

National Context: The Legal Fights over Sanctuary Policies

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October 10, 2018



During the Webinar

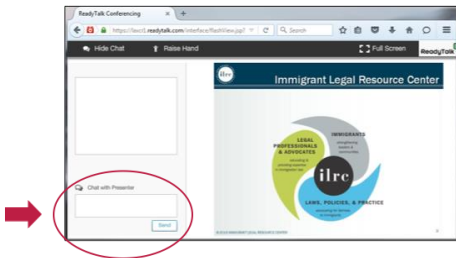
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Chat Box: You can enter your questions in the chat box, and instructors will answer them, if time permits.



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Introductions



Marcela Diaz, Somos Un Pueblo Unido
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 Lena Graber - ILRC
 Paul Lopez - Denver City Council

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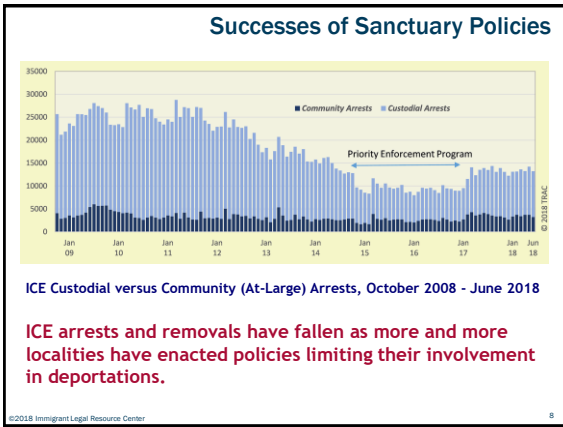
Overview

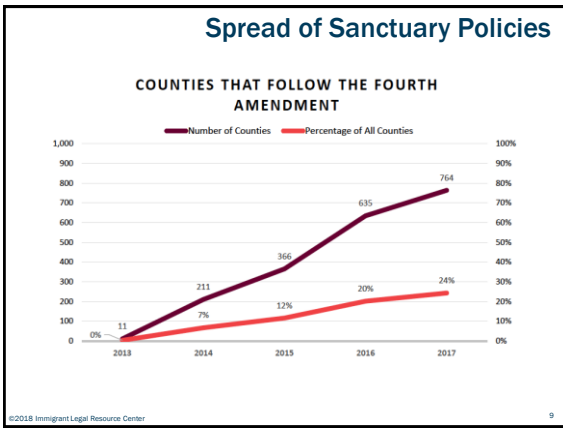
1. Successes and Challenges of Sanctuary Policies
 - Trump administration attacks
 - Local responses
2. Current Legal Landscape
 - DOJ threats
 - Current status of court cases and injunctions
 - How this plays out locally
3. Focus on 8 USC § 1373
 - Constitutionality
 - Implications
4. Looking ahead
 - Local power and movement
 - Connecting to criminal justice reforms

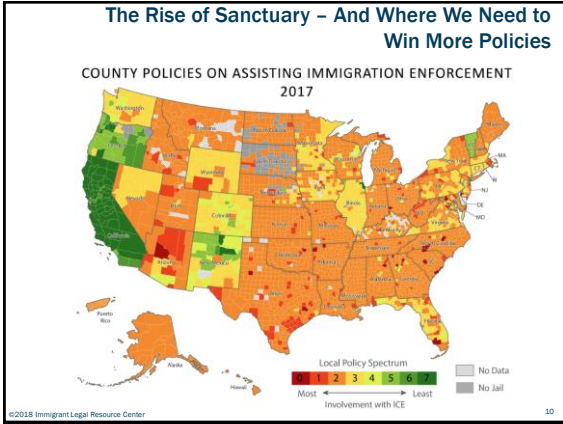
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Current Legal Landscape

Legal Threats or Consequences for 'Sanctuary' Policies:

- Threats
 - AG Sessions and Trump stump speeches
 - Exec. Order, warning letters, subpoenas, etc.
- Attacks on Funding
 - Byrne Justice Assistance Grants (JAG)
 - COPS grants
 - Other DOJ law enforcement grants
- Lawsuits
 - U.S. v. California

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Current Legal Landscape

Legal Status of the Threats:

- 2017 Executive Order (**enjoined**)
- 2017 JAG Grants conditions (**enjoined** for plaintiffs – Chicago, Philly, SF, CA, members of Conf. of Mayors)
 - Allow ICE access to local detainees
 - Provide 48 hours notice of release dates
 - Certify compliance with 8 USC 1373
- USA v. California lawsuit against SB54 (**dismissed**)
- 2017 COPS factors (**enjoined**)

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Current Legal Landscape

Nonetheless they keep trying:

- 2018 JAG and SCAAP Conditions:
 - Certify compliance with 8 USC 1373
 - Certify compliance and non-interference with several other federal statutes about immigration enforcement
- Other discretionary 2018 DOJ grants:
 - The original 3 conditions + compliance with federal laws about harboring aliens

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Local Examples - Denver



City Councilman Paul López says a new immigration policy ordinance places Denver “on the right side of history.” He spoke during an ordinance-signing ceremony on Aug. 31, 2017, in the City and County Building.

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Denver Public Safety Enforcement Priorities Act

Summary of Ordinance Provisions

- 1). Memorialize existing City policy by prohibiting the detention of individuals beyond their sentence.
- 2). Memorialize predominant City practices by prohibiting City employees from collecting information on immigration or citizenship status.
- 3). Prohibit the sharing of any other information about individuals for purposes of immigration enforcement.
- 4). Memorialize *predominant* practices by prohibiting use of city resources or city cooperation with civil immigration enforcement, including prohibiting providing access to secure areas or facilities.



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Denver's Ongoing Commitments

Beyond the Legislation:

- Establishment of a legal defense fund
- Criminal Justice reform that touches our entire community
- Preventing discrimination against individuals on the basis of immigration status
- Monitoring data and practices in the city to ensure effective education and training to address new and changing conditions as they emerge



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Examples of “sanctuary” policies in NM

Over two dozen NM jurisdictions have written policies/procedures

- NM: Driver’s Licenses for Immigrants (2003)
- NM: Bias-based policing prohibition (2009)
- Rio Arriba Detention Center: No participation in Criminal Alien Program (CAP), no inquiry, no cooperation, no access to inmates (2015)
- Farmington Police Department: No inquiry regarding immigration status (2017)



Sanctuary in Santa Fe (Context)

- **City of Santa Fe: 1999 Resolution**
No municipal resources to identify or apprehend residents based on immigration status
- **County of Santa Fe: 2010 Non-discrimination Resolution**
- **SF County Adult Detention Facility (2012)**—no CAP, no inquiry, no access, no resources, no detainees.



