

AN END TO THE CO-OPTATION OF LOCAL LAW ENFORCEMENT FOR FEDERAL IMMIGRATION ENFORCEMENT



Policy Background

Over the last several years, jurisdictions that limit the extent to which local government (and especially local police) will help facilitate the deportation of non-citizens have come to be known as “sanctuary cities.” The term refers to the centuries-old religious practice of sanctuary, whereby a faith community shields a person from unjust arrest or punishment by ruling authorities. It includes the offer of physical refuge within the community’s church, temple, or other sacred space. Throughout history, sanctuary has been an act of resistance against systemic injustice, a form of civil disobedience that involves the moral imperative to give cover to those targeted by unjust laws by standing with them. In the 1980s, the sanctuary movement, a network of U.S.-based faith groups, offered support and protection to Central American refugees fleeing violence in their home countries—violence that stemmed from U.S.-funded civil conflict in the region.¹

Today there are over 300 jurisdictions—including cities, counties, and several states—that restrict cooperation with immigration enforcement to some extent. The vast majority of these restrictions aim to stop the co-optation of local law enforcement. Over the last decade, the federal government has increasingly come to rely on local criminal justice systems as force multipliers to carry out immigration enforcement operations. These actions can include sending Immigration and Customs Enforcement (ICE) officers into local jails to search for people to deport, deputizing police officers to act as ICE officers, requesting that local jails hold people on ICE’s behalf or notify ICE of a person’s release, contracting with local jails for detention bed space, targeting individuals with past criminal convictions for deportation, and requesting or compelling local governments to share confidential information about local residents.² Cities and

counties can resist these tactics through a variety of laws and policies limiting the extent to which local resources, ostensibly devoted to public safety and crime prevention, can be diverted to support enforcement of civil immigration laws.

The intertwining of the federal immigration system with local criminal justice systems is problematic in several ways. First, it erodes trust of law enforcement within immigrant communities.³ Immigrants are less likely to report a crime, cooperate with police investigations, or seek help from the police if there is a risk that they or their loved ones may be reported to ICE. In fact, a recent study found that localities with sanctuary policies are safer than those without such policies.⁴ Second, combining immigration enforcement with local law enforcement compounds injustices within both systems. Immigrants are often first pulled into the local criminal justice system through racial profiling by police, which, in turn, enables the immigration system to target them for deportation. Intensifying the injustice even further, immigrants must then navigate an immigration system that lacks even the most basic due-process protections.

Assessing the Landscape

Identifying and assessing local law enforcement’s involvement in immigration enforcement can be complicated because it implicates so many different areas of law and policy, at so many different levels of government. The following questions will help to identify the prevailing practices in the area, as well as the levers of power that are most relevant to the particular way that immigration enforcement is happening locally. Some of the most crucial questions include:

- Which law enforcement entity has the most interaction with the immigrant community? (In some places this may be the city police department; in other places it is the county sheriff's department.)
- Which agency, or agencies, receive detainer requests from ICE?
- How do local law enforcement agencies respond to federal immigration authorities' requests to hold someone in custody or share information about them?
- Does the local legislative authority have oversight over the law enforcement entity having the most interaction with immigration authorities?
- Is there an existing state-law framework that constrains what local jurisdictions can do to limit cooperation with federal immigration authorities?

Best Practices

The Department of Homeland Security (DHS), through its subsidiary agencies ICE and Customs and Border Patrol (CBP), interposes its deportation agenda at several different points within local criminal justice systems. Cities should enact policies that are comprehensive and designed to resist each aspect of federal co-optation. An ideal sanctuary city policy will prohibit:

- holding any person in custody solely on the basis of an ICE detainer or ICE administrative warrant;
- sharing information about a person's jail release date with DHS;
- sharing other personal non-public information about an individual with DHS;
- inquiring into or gathering information about an individual's immigration status;
- arresting any individual on the basis of immigration-related information contained in the National Crime Information Center database;
- allowing DHS access to jail facilities, or to persons in local custody, for the purpose of investigating violations of federal immigration law;

and include the following:

- a provision terminating any existing contracts with DHS to house individuals in local jails and prohibiting any such contracts going forward;
- a provision prohibiting the deputizing of police to act as DHS agents, terminating any existing such agreements between the local jurisdiction and DHS, and prohibiting the creation of any new such agreements in the future (known as 287g agreements);
- the requirement that prosecutors consider immigration consequences in deciding whether to bring and how to resolve criminal cases in their jurisdiction; and
- a mechanism for oversight and enforcement of all aspects of the policy. To this end the policy should be codified in law as an ordinance voted upon by the legislative body of the city or county in question.

One strategy that some jurisdictions have used for covering many of these policy points without having to enumerate them is to pass an ordinance prohibiting the expenditure of any local resources on the enforcement of immigration law. These laws mean that no local dollars, staff time, or facilities can be used to help carry out deportations. Cook County, IL, Santa Clara, CA, and New York City have local laws of this type.

