



“Sanctuary” Policies: An Overview

What are “sanctuary” policies?

Over the past several decades, many states, counties, and cities have adopted a variety of policies intended to serve and protect all of their residents, regardless of immigration status. These policies include offering English language classes; issuing municipal identification documents and driver’s licenses to all residents; ensuring that immigrants have equal access to bail; establishing U-Visa policies; and training criminal prosecutors and public defenders on the immigration consequences of convictions and plea deals.

One subset of these policies concerns a state or locality’s role in cooperating with federal authorities to enforce immigration law. These laws, policies, or resolutions are sometimes referred to as “sanctuary” policies, although no legal or standard definition of the term exists. There are many reasons jurisdictions adopt “sanctuary” policies, such as: strengthening resident-police relations and ensuring that all people feel comfortable reporting crimes, regardless of immigration status; allowing the police to determine how they will prioritize and allocate their resources; and protecting police agencies from liabilities resulting from local enforcement of federal immigration laws.

“Sanctuary” jurisdictions share information with federal immigration authorities and do not shield immigrants from deportation

Contrary to what many believe, so-called “sanctuary” policies do not conceal or shelter unauthorized immigrants from detection.¹ Nor do they shield immigrants from deportation or prosecution for criminal activities. The police can enforce all criminal laws against immigrants who commit crimes.

Jurisdictions that have a “sanctuary” policy cooperate with federal immigration officials in a variety of ways. For example:

- Even in “sanctuary” jurisdictions, officials send federal immigration agencies the fingerprints of any person—including an immigrant—booked into a prison or jail; the federal government then uses that information to identify noncitizens for deportation.²
- “Sanctuary” jurisdictions may rent jail space to the federal government to house immigrant detainees through Inter-Governmental Service Agreements (IGSAs).³
- “Sanctuary” jurisdictions may have policies that direct local law enforcement to, under limited circumstances, either honor requests from U.S. Immigration and Customs Enforcement (ICE) to be notified

of an individual’s release from local custody or comply with immigration detainers. A detainer is an official request from ICE that a state or local law-enforcement agency maintain custody of an individual for 48 hours beyond the time the individual otherwise would have been released, so that ICE can arrange to take over custody.⁴ A “sanctuary” jurisdiction may have, for example, a policy directing local law enforcement to only honor detainers if the individual in question has been convicted of a serious or violent crime.

There is no universal definition of a “sanctuary” policy

“Sanctuary” policies take many forms and generally fall into the following categories:⁵

- restricting the ability of police to make arrests for federal immigration violations;
- prohibiting “287(g)” agreements through which ICE deputizes local law-enforcement officers to enforce federal immigration law;
- refusing to enter into a contract with the federal government to hold immigrants in detention;
- restricting the police or other city workers from asking about immigration status or collecting data from individuals they encounter or arrest;
- restricting local police responses to federal immigration detainers;
- refusing to allow ICE into local jails without a warrant; and
- restricting immigration enforcement in sensitive locations like hospitals and schools.

“Sanctuary” jurisdictions are in compliance with federal law

8 U.S.C. §1373 is a federal statute that prohibits state and local governments from enacting laws or policies that limit communication about “information regarding the immigration or citizenship status” of individuals with the Department of Homeland Security (DHS).⁶ The statute also prohibits restrictions on maintaining such information.

In 2016, the Department of Justice (DOJ) Office of the Inspector General (OIG) issued a memo to the DOJ Office of Justice Programs (OJP) that analyzed state and local policies with respect to immigration enforcement and did not conclude that any jurisdiction was in violation of §1373.⁷ In fact, policies that do not explicitly limit communication with DHS about an individual’s citizenship or immigration status, or affirmatively forbid the maintenance of such information, are not in violation of §1373. Moreover, §1373 **does not**:

- prohibit laws or policies that limit communications regarding criminal case information, custody status, or release dates of individuals in custody;
- mandate that jurisdictions comply with immigration detainers;

- prohibit policies or laws that restrict compliance with detainers; or
- require state or local law enforcement to collect information on immigration or citizenship status—
- nor does it prevent jurisdictions from limiting the collection of such information.⁸

The Federal government cannot compel jurisdictions to take part in immigration enforcement

Federal actions intended to force local jurisdictions to perform immigration enforcement are likely unconstitutional. Under the Tenth Amendment of the U.S. Constitution, the Federal government “may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”⁹

Compliance with immigration detainers is voluntary, not mandatory. The federal government cannot force local jurisdictions to honor detainers, an interpretation upheld by the courts.¹⁰ In fact, jurisdictions that do honor detainers can be found liable for unlawfully holding an individual under an immigration detainer¹¹ and may be required to compensate individuals for damages.¹²

“Sanctuary” jurisdictions are safer and more economically vibrant than non-sanctuary jurisdictions

According to a 2017 report, sanctuary counties have lower crime rates and higher economic indicators than non-sanctuary counties.¹³ The statistical analysis revealed that in sanctuary counties:

- **Crime is lower.** There are, on average, 35.5 fewer crimes committed per 10,000 people in sanctuary counties compared to non-sanctuary counties.¹⁴ Crime is defined in the report as the total number of violent crimes (murders, rapes, robberies, and assaults) and property crimes (burglaries, larceny, motor vehicle thefts, and arsons) per 10,000 people. Likewise, a 2016 study found no association between crime rates and policing practices.¹⁵
- **Median household income is higher.** On average, median household income is \$4,353 higher in sanctuary counties than in non-sanctuary counties. This outcome is not driven by income gains among Latinos at the expense of whites or African-Americans. In fact, among whites, median household income is \$2,836 higher in sanctuary counties compared to non-sanctuary counties.¹⁶
- **Poverty is lower.** The poverty rate is 2.3 percent lower in sanctuary counties compared to non-sanctuary counties. The rate of poverty among whites is 1.4 percent lower in sanctuary counties.¹⁷
- **Reliance on public assistance is lower.** The percentage of households receiving Supplemental Nutrition Assistance Program (SNAP) benefits (formerly known as food stamps) is 2.6 percent lower in sanctuary counties. The percentage of households that receive Supplemental Security Income (SSI) is 0.9 percent

lower. The share of children under 18 who receive public assistance is 4.9 percent lower in sanctuary counties.¹⁸

- **Labor force participation is higher.** On average, the labor force participation rate (the proportion of the population 16 years and older that is working or actively looking for a job) is 2.5 percent higher in sanctuary counties when compared to non-sanctuary counties. White labor force participation is also 2.5 percent higher in sanctuary counties when compared to non-sanctuary counties.¹⁹
- **Employment-to-population ratio is higher.** The employment-to-population ratio is the number of people 16 years and older who are employed, divided by the total number of people 16 years and older. The employment-to-population ratio is 3.1 percent higher in sanctuary counties when compared to non-sanctuary counties. The white employment-to-population ratio is 3.2 percent higher in sanctuary counties.²⁰
- **Unemployment is lower.** The unemployment rate is 1.1 percent lower in sanctuary counties compared to non-sanctuary counties. The white unemployment rate is 0.8 percent lower in sanctuary counties.²¹ Similarly, a 2016 study found no association between unemployment rates and policing practices.²²

Endnotes

- ¹ Erwin Chemerinsky, Annie Lai, and Seth Davis, “Trump can’t force ‘sanctuary cities’ to enforce his deportation plans,” *The Washington Post*, December 22, 2016, https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d_story.html?utm_term=.9293174c5d44.
- ² See ICE Priority Enforcement Program webpage, archived January 2017, www.ice.gov/pep.
- ³ U.S. Department of Homeland Security Immigration and Customs Enforcement, “Salaries and Expenses, DRO - Custody Operations, Program Performance Justification,” *Fiscal Year 2014 Congressional Justification*, 44-45, <https://www.dhs.gov/sites/default/files/publications/DHS-%20Annual%20Performance%20Report%20and%20Congressional-Budget-Justification-FY2014.pdf>. A list of Intergovernmental Service Agreements is available in the ICE FOIA Library, www.ice.gov/foia/library.
- ⁴ See U.S. Department of Homeland Security, Immigration Detainer-Notice of Action (Form I-247), updated December 2012, <https://www.ice.gov/doclib/secure-communities/pdf/immigration-detainer-form.pdf>, retrieved January 10, 2017.
- ⁵ See Lena Graber and Nikki Marquez, “Searching for Sanctuary: An Analysis of America’s Counties and Their Voluntary Assistance with Deportations” *Immigrant Legal Resource Center*, December 2016, https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf.
- ⁶ 8 U.S.C. § 1373.
- ⁷ Michael Horowitz (Department of Justice Inspector General) to Karol Mason (Assistant Attorney General), “Department of Justice Referral of Allegations of Potential Violations of 8 U.S. C. §1373 by Grant Recipients,” May 31, 2016, <https://oig.justice.gov/reports/2016/1607.pdf>.
- ⁸ Hughes Socol Piers Resnick & Dym, Ltd. to U.S. Conference of Mayors, “Legal Issues Regarding Local Policies Limiting Local Enforcement of Immigration Laws and Potential Federal Responses,” January 13, 2017.
- ⁹ See Kate M. Manuel, “Immigration Detainers: Legal Issues,” *Congressional Research Service*, R42690, May 7, 2015, <https://fas.org/sgp/crs/homesec/R42690.pdf>.
- ¹⁰ *Galarza v. Szalczyk*, No. 10-cv-06815, 2012 WL 1080020 (E.D. Pa. Mar. 30, 2012), rev’d in part on other grounds, 745 F.3d 634 (3d Cir. 2013).
- ¹¹ *Ibid.*
- ¹² *Miranda-Olivares v. Clackamas Cnty.*, No. 12-02317, 2014 WL 1414305, at *11 (D. Ore. Apr. 11, 2014); *DelAgua v. Jones*, No. 15-0185 (Eastern District of California, settled 2015); *Valdez-Sandoval v. Walcher* (District of Colorado); *Quezada v. Mink*, No. 10-0879 (District of Colorado, settled 2011); *Harvey v. City of New York*, No. 07-0343 (Eastern District of New York, settled 2009).
- ¹³ The report defined sanctuary counties as those that do not assist federal immigration enforcement officials by holding people in custody beyond their release date. Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy* (Washington, DC: Center for American Progress, 2017), 6, <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/>.
- ¹⁴ *Ibid.*
- ¹⁵ Doris Marie Provine, Monica W. Varsanyi, Paul G. Lewis, and Scott H. Decker, *Policing Immigrants: Local Law Enforcement on the Front Lines* (Chicago, IL: The University of Chicago Press, 2016), 76.
- ¹⁶ Tom K. Wong, *The Effects of Sanctuary Policies*, 7.
- ¹⁷ *Ibid.*, 8.
- ¹⁸ *Ibid.*
- ¹⁹ *Ibid.*, 8-9.
- ²⁰ *Ibid.*, 9.
- ²¹ *Ibid.*, 10.
- ²² Doris Provine et al., *Policing Immigrants*, 76.