ENFORCEMENT OF IMMIGRATION LAW. 8 U.S.C. § 1357(g) (otherwise known as Section 287(g) of the Immigration and Nationality Act (INA)) authorizes the Secretary of the U.S. Department of Homeland Security (DHS) to enter into written agreements with state or local law enforcement agencies. These agreements allow state and local law enforcement officers to be trained and deputized to act as immigration agents. Although the 287(g) program, as it is commonly referred to, has largely been gutted by the Obama Administration, its

provisions in the INA reflect Congress' intent to allow state and local officers to act as partners—rather than adversaries—when it comes to the enforcement of federal immigration law. Importantly, 8 U.S.C. § 1357(g) does not require state and local officers to have such an agreement in place or otherwise ask permission to contact the federal government regarding an individual's immigration status.

In addition to the 287(g) program, the federal government has also set the precedent for such cooperation between federal, state, and local law enforcement officials in other areas. These include: Border Enforcement Security Task Forces, the Criminal Alien Program, customs cross-designation authority, the Document and Benefit Fraud Tasks Forces, the National Fugitive Operations Program, Operation Community Shield, and Operation Firewall. Even the Priority Enforcement Program and its accompanying detainer scheme envision cooperation.

THE SUPREME COURT HAS UPHeld STATE AND LOCAL COOPERATION AND ASSISTANCE PROVISIONS.

In 2012, the United States Supreme Court in *U.S. v. Arizona* upheld state legislation that requires state and local law enforcement officers to make a reasonable attempt to ascertain the immigration status of persons involved in a lawful stop when officers have a reasonable suspicion that the person is unlawfully present. Specifically, Section 2(b) of Arizona Senate Bill 1070 was found to be consistent with Congressional intent and therefore not federally preempted. Section 2(b) requires law enforcement to presume a detainee is lawfully present in the United States if he or she provides a valid Arizona driver's license or similar identification, and prohibits law enforcement from considering race, color or national origin except to the extent permitted by the U.S. and Arizona Constitutions.

The Court found that the state provision did not conflict with federal law, but instead fostered the cooperation expressly encouraged in federal law between federal officials and state and local officials. Because federal law states that state or local officers may “communicate with the [federal government] regarding the immigration status of any individual,” without any special training and federal law expressly requires ICE to respond to any request made by state and local officials for verification of a person's immigration status, the Court reasoned that Congress has affirmatively encouraged the sharing of information regarding possible immigration violations. The Court noted, in finding this conclusion, that “[c]onsultation between federal and state officials is an important feature of the immigration system.”

CONVERSELY, STATE AND LOCAL SANCTUARY POLICIES MAY BE PREEMPTED BY FEDERAL LAW.

The United States Supreme Court has repeatedly held that state laws and policies are preempted when they conflict with federal law, as well as when they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Congress has set priorities through the INA to determine who may enter and remain in the United States. Sanctuary laws, ordinances, and policies shield aliens from the administration of federal law, thereby frustrating the execution of immigration law as Congress intended.

Additionally, in *De Canas v. Bica* the Supreme Court held that any state law or policy related to immigration will be *per se* preempted if it is a regulation of immigration because the “power to regulate immigration is unquestionably exclusively a federal power.” A state law or policy is a “regulation of immigration” when it determines who should or should not be admitted into the country, and under what conditions they may remain. Sanctuary laws, ordinances, or policies regulate immigration because they essentially decide who may remain in the United States. In particular, state and local governments that ignore the federal government’s request to hold an alien for pick-up or for notification of release regulate immigration because they take away the decision over who can remain in the country by shielding them from federal prosecution. As a result, such laws, ordinances, and policies should be *per se* preempted by federal law.

Finally, federal law at 8 U.S.C. § 1373 prohibits policies that impede cooperation between federal, state, and local officials when it comes to the sending, requesting, maintaining, or exchanging of information regarding immigration status. Under that provision, any 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 federal government, information regarding the citizenship or immigration status, lawful or unlawful, of any individual. Congress enacted this law in 1996 with the intent to block state and local leaders from obstructing the INA’s carefully crafted scheme because of pressure from special interests and partisan politics. Thus, because sanctuary laws, ordinances, and policies inherently restrict such communication, they are in direct conflict with federal law and should be deemed invalid.

Conclusion

State and local law enforcement agencies do not have to turn a blind eye to immigration violations that harm their communities simply because the regulation of immigration is a federal issue. To the contrary, Congress designed immigration law with assistance from state and local law enforcement in mind. Understanding that the cost of illegal immigration disproportionately impacts state and local governments, local leaders have even more incentive to cooperate with federal officials.

Sanctuary and other non-cooperation policies are harmful as they exacerbate national security threats, encourage illegal immigration, waste law enforcement and other taxpayer funded resources, and most importantly, put the public at risk by allowing known criminal aliens to be released back onto the streets. State and local lawmakers should consider enacting legislation to prohibit sanctuary policies in their communities and require cooperation with federal authorities. Anti-sanctuary and law enforcement cooperation legislation ensure that state and local officials are able to maintain a stream of communication with the federal government to best protect the interests of the American people and ensure that federal immigration officers are able to carry out their mission.

[For more information on Sanctuary Policies, visit FAIRus.org.](https://fairus.org)