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2017 Community-driven Welcoming City Resolution

- ✓ No City employee shall make or initiate any inquiry regarding the immigration status of any person
- ✓ Broad confidentiality and privacy policy
- ✓ City employees shall refuse access to all non-public areas of city property by federal immigration agents.
- ✓ U-visa certification policy
- ✓ City-sponsored know-your-rights training
- ✓ Training for City employees (Including Santa Fe Police Department)
- ✓ Language access improvements
- ✓ Intergovernmental Working Group

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Sanctuary is Helping!

- Arrests & deportations increased by 30% in 2017 nationally
- In jurisdictions where there is local government collaboration, the increase is up to 75%
- “Sanctuary” jurisdictions have seen increases, but not big ones. ICE’s El Paso region (West TX & NM) arrests increased by 12-15 percent

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8 USC § 1373

- Federal statute that prohibits local laws or policies that:
 - limit communication with DHS
 - about a person’s citizenship or immigration status
- 2018: NCAA v. Murphy
 - SCOTUS says Congress cannot compel states to legislate, whether affirmatively or prohibitively
 - PA, CA and IL federal district courts found 8 USC 1373 unconstitutional in the JAG litigation

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8 USC § 1373 - Unconstitutional

What does this mean?

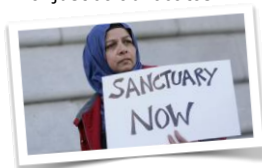
- Key statute that DOJ is using against localities may be void
 - So far it's only invalid in Illinois, Pennsylvania, and CA
- Local policies can expand and simplify:
 - Police chief can simply direct officers not to call ICE on people
 - City or county can enact an ordinance abolishing all local government interactions with ICE, including information sharing
- DOJ can't use it to force localities to provide notice of release dates, ICE access to jails, or other conditions

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Looking Ahead: Sanctuary Policies

- Use momentum from sanctuary victories!
- Pass New Policies and Strengthen Existing Policies
 - Eliminate criminal exceptions
 - Fight against bad immigrant narrative
 - Work closely with criminal justice advocates



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Looking Ahead: Think Big on §1373

- End/Limit information sharing with ICE
 - Inform law enforcement agencies that they are not legally obligated to share information with ICE
- Highlight problems inherent in databases shared



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Looking Ahead: Reject Law Enforcement Grants

- Consider opting out of federal grants
 - Funding for more law enforcement and equipment is not the answer
 - Focus on funding rehabilitative and education programs and reforming criminal justice system



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QUESTIONS

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Upcoming Webinars

Police-ICE Collusion: Essential Knowledge and Interventions

Date: December 5, 2018

Time: 11:00 am – 12:00 pm Pacific Time

- Grisel Ruiz, Staff Attorney - ILRC
- Lena Graber, Staff Attorney - ILRC
- Annie Benson, Senior Directing Attorney - Washington Defender Association
- Paromita Shah, Associate Director – National Immigration Project

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DOJ GRANTS AND SANCTUARY CITIES

The Courts Have Consistently Rejected DOJ's Conditions on Federal Grants That Would Have Required States and Localities to Help Enforce Immigration Laws

INTRODUCTION

In 2017, the Department of Justice (DOJ) announced that it would withhold federal grants from state and local jurisdictions applying to the FY2017 Byrne Justice Assistance Grant (Byrne Jag) and COPS Hiring Program (CHP) if jurisdictions failed to cooperate with Immigration and Customs Enforcement (ICE) in deporting members of immigrant communities. Specifically, the DOJ placed the following three conditions on the Byrne JAG and COPS programs:

- Complete a certification of compliance with 8 U.S.C. § 1373 (“Compliance Condition”);¹
- Allow ICE access to jails and detention facilities (“Access Condition”);
- Provide ICE with a 48-hour notice before a detainee is released (“Notice Condition”).

IS IT LEGAL TO ADD THESE REQUIREMENTS TO FEDERAL GRANTS?

No. So far, the courts have soundly rejected the administration’s attachment of these conditions to the Byrne and COPS grant programs. The federal district and appellate courts have found that these conditions exceed congressional authority and violate the Administrative Procedure Act and the U.S. Constitution. Further, two of these courts have held that 8 U.S.C. 1373 is unconstitutional.² As a result, courts have ordered the DOJ to grant federal funds to states and local jurisdictions, irrespective of a jurisdiction’s unwillingness to cooperate with ICE. These decisions covered both the express conditions added to the Byrne JAG program, as well as the ‘prioritization’ scheme added to the COPS grants.³

The following jurisdictions have filed lawsuits to prevent the DOJ from imposing these conditions:

- **The city of Philadelphia** sued the DOJ in *City of Philadelphia v. Sessions* for unlawfully placing these conditions on the Byrne JAG program. On June 6, 2018, the U.S. District Court for the Eastern District of Pennsylvania held that the conditions exceeded congressional authority, violated the constitutional Separation of Powers and Spending Clause, and the Administrative Procedure Act.⁴ Importantly, in regards to complying with 8 U.S.C. § 1373, the court went further to hold that 8 U.S.C. § 1373 is unconstitutional under the Tenth Amendment.⁵
- **The city of Chicago** filed a lawsuit to enjoin the DOJ from adding these conditions to the Byrne JAG program in *City of Chicago v. Sessions*. On September 15, 2017, the U.S. District Court for the Northern District of Illinois granted a nationwide preliminary injunction against the Notice and Access conditions finding that the conditions could exceed Congressional authority.⁶ On April 19, 2018, the Seventh Circuit affirmed the district court’s findings.⁷ The Seventh Circuit later agreed to rehear the question of whether the injunction would stand across the entire country, or just as to Chicago. On July 27, 2018, the district court issued a permanent nationwide injunction against all three of the JAG conditions, and granted a stay of the national scope of the injunction, pending further review from the Seventh Circuit. The district court also found 8 U.S.C. § 1373 unconstitutional.
- **The city of Los Angeles** sued the DOJ in *City of Los Angeles v. Sessions* for imposing the Access and Notice conditions as considerations on scoring applicants for the CHP grant. On April 11, 2018, the U.S. District Court for the Central District of California granted a nationwide permanent injunction against the two conditions, finding that the DOJ imposed them without congressional authority and in violation of the Spending Clause and the Administrative Procedure Act.⁸

¹ For more information about 8 U.S.C. § 1373, see: <https://www.ilrc.org/fact-sheet-sanctuary-policies-and-federal-funding>.

² For more information about the constitutional issues with 8 U.S.C. § 1373, see: <https://www.ilrc.org/unconstitutionality-8-usc-%C2%A7-1373>.

³ The conditions were appended to the COPS program not as express requirements but as factors for favorable prioritization to applicants.