It is helpful to remember that, as important as immigrant-specific protections are, any reforms designed to improve accountability of law enforcement to communities of color will have a positive impact on immigrant communities. Reforms that work to reduce bias-based policing, for example, will help limit the number of interactions that immigrants are having with police, which will lead to fewer arrests, and which will ultimately mean that fewer people come to the attention of ICE. Other key reforms that will have a significant impact on the deportation pipeline include pre-arrest diversion programs and the decriminalization of low-level offenses.

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look	
<ul style="list-style-type: none"> Local law enforcement should refuse to keep individuals in local custody for a longer period of time at the behest of immigration authorities. 	<ul style="list-style-type: none"> Do your local law enforcement agencies refuse to comply with ICE detainer requests? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____	<ul style="list-style-type: none"> State or local laws pertaining to the powers and duties of law enforcement, or state and local human-rights laws. Sheriff or police-department orders and directives. State- or municipal-level executive orders 	
	<ul style="list-style-type: none"> Does your jurisdiction have a formal policy—either an ordinance or an administrative policy—prohibiting compliance with ICE detainers? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____		
<ul style="list-style-type: none"> Local jails should prohibit federal immigration authorities from interviewing, or having any access to, individuals in local custody without a signed judicial warrant. Local jails that allow access by immigration authorities should implement “know your rights” trainings for those in custody and should require that immigration authorities clearly identify themselves to those they interview. 	<ul style="list-style-type: none"> Does your local jail prohibit immigration authorities from conducting interviews in the jail? <ul style="list-style-type: none"> If not, does your local jail educate those in custody about their right to refuse to talk to immigration authorities? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____	<ul style="list-style-type: none"> Internal sheriff or police-department policies State or municipal laws pertaining to law enforcement or human rights 	
	<ul style="list-style-type: none"> Do jail staff ensure that immigration officials identify themselves clearly before speaking with anyone in custody? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____		
	<ul style="list-style-type: none"> Does your jurisdiction have a formal policy in place codifying procedures relating to immigration authorities in the jails? <ul style="list-style-type: none"> Does the policy require “know your rights” trainings? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____		
	<ul style="list-style-type: none"> Does the policy require that authorities identify themselves to those they interview? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____		

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> • Law enforcement should refuse requests by immigration authorities to notify them of the date, time, or place of any individual's release from custody absent a judicial warrant requiring such. 	<ul style="list-style-type: none"> • Do your local law enforcement agencies refuse to respond to ICE requests for notification of release? • Do you have local laws or departmental policies that prohibit the sharing of release-information with immigration authorities? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<ul style="list-style-type: none"> • Internal sheriff or police-department policies • State or municipal laws pertaining to law enforcement or human rights
<ul style="list-style-type: none"> • Law enforcement agencies should never volunteer to share personal or confidential information about residents with immigration authorities. If immigration authorities solicit such information, law enforcement agencies should decline to share it. While it may conflict with federal law 	<ul style="list-style-type: none"> • Are there local policies in place to guide local law enforcement agencies and officers in responding to requests for information from federal immigration authorities? • Do these policies preserve the discretion of local law enforcement when it comes to the sharing of information about immigration status? • Do these policies prohibit the sharing of any other kinds of personal or confidential information? 	<p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p> <p><input type="checkbox"/> Y <input type="checkbox"/> N _____</p>	<ul style="list-style-type: none"> • State and local privacy laws, state and local laws relating to law enforcement, human rights law. • State- and municipal-level executive orders. • State- and local-level departmental policies.

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
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to prohibit local law enforcement from sharing information about immigration status, nothing prevents law enforcement officers from exercising discretion (i.e., not share information with ICE), and officers should be trained to exercise such discretion where appropriate.*

- Law enforcement should never inquire about an individual's immigration status.

- Are there state or local laws in place prohibiting local law enforcement officers from inquiring about immigration status?
 - If not, is there an absence of any state or local law explicitly permitting or requiring that law enforcement inquire into immigration status?

 Y

 N

 Y

 N

- State and local privacy laws, state and local laws pertaining to law enforcement, human rights laws.
- Police or sheriff department policy.

* Federal law makes it illegal for local jurisdictions to prohibit the sharing of information about immigration status. It does not require that law enforcement always share information about immigration status; it simply makes it illegal to pass a law that takes away the discretion of local agents to share such information if they so choose.

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Criteria	Questions to Evaluate Your Jurisdiction	Meets Criteria? Y/N/Other:	Where to Look
<ul style="list-style-type: none"> Laws and policies restricting collaboration between law enforcement and federal immigration authorities should not make exceptions on the basis of prior criminal convictions. 	<ul style="list-style-type: none"> Do your state and local laws or policies prohibit detainer compliance, information sharing, and/or jail access whether or not a person has certain criminal convictions? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____	<ul style="list-style-type: none"> State and local laws and policies pertaining to law enforcement, privacy, human rights Police or sheriff department policy
<ul style="list-style-type: none"> Local law enforcement should be prohibited from entering into contracts with federal immigration authorities for (1) the housing of immigration detainees in local jails, or (2) the deputization of local police to act as federal immigration agents. 	<ul style="list-style-type: none"> Is the local jurisdiction prohibited from having contracts with ICE (for any purpose)? Is the local jurisdiction prohibited from making an intergovernmental service agreement with the federal government, renting out bed space to ICE in the local jail? Is the local government prohibited from entering into an agreement, under section 287(g)⁵ of the Immigration and Nationality Act (INA), which allows local police to be deputized as immigration agents? 	<input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____ <input type="checkbox"/> Y <input type="checkbox"/> N _____	<ul style="list-style-type: none"> You may have to submit a public-records request for copies of any contracts between the local government and federal immigration authorities.

Lessons from the Field

Long before anti-immigrant rhetoric became the norm under the Trump administration, Santa Clara County took a bold step in leadership in an effort to reduce the interaction between their local police force and ICE. In 2011, following a 3-2 vote, County Supervisor Dave Cortese ushered in a new policy to protect immigrants, which limited the scope under which the county would honor ICE requests to hold inmates following their release.

John Pedigo, a Catholic priest, was one of the first Santa Clara leaders to begin organizing around this issue because his church was in a predominantly immigrant community and several members of the congregation talked about family members being detained in confession. Working in partnership with community groups, including People Acting in Community Together (PACT), Justice for Immigrants (JFI) and others, the Santa Clara Board of Supervisors decided they needed to address ongoing concerns about their detainer policy.

As the board soon discovered, the sheriff was holding people in local jails for multiple federal agencies. Although it was unclear for whom they were being held, the board soon learned through the chief of corrections that the Sheriff's department was willingly complying with ICE requests. The board also learned that they had 399 people detained, and only 26 of them had a "dangerous background" while the rest were held for minor infractions and misdemeanors. It appeared that the 399 people had Latinx surnames and some had been held for more than 180 days. Not only did the board feel compelled to address this as a moral issue, but it was also evident that, as ICE officers shirked responsibility by ensuring their asks were "voluntary," the county faced a serious risk of lawsuits regarding due process and other civil rights issues.

Because Cook County, IL, had already passed a similar bill limiting collaboration with ICE, County Supervisor Cortese felt that precedent meant they were in strong legal standing to pass their own legislation. Unsurprisingly, the board faced opposition from the district attorney and the county sheriff. But in the days before the vote, the chief county counsel advised the board that a detained inmate could file a lawsuit against the county if it continued to detain people for ICE.

In the seven years since the narrow vote limiting cooperation with ICE, Santa Clara County has not changed its protective policy, despite an attempt to do so by the county's district attorney. Instead, the Trump administration's radical escalation of the attacks on sanctuary cities has solidified the county's confidence in the necessity of their policy. In the face of Trump's threats, Santa Clara has been leading on national lawsuits that have resulted in a permanent injunction protecting cities and counties across the United States from the President's Executive Order of January 25, 2017.

Resources

- See the Center for Popular Democracy's Sanctuary City Toolkit: <https://populardemocracy.org/news/publications/protecting-immigrant-communities-municipal-policy-confront-mass-deportation-and>
- See the Immigrant Legal Resource Center's Immigration Enforcement Map: <https://www.ilrc.org/local-enforcement-map>
- See Cook County's Sanctuary Ordinance: [https://immigrantjustice.org/sites/default/files/Cook%20County%20Detainer%20Ordinance%20\(enacted\).pdf](https://immigrantjustice.org/sites/default/files/Cook%20County%20Detainer%20Ordinance%20(enacted).pdf)
- See the New York City Law Prohibiting Expenditure of Local Resources on Immigration Enforcement (Attachment 13): <http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3022098&GUID=D0BFA473-FA7C-4FA6-83C4-216E9706EE7A>
- See Seattle's Welcoming Cities Resolution: <http://www.seattle.gov/council/issues/welcoming-cities-resolution>
- See the Santa Clara County Sanctuary Ordinance: https://www.ilrc.org/sites/default/files/resources/santa_clara_ordinance.pdf

NOTES

1. “Central Americans and Asylum Policy in the Reagan Era,” Migration Policy Institute, April 1, 2006, <http://www.migrationpolicy.org/article/central-americans-and-asylum-policy-reagan-era/>. See also, Susan Coutin, *The Culture of Protest* (Boulder, CO: Westview Press, 1993).
2. For a full discussion of the wide range of federal programs designed to co-opt local law enforcement for immigration purposes, and strategies for local response, see “Protecting Immigrant Communities: Municipal Policy to Confront Mass Deportation and Criminalization,” *The Center for Popular Democracy*, March 2017, <https://populardemocracy.org/news/publications/protecting-immigrant-communities-municipal-policy-confront-mass-deportation-and>.
3. Nik Theodore, “Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement,” University of Illinois at Chicago, PolicyLink, Lake Research Partners, May, 2013, http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.
4. Tom K. Wong, “The Effects of Sanctuary Policies on Crime and the Economy,” National Immigration Law Center, Tom K. Wong, January 26, 2017, <https://www.nilc.org/issues/immigration-enforcement/sanctuary-policies-effects-crime-economy/>.
5. For a full history of the 287(g) program see: “The 287(g) Program: An Overview,” The American Immigration Council, March 2017, https://www.americanimmigrationcouncil.org/sites/default/files/research/the_287g_program_an_overview_0.pdf.