⁴ *City of Philadelphia v. Sessions*, No. CV 17-3894, 2018 WL 2725503 (E.D. Pa. June 6, 2018).

⁵ *Id.* at *31.

⁶ *City of Chicago v. Sessions*, 264 F. Supp. 3d 933, 943 (N.D. Ill. 2017), reconsideration denied, No. 17 C 5720, 2017 WL 5499167 (N.D. Ill. Nov. 16, 2017).

⁷ *City of Chicago v. Sessions*, 888 F.3d 272 (7th Cir. 2018).

⁸ *City of Los Angeles v. Sessions*, 293 F. Supp. 3d 1087, 1093 (C.D. Cal. 2018).

- **The state of California** filed a lawsuit in *State ex rel. Becerra v. Sessions* to enjoin the DOJ from placing the conditions on the Byrne JAG program and CHP grant. Although the final resolution of the case is still pending, the court denied California's request for a preliminary injunction on March 5, 2018, finding that the grants were not a big enough portion of the state budget to warrant a preliminary injunction.⁹
- **The state of Illinois** filed a lawsuit against the DOJ in July 2018, seeking a court order against the notice, access, and compliance conditions and arguing that 8 U.S.C. § 1373 is unconstitutional.¹⁰
- **Evanston, IL and the U.S. Conference of Mayors** filed a joint lawsuit asking the court to declare the notice, access, and compliance conditions unconstitutional and to enjoin DOJ from imposing them on the FY2017 or any future Byrne JAG grants.¹¹
- **New York, New Jersey, Massachusetts, Connecticut, Washington, and Virginia** filed a joint lawsuit in July 2018, claiming that all the Byrne JAG conditions are unlawful and asking the court to enjoin DOJ from enforcing them.¹²

HOW MUCH MONEY IS AT STAKE?

Different jurisdictions receive varying amounts of money under these grants.

- **The COPS CHP grant** program gives out large sums of money to hire officers; most awards are between \$100,000 - \$500,000, and some larger counties receive as much as \$1 - 3 million.
- **Byrne Grants:** The JAG program awards a total of about \$300 million per year to states and localities. Most states and counties in the country apply for and receive JAG funds according to the statutory formula. Generally, larger and more populous cities and counties receive \$100,000 - \$300,000, while most cities receive \$10,000 - \$50,000. States receive the majority of federal funds and re-grant substantial amounts to local law enforcement agencies.

WHAT DO THESE GRANTS FUND?

- **Byrne** grants fund a variety of law enforcement programs, from body armor to drug enforcement and border security efforts. FY2017 “areas of emphasis” of the Byrne JAG program included: reducing gun violence, FBI's national incident based reporting system, officer safety and wellness, border security, and collaborative prosecutions between police and prosecutors. Nothing in the Byrne JAG program mentions or prioritizes immigration enforcement. The Byrne JAG program has been widely criticized for funding discriminatory drug war policies and incentivizing aggressive enforcement measures without tracking actual improvements in public safety, health, or crime reduction.¹³
- The **COPS CHP** program is specifically for hiring police officers, for the purpose of “community policing.” The agency defines community policing as programs that “encourage[] agencies to proactively develop solutions to the immediate underlying conditions contributing to public safety problems.” This definition of community policing has nothing to do with communities, and ignores the problems of racial profiling, coercion, and police brutality in building better public safety programs. Instead, the COPS program appears to address community safety by simply expanding the size and scope of police forces, including the placement of police officers in schools.

NEW CERTIFICATION REQUIREMENTS ADDED TO MORE DOJ GRANTS IN JUNE 2018

The DOJ announced on June 28, 2018 that they would add **new requirements of certifying compliance with various federal immigration laws** to four different federal grant programs for the 2018 cycle.¹⁴ These funds are a range of

⁹ *State ex rel. Becerra v. Sessions*, 284 F. Supp. 3d 1015, 1037 (N.D. Cal. 2018).

¹⁰ *State of Illinois v. Sessions*, No. 1:18-cv-04791 (N.D. Ill. Jul. 12, 2018).

¹¹ *City of Evanston v. Sessions*, No. 1:18-cv-04853 (N.D. Ill. Jul. 16 2018).

¹² *State of New York et al v. Sessions*, No. 1:18-cv-06471 (S.D.NY Jul 18, 2018).

¹³ See, e.g., National Juvenile Justice Network, *Fiscal Policy Center Toolkit: How to Find and Use Byrne Justice Assistance Grant (JAG) Information for Juvenile Justice Reform*, 2 (2016), available at http://www.njnn.org/uploads/njnn-publications/NJNN_Toolkit_How-to-Use-JAG-Funds_Oct19-2016FINAL.pdf.

¹⁴ United States Department of Justice, Department of Justice Announces New Immigration Compliance Requirements for FY 2018 Grants, June 28, 2018. These grants are: 1) Supporting Innovation: Field-Initiated Programs to Improve Officer and Public Safety; 2) Justice Accountability Initiative (JAI): Pilot Projects Using Data-driven Systems to Reduce Crime and Recidivism; 3) Gang Suppression Planning: Build Capacity for a Multilateral Data-Driven

discretionary grant programs for law enforcement and non-government agencies that largely focus on criminal justice, law enforcement and gang issues. Like the Byrne JAG and COPS programs, many of these grants also fund aggressive prosecution and policing strategies that target communities of color.

DOJ announced that acceptance of these grants requires certification of compliance with 8 U.S.C. § 1373, as well as certification that the jurisdiction understands and has no “law, rule, policy, or practice” that would aid or abet violations of 8 U.S.C. § 1324(a), or impede federal officers in exercising their authority under 8 U.S.C. § 1357(a), § 1226(a) & (c), and § 1366(1) & (3).¹⁵ These federal statutes encompass the arrest, interrogation, and detention authority of federal immigration agents, criminal laws regarding “harboring” undocumented immigrants, communications with immigration authorities about citizenship and immigration status, and the reporting of data on incarceration of undocumented immigrants. In addition, DOJ will prioritize applicants that will “address the problem area identified in its application through cooperation with federal immigration authorities.”¹⁶

Applications for these grants are ongoing, and thus no litigation has been filed against these new certification requirements so far. DOJ may follow up with threatening letters against certain applicants who they claim are thwarting immigration enforcement, as they did in the Byrne JAG context.¹⁷

WHAT SHOULD LOCALITIES DO IN RESPONSE?

Understand the Legal Landscape

- Every court to review the question has ruled against the DOJ and found that the notice and access conditions exceed congressional authority and violate the Constitution.
- Even where the new conditions were framed as “considerations” for prioritizing funding, rather than straight requirements, they were found to be illegal.¹⁸
- So far two federal courts have found 8 U.S.C. § 1373 unconstitutional, based on new Supreme Court precedent. Consider how the unconstitutionality of 8 U.S.C. § 1373 affects your local policy choices see ILRC’s guide: [The Unconstitutionality of 8 U.S.C. § 1373 and Its Implications for Sanctuary Policies](#).
- The DOJ and the Trump Administration appear to be wholly unconcerned that these conditions are unconstitutional; their tactics are intended to scare local agencies into complying with their demands on immigration enforcement.

Stand Up for Good Local Policies

- Localities that restrict access to jail facilities or limit information sharing with ICE are doing so because of a strong governmental interest in building healthier relationships with the communities they are sworn to protect.
- Greater involvement with abusive and unaccountable federal agencies like ICE and CBP is bad for public safety and undermines local authority.
- Consider opting out of these grant programs to begin with. Federal grants that simply fund more police officers and more militaristic equipment will not help build community trust or improve relations between law enforcement and communities of color. Even if a grant sounds like it has a good purpose, for example to combat opioid addiction, why is the police or sheriff’s department the agency funded to run such a program, instead of a clinic or school or NGO? Programs that invest in the community and support education, rehabilitation, and job growth are a better use of funds than feeding the machinery of mass incarceration.

Strategy to Promote Public Safety; and 4) A Law Enforcement and Prosecutorial Approach To Address Gang Recruitment of Unaccompanied Alien Children program.

¹⁵ See Certification form at: <https://ojp.gov/funding/Explore/pdf/FY2018JAComplianceWithVarious.pdf>.

¹⁶ The solicitations provide the following language: “In addition, an applicant may receive priority consideration by explaining how it would address the problem area identified in its application through cooperation with federal immigration authorities, including compliance with 8 USC §§ 1373, 1644, and 1324, participation in a 287 (g) or other cooperation program, honoring requests for notice of release, transfers of custody, and/or short term extensions of custody, and providing access to detention centers so federal immigration authorities may conduct interviews. If you choose to seek this priority consideration, please explain specifically how you believe these forms of cooperation will address the problem area you have identified, and how you will use these grants funds to achieve this end.”

¹⁷ See ACLU, Major Developments Relating to “Sanctuary” Cities Under the Trump Administration (July 5, 2018) available at <https://www.aclu.org/other/major-developments-relating-sanctuary-cities-under-trump-administration>

¹⁸ *City of Los Angeles v. Sessions*, 293 F. Supp. 3d 1087 (C.D. Cal. 2018).



THE UNCONSTITUTIONALITY OF 8 U.S.C. § 1373 AND ITS IMPLICATIONS FOR SANCTUARY POLICIES

Why Jurisdictions Limiting Cooperation with ICE Should Feel Relieved

INTRODUCTION

The Trump Administration has repeatedly attacked states and local jurisdictions that have ‘sanctuary policies’ and claim that they violate federal law. The legal argument largely relies on federal law 8 U.S.C. § 1373, which prohibits state and local governments from enacting laws or policies that limit communication with ICE about “information regarding the immigration or citizenship status” of individuals.¹ According to the federal government, 8 U.S.C. § 1373 requires jurisdictions to comply with numerous ICE requests and, by extension, make sanctuary policies unlawful.

Recently, however, the Supreme Court of the United States has provided a powerful tool for jurisdictions with sanctuary policies to attack the constitutionality of 8 U.S.C. § 1373.² In fact, two federal district courts have already found 8 U.S.C. § 1373 unconstitutional under the Tenth Amendment,³ and another characterized it as “highly suspect.”⁴ These decisions have important implications for jurisdictions who wish to adopt policies against aiding the federal government in deporting immigrants.

NEW COURT RULINGS PROHIBIT THE FEDERAL GOVERNMENT FROM TELLING STATES AND LOCALITIES HOW TO REGULATE

In May 2018, the Supreme Court of the United States issued an important decision in *Murphy v. National Collegiate Athletic Association*.⁵ Although this case dealt with a federal law that prohibited state authorization and licensing of sports gambling schemes, the Court’s findings have sweeping implications in the immigration field.

Specifically, the Court ruled that the Tenth Amendment not only prohibits the federal government from affirmatively **compelling** a state or local jurisdiction to enact laws and policies, but it also prevents the federal government from **prohibiting** a state or local jurisdiction from enacting new laws or policies. According to the Court, the basic principle is that the Tenth Amendment bars the federal government from issuing direct orders to state and local jurisdictions, and therefore applies in either scenario.

In June 2018, the U.S. District Court in the Eastern District of Pennsylvania became the first court to take the Supreme Court’s findings and apply them to 8 U.S.C. § 1373.⁶ Observing that 8 U.S.C. § 1373 **prohibits** government entities from enacting laws or policies, the district court cited *Murphy* to hold that 8 U.S.C. § 1373 is unconstitutional under the Tenth Amendment of the U.S. Constitution. In July 2018, the Northern District of Illinois agreed.⁷

BIG IMPLICATIONS FOR LOCAL SANCTUARY POLICIES

So far, 8 USC § 1373 has been found unconstitutional by two courts and ‘constitutionally suspect’ by a third. Everywhere else, it is still the law. But as more courts review it, the statute may be struck down in more jurisdictions.

Where 8 U.S.C. § 1373 has been struck down, it may be lawful for a state or locality to limit communications with ICE about individuals’ immigration status.

- Advocates should use these findings to push for adopting or strengthening sanctuary policies in their communities, and demand that local governments not report anyone to ICE.
- Jurisdictions with sanctuary policies should use these court rulings to defend their policies.
- Communities should educate their law enforcement agencies and local governments that there is no legal obligation to share immigration status information with federal agents, and that policies against collaboration with ICE are entirely legal and good policy choices.

¹ 8 U.S.C. § 1373. For more information about 8 U.S.C. § 1373 and sanctuary policies, see our [Fact Sheet on Sanctuary Policies and 8 U.S.C. § 1373](#).

² *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

³ *City of Philadelphia v. Sessions*, No. CV 17-3894, 2018 WL 2725503, at *31 (E.D. Pa. June 6, 2018).

⁴ *United States v. California*, No. 2:18-cv-00490 at *35 (E.D. Cal. July 5, 2018). However, the court did not make a ruling on the constitutionality of § 1373 because it found that California’s laws did not conflict with the statute anyway.

⁵ *Murphy v. Nat’l Collegiate Athletic Ass’n*, 138 S. Ct. 1461 (2018).

⁶ *City of Philadelphia v. Sessions*, No. CV 17-3894, 2018 WL 2725503 at *33.

⁷ *City of Chicago v. Sessions*, No. 1:17-cv-05720 (N.D. Ill. Jul. 27, 2018).



Anti-Sanctuary Jurisdiction Legislation: Attacks on Local Communities Promoting Constitutional Policing

Over the years, anti-sanctuary jurisdiction legislation has been a central focus of immigration hardliners. These proposals are intended to punish local jurisdictions who limit their entanglement with federal immigration enforcement. However, those seeking [bipartisan solutions on immigration](#) have rejected anti-sanctuary legislation, a recognition of the serious constitutional defects inherent in anti-sanctuary policies and the devaluation of how local communities wish to promote constitutional policing practices and build trust with communities of color.

Though the Department of Homeland Security (DHS) budget exceeds that of all other federal law enforcement agencies combined, DHS relies heavily on the voluntary assistance of local governments and law enforcement to remove individuals. However, localities have no legal authority to enforce immigration law and no legal obligation to assist DHS with immigration enforcement. Still, [over 75% of counties](#) voluntarily detain individuals at the request of DHS' Immigration and Customs Enforcement (ICE).

Sanctuary cities or jurisdictions are loosely identified as those that enact policies limiting involvement of their local law enforcement agencies in immigration enforcement. Sanctuary jurisdictions cannot and do not prohibit ICE from enforcing immigration law in their jurisdictions. The level of disengagement of local law enforcement with federal immigration enforcement can vary among localities but some examples include restricting ICE access to local jails, refusing to honor detainer requests (ICE requests to detain an individual beyond the constitutionally permissible time to effectuate transferring custody to ICE) and a prohibition on county officials on asking individuals about immigration status. Currently, more than 760 counties refuse to comply with detainer requests - this represents close to 25% of counties in the US. Just over 5% of counties in the US restrict notifications to ICE about individuals' release dates or other information; under 4% of counties limit ICE access to local jails or interrogation of detainees; under 4% prohibit county officials' inquiries into immigration status and/or place of birth; and just under 4% of counties prohibit participation in immigration enforcement.

Contrary to anti-sanctuary policies that rely on an overbroad use of federal power, sanctuary jurisdictions promote building healthier relationships between law enforcement and communities of color; prioritizing constitutional policing practices; and

protecting survivors and witnesses of crime. Most recently, [federal courts](#) have ruled that the federal government cannot coerce sanctuary cities to engage in immigration enforcement through conditioning the receipt of federal funds.

Summary and Comparison of Select Bills

	Stop Dangerous Sanctuary Cities Act	No Sanctuary for Criminals Act	Stop Sanctuary Policies and Protect Americans Act	Mobilizing Against Sanctuary Cities Act	Enforce the Law for Sanctuary Cities Act
<i>Sponsor/Bill number</i>	Toomey S.87/Black H.R. 400	Goodlatte H.R. 3003	Vitter S. 2146	Barletta H.R. 83	Hunter H.R. 3009
<i>Congress</i>	115th	115th	114th	115th	114th
<i>Legislative Posture</i>	<p>Introduced in the 115th Congress by Senator Toomey (S. 87) with 25 Republican co-sponsors and Rep. Black (H.R. 400) with 94 Republican co-sponsors.</p> <p>In the February 2018 Senate floor votes on immigration, this bill was offered as an amendment and received 54 votes (4 Democrats voted for). Here is the ILRC's Vote Recommendation Against Toomey 1948.</p>	<p>Introduced in the 115th Congress by Rep. Goodlatte (H.R. 3003) and passed House in June 2017 with 225 votes, including 3 Democrats. Seven Republicans voted against the bill. Here is NIJC's analysis of this bill.</p>	<p>Introduced in the 114th Congress by Senator Vitter (S. 2146) with 16 Republican co-sponsors.</p> <p>In October 2015, motion to proceed did not pass by vote of 54-45. Here is AILA's vote recommendation against S. 2146.</p>	<p>Introduced in the 115th Congress by Rep. Barletta (HR 83) with 15 Republican co-sponsors.</p>	<p>Introduced in the 114th Congress by Rep. Hunter (H.R. 3009) and passed House in July of 2015 with 241 votes, including 6 Democrats. Five Republicans voted against the bill. Here is an NGO sign on letter in opposition to H.R. 3009.</p>
<i>Definition of Sanctuary City</i>	<p>State or locality that has law or policy that restricts sharing information on immigration status OR from complying with a detainer or notification request.</p> <p>An exception to sanctuary jurisdiction definition is when a</p>	Does not address.	A state or locality that has a law or policy in violation of 8 USC § 1373 or a law or policy that prohibits compliance with a detainer or notification request.	Does not address.	Does not address.

	state or locality does not share information or comply with detainers/notifications for an individual who comes forward as a victim or witness to a criminal offense.				
<i>Funding Restrictions</i>	<p>Limits four Economic Development Administration Grants to sanctuary cities: 1) grants for public works and economic development; 2) grants for planning and administrative expenses; 3) supplementary grants; and 4) grants for training, research and technical assistance.</p> <p>Limits Community Development Block Grants to sanctuary cities and calls on those who have received funds to return them.</p>	Any state or locality that fails to comply with 8 USC § 1373 is ineligible for federal funds including SCAAP; Cops on the Beat program funds; Byrne JAG funds; and any other funds from DOJ or DHS related to law enforcement, terrorism, national security, immigration or naturalization.	<p>Restricts sanctuary cities from the following federal grants: 1) SCAAP; 2) Cops on the Beat program; and 3) Community Development Block Grants.</p> <p>Requires return of funds for sanctuary jurisdictions that received funding and sets forth enforcement scheme.</p>	<p>Any state or locality in violation of 8 USC § 1373 is ineligible for any federal financial assistance.</p> <p>Attorney General, each year, will determine and report which jurisdictions are in compliance.</p>	<p>Any state or locality is ineligible for SCAAP funding if they have a law or policy in violation of 8 USC § 1373 or prohibit state or local law enforcement from gathering citizenship or immigration status information.</p> <p>Any state or locality that has a law or policy in violation of 8 USC § 1373 or prohibits state or local law enforcement from gathering citizenship or immigration status information shall have COPS and Byrne-JAG funds withheld.</p>
<i>State/Local Immigration Authority</i>	Deems a state or local agent complying with a detainer as a DHS agent, with the full authority of a DHS agent.	Amends 8 USC § 1373 by prohibiting any state or local law or policy from restricting compliance with immigration laws or assisting/cooperating	Deems a state or local agent complying with a detainer as a DHS agent, with the full authority of a DHS agent.	Does not address.	Does not address.

		<p>with federal agents in enforcing these laws.</p> <p>Specific law enforcement activities that cannot be restricted by state and local laws and policies include: 1) making inquiries to obtain information; 2) notifying federal government about individuals encountered; and 3) complying with requests from federal agents.</p> <p>Nothing in this law requires law enforcement to report or arrest victims or witnesses of a criminal offense.</p>			
<i>Detainers</i>	Shifts liability for legal challenges to detainer compliance to federal government.	<p>Amends INA § 287(d) to require DHS to issue a detainer if there is probable cause to believe the individual is inadmissible or deportable. Broadly defines probable cause as when there is biometric confirmation of identity; the individual is subject of removal proceedings; there is a prior order of removal; the individual made voluntary statements or other reliable evidence; or there are reasonable grounds to believe the individual is inadmissible or deportable.</p> <p>Allows state or locality to hold individual on detainer for up to 96 hours.</p>	Shifts liability for legal challenges to detainer compliance to federal government.	Does not address.	Does not address.

		<p>Holds harmless any state or locality for liability related to detainer compliance.</p> <p>Shifts liability for detainer compliance to the federal government.</p>			
<i>DHS Authority</i>	Does not address.	<p>DHS can decline to transfer custody of individual to state or locality unless that entity is in compliance with 8 USC § 1373.</p> <p>DHS will not transfer custody of individuals with final orders of removal to state or locality unless that entity is in compliance with 8 USC § 1373.</p>	Does not address.	Does not address.	Does not address.
<i>Private Right of Action</i>	Does not address.	<p>Individual, spouse, parent or child who is a victim of murder, rape or any felony and convicted and sentenced for at least 1 year, may bring an action against the state or locality if the entity declined to honor a detainer.</p> <p>Ten year statute of limitations and attorneys' fees.</p>	Does not address.	Does not address.	Does not address.
<i>Detention</i>	Does not address.	<p>Authorizes the indefinite detention of individuals.</p> <p>Expands mandatory detention to those convicted of driving while intoxicated; individuals who entered without inspection</p>	Does not address.	Does not address.	Does not address.

		<p>and individuals whose visas have been revoked, and who have violated their visa status and been arrested or charged with a particularly serious crime or crime resulting in death or serious bodily injury.</p> <p>Limits immigration judge's review of DHS custody determinations and sets forth a clear and convincing standard for certain individuals seeking bond.</p>			
<i>Reentry</i>	Does not address.	Does not address.	<p>Increases penalties for reentry convictions to five years.</p> <p>Sets forth a mandatory minimum for the illegal reentry for individuals deemed to be aggravated felons or individuals with at least two reentry convictions.</p>	Does not address.	Does not address.

For any questions or further information please contact Sameera Hafiz, Senior Policy Strategist at the Immigrant Legal Resource Center (ILRC) at shafiz@ilrc.org.



The Rise of Sanctuary

Getting Local Officers Out of the Business of Deportations in the Trump Era



Acknowledgments

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The Immigrant Legal Resource Center (ILRC) is a national nonprofit that works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training & technical assistance, and policy development & advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

To learn more about our work, visit:
www.ilrc.org

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As the Trump administration moves to expand immigration enforcement, cities, counties and states have numerous policy tools at their disposal to protect their immigrant residents.

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Introduction:

Juxtaposed against the Statue of Liberty's promise of refuge to "the huddled masses, yearning to breathe free" lies another reality: immigration policy in the United States has long been fraught with racial tension and dictated by an uneasy fear of "the other."

From the Chinese Exclusion Act and the Mexican Bracero program of the past to the Muslim ban and elimination of Temporary Protected Status of the present, history has shown that the work of immigrant justice and racial justice are inextricably linked.

Since the first week of the Trump administration, the federal government has launched a racist and mean-spirited attack on immigrants and those who support and welcome them, all in the aim of satisfying Trump's steadfast campaign promise to "deport them all" as a way to "make America great again."

With a budget of over \$18 billion - more than all other federal law enforcement agencies combined - the Department of Homeland Security (DHS) detention and deportation machine is vast and dangerous. But it also relies heavily on the voluntary assistance of local governments, particularly local law enforcement agencies, to remove individuals from the families and livelihoods they have built in the U.S.

Localities have no legal authority to enforce immigration laws and no legal obligation to assist DHS with its immigration enforcement actions.

Yet local assistance with federal immigration work continues across the country. Three out of every four counties will voluntarily detain individuals at the request of Immigration and Customs Enforcement (ICE).

Threats and attempts to deny federal grants to "sanctuary jurisdictions" - loosely identified as those who enact policies limiting involvement of their local law enforcement agencies in immigration enforcement - have been key strategies in Trump's anti-immigrant agenda.

From executive order pronouncements and Department of Justice (DOJ) policy decisions to near-weekly public speeches invoking threats against and denunciations of sanctuary policies, the administration has sought to force localities to help carry out its increased deportation efforts, pushing local agencies to prioritize federal immigration enforcement over their own community concerns - and seeking to punish those who rightfully refuse to be involved.

However, efforts to thwart sanctuary policies have failed in a number of ways. During 2017, local policies limiting involvement with ICE expanded in spite of, and sometimes because of, the hateful anti-immigrant rhetoric and policy changes in the Trump Administration. **Over 400 counties now have stronger limitations on engaging in immigration enforcement than they did a year ago.**

Under pressure from community members and advocates, cities, counties, and states across the country enacted new laws and policies disengaging with federal immigration enforcement in a variety of manners, from restricting ICE access within their jails to refusing to honor ICE detainers, which are requests to detain someone for apprehension by ICE - a detention that federal courts continue to find unconstitutional.

Federal courts have also ruled against other unconstitutional overreaches by the federal government, issuing new rulings on the strict limits of local authority in immigration enforcement and preventing the administration from stripping federal funding to sanctuary jurisdictions.

In 2018, strengthening and expanding local sanctuary policies will be crucial to resisting the anti-immigrant Trump agenda. Though we recognize that sanctuary policies alone are not sufficient to prevent deportations, we hope that their adoption continues and increases over the Trump administration's second year.

The Immigrant Legal Resource Center (ILRC) will continue our work to support and advise local advocates and city, county, and state government bodies across the country to fight back against unjust detention and deportations and to protect immigrant rights.



Towards a Broader Vision of Sanctuary:

The idea of sanctuary often centers on civil immigration enforcement, but it can and should be much broader. Many communities pass “welcoming city” or similar policies with statements about how their local agencies will treat all people with respect, regardless of national origin, race, religious affiliation, gender identity, or difference in ability. These localities want to embrace a broader vision of sanctuary in response to the xenophobia and racial animus that drove Donald Trump to power, and particularly in response to the Muslim Ban executive order and denial of entry to refugees fleeing persecution. These policies seek to make immigrants feel welcome in their communities, and to provide integration assistance with English and education, helping people to enter the labor force and participate in local civic affairs.

Many communities are also currently developing policies to address mass incarceration and criminalization. These policies seek to make the criminal legal system less punitive and discriminatory. These broader reforms largely – and positively - impact communities of color, including immigrants, all of whom bear the brunt of abusive law enforcement tactics. Because any contact with the criminal legal system, however minimal, creates a serious risk that ICE will intervene, local policies that clamp down on aggressive, racially-motivated policing are a vital tool for mitigating the pipeline from jail to deportation. Reducing our overreliance on imprisonment and fighting other discriminatory practices are essential for addressing the devastating impacts on both immigrant and non-immigrant communities of color, who are unfairly and disproportionately targeted by law enforcement.

Finally, for all people of color, particularly members of the LGBTQ and/or black communities, interactions with law enforcement are fraught with trauma, violence, prejudice, and far too often, death. Efforts to create sanctuary should protect all residents from punitive and discriminatory law enforcement.

Methodology:

Local engagement with federal immigration enforcement activities takes many forms. In this report, we review seven of the most common ways that local agencies may interact with immigration enforcement and the common policies - often called “sanctuary” policies - adopted to restrict local resources from being used for deportations. These policy factors form a spectrum of how deeply involved a county may be in immigration enforcement work.

In evaluating the data, we created a 7-point rubric that covers the types of policies that most affect local involvement in immigration enforcement, and then counted how many of these various policies each county had adopted. If we had no information on whether a county had regulated a particular aspect, we assumed they have not.



For each county we looked to see if it did the following:

- The county does not have a 287(g) agreement with ICE
- The county does not have a contract with ICE to detain immigrants in county detention facilities (called an Intergovernmental Service Agreement or IGSA)
- The county restricts or refuses to hold individuals after their release date on the basis of ICE detainers (ICE holds)
- The county has a policy against notifying ICE of release dates and times (ICE alerts) or other information about inmate status
- The county does not allow ICE in the jail or requires consent from detainees before ICE agents are allowed to interrogate them while in custody
- The county has a prohibition on asking about immigration status
- The county has a general prohibition on providing assistance and resources to ICE for the purposes of enforcing civil immigration laws or against participating in joint task forces

For a more detailed explanation of these policy choices, see the Appendix.

Common Types of Sanctuary Policies

Policy Option	Description of Enforcement Practice	Reasons for Policy Limiting this Practice
No 287(g)	The 287(g) program is an optional agreement formed with ICE that specifically deputizes certain local law enforcement agents to enforce immigration laws.	287(g) turns local police into immigration agents, meaning that contact with local public safety officials could be a direct route to deportation. Furthermore, all the costs of this work fall on the city or county, so the locality is paying to do the federal government's job.
No ICE Detention Contract	An ICE detention contract is a contract between ICE and a local jail where ICE pays the jail to hold immigrants in detention during their deportation proceedings.	Contract detention uses local jail space to detain people for the federal government, and muddles the lines between local law enforcement officers and immigration authorities. IGSA's can incentivize profiling and arresting immigrants to profit off their detention.
Limiting ICE Detainers (ICE Holds)	An ICE detainer, also called an ICE hold, is a request from ICE to a local jail or law enforcement agency to hold a person, after they should be released, for additional time to allow ICE to come take custody.	Holding individuals to transfer them to ICE fuels the deportation pipeline via local police. Moreover, several federal courts have found that holding people for ICE pursuant to ICE detainers is illegal. Any law enforcement agency that prolongs detention on the basis of an ICE detainer may be liable for unlawful detention.
Restricting notifications to ICE about release dates or other information	ICE asks local agencies to give them advance notice of when immigrants will be released from custody, so that ICE can come and arrest them upon release. These requests are part of immigration detainers, but may come in other ways as well.	ICE notifications put an additional burden on local resources to respond to ICE inquiries or help transfer people to ICE, and further the perception the local police are not safe for immigrants to report to. These transfers often involve prolonged detention by local agents and violations of privacy if jails share detainees' home addresses or other contact information with ICE.
Limits on ICE access to local jails and ICE interrogations of detainees	Some communities do not allow ICE in the jail, require a judicial warrant to access limited areas, and/or enact procedural protections for immigrants in the jail so that they can refuse to be interrogated by ICE agents.	When ICE agents are given access to interrogate inmates in local jails, police and sheriffs are enabling racial profiling and further undermining trust with immigrants. ICE agents in jails frequently question people without identifying themselves, providing <i>Miranda</i> warnings, or adhering to any legal standards that other law enforcement follow.
Prohibitions on inquiries into immigration status and/or place of birth	Some jails prohibit their officers or employees from inquiring into immigration status or place of birth.	Asking about immigration status is often rooted in racial profiling and wrongful targeting of individuals for illegal purposes. It is a deceptive practice used to elicit information under the guise of verifying identity, used to discriminate against immigrants and turn them over for deportation.
General prohibitions on participating in immigration enforcement.	Some jurisdictions enact general policies to prohibit the use of local resources in assisting with immigration enforcement. Sometimes they specifically prohibit local officers from participating in joint task forces with ICE.	When local agencies are involved in immigration enforcement, they are paying local tax dollars to do the federal government's job. Moreover, they are undermining local services and operations for the immigrant community and limiting immigrants' access to justice, because residents will not feel that engaging with civic services or local peace officers is safe for them to do.

Methodology:

About the Data:

The ILRC has been tracking local policies regarding assistance with deportations through city and county use of ICE detainers since 2013. In November 2016, we received data from a Freedom of Information Act (FOIA) request that provided details on local jail meetings with ICE across the country and what levels of assistance they were willing to provide to ICE going forward. Based on this data, as well as our own collected data from existing written policies and ordinances, we analyzed the extent of local assistance in civil immigration enforcement across the country. In December 2016, we released a report on those findings, [Searching for Sanctuary](#), accompanied by a live, interactive map tracking county-level involvement in deportations.

In December 2017, we received the results of a second FOIA request with updated information regarding the ways that counties are willing or unwilling to engage with ICE. We also obtained more data on new counties that we previously did not have any information on. Once again, we combined this new information with our own knowledge of local policies and laws across the country to produce the data for this report.

Policy vs. Reality:

Throughout this report, we examine statements of policy and existing laws, whether written or reported to us or to ICE. However, we do not measure compliance with those laws and policies.

It is important to note that what occurs in any jurisdiction may differ from the official policy or statements made by local governments. Within each policy may lie nuances, exceptions, and loopholes that law enforcement may exploit to funnel immigrants to ICE. Further, all these laws and policies continue to bump up against endemic racial and ethnic profiling against communities of color.

For these reasons, we limit our analysis to the stated policies themselves and not the practices or implementation of those policies.





County Focus:

It is important to note that city-level sanctuary policies are not the focus of this report.

Although many cities and municipal agencies may adopt policies on how they will interact with federal immigration authorities, the most significant interactions with ICE are at the county level, such as within county jails, courts, and probation departments. The jail-to-deportation pipeline is grounded in these county agencies, where the federal civil immigration and local/state criminal legal systems have become increasingly intertwined. Although there are many problems with biased policing against immigrants and communities of color by city police, ICE regularly operates out of county jails across the country, interrogating inmates in county custody, asking sheriffs to deliver information on immigrants, and requesting that jails hold people at ICE's convenience.

Thus, it is primarily the county jails' policies regarding interactions with ICE that govern how immigrants may be funneled into the deportation pipeline. As a result, we focus on county policies, particularly on the role of county sheriffs, who in most states are the managers of the county detention facilities where ICE focuses its deportation efforts.

Additionally, we focus on county interactions with ICE specifically. We do not have reliable data on how localities interact with Customs and Border Protection (CBP), although many local restrictions on involvement in immigration enforcement apply to engaging with ICE and CBP equally.

It is primarily the county jail's policy regarding assistance with deportations that governs how immigrants may be profiled and funneled into the deportation pipeline.



In 2018, strengthening & expanding local sanctuary policies will be crucial to resisting the anti-immigrant Trump agenda and mitigating deportations.

Mapping Local Police Involvement in Deportations

There are many kinds of local policies around immigration. Although immigration is governed by federal law and beyond the power of states and localities to regulate, local governments and their agencies are nonetheless affected by immigration and must establish their own policies for how they will handle immigration-related issues, including demands from federal government agencies like ICE.

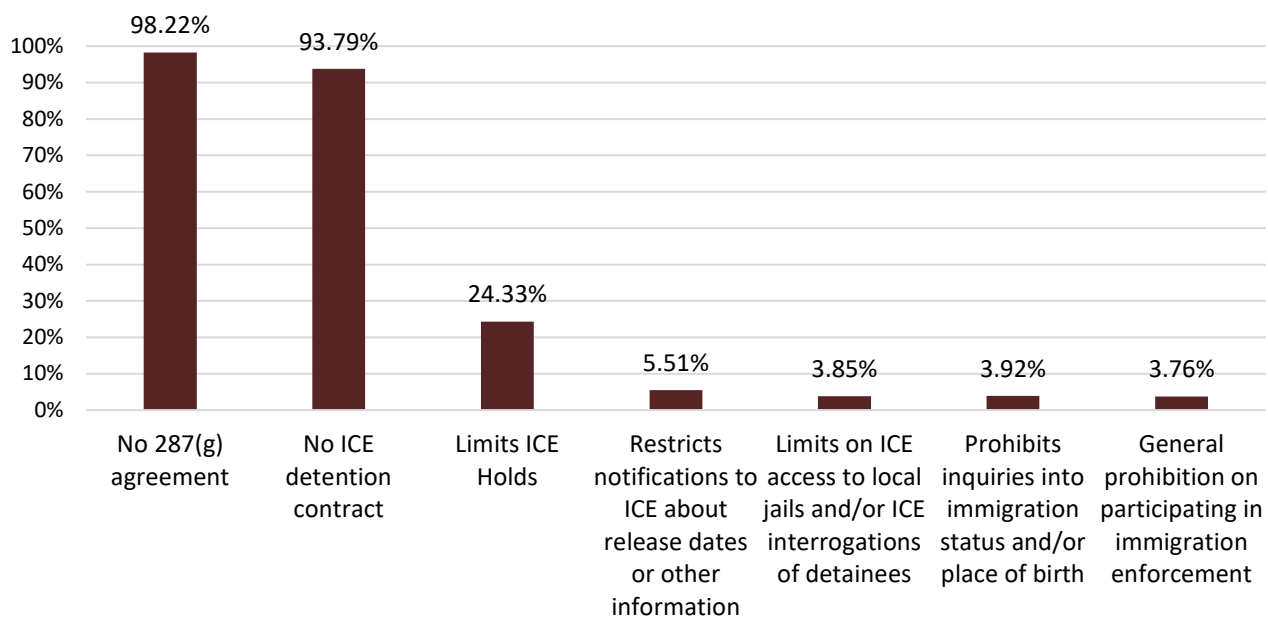
The federal government actively seeks to use the time and resources of local law enforcement agencies for immigration enforcement. But localities have no legal obligation to assist the federal government or spend their resources enforcing federal laws like immigration. In fact, doing so often undermines their relations with their own immigrant residents and constituents.

Therefore, many local governments enact policies, sometimes referred to as sanctuary policies, to separate themselves from immigration enforcement and clarify that their services are available for their residents regardless of citizenship or immigration status. These policies may take many different forms and can cover varying aspects of local operations.

More than 760 counties currently refuse to hold individuals beyond their release dates based on ICE holds, an increase of approximately 135 counties in the last year. Many more counties are rethinking their policies about allowing law enforcement or other public employees to ask about someone’s immigration status. Some jurisdictions have passed sweeping new policies with general prohibitions about spending any local time or resources on civil immigration enforcement. And others are in the midst of evaluating the extent to which their resources are spent assisting ICE and deciding whether to pass policies regulating those activities.

Our analysis is based on the different types of policies a county may have adopted. Note that on-the-ground practices may or may not always match stated policies.

Frequency of Different County Policies 2017



Mapping Local Police Involvement in Deportations

For our analysis, we looked at 3,015 of the 3,140 counties and county equivalents in the U.S.

- **ICE Detention Contracts:** Only 56 counties have 287(g) agreements and 177 have ICE detention contracts (also called Intergovernmental Service Agreements or IGSA's). These numbers show that only a small proportion of counties have a formal contractual relationship with ICE.
- **ICE Detainers:** 760 counties, or 24% of counties, have policies against holding people on ICE detainers. The remaining 2,380 counties, or 76% of counties, will hold people for ICE without a warrant, willingly violating these individuals' 4th Amendment rights.
- **ICE Notifications:** 169 counties – 6% – have a policy against sharing release dates or other information about detainees with ICE. The remaining 2,971 counties spend their time and resources informing ICE when immigrants will be released from custody and voluntarily sending them other information about immigrants in local custody.
- **ICE Access to Jails:** 117 counties, about 4%, place some sort of restriction on ICE's access to the jail or have instituted some procedural protections on ICE's ability to interrogate detainees. In 3,023 counties, there are no limitations on what ICE can do inside the jail, even if it may violate detainees' due process rights.
- **Inquiries into Immigration Status:** 119 counties, about 4%, limit or prohibit their officers from asking people about their immigration status. The remaining 3,021 counties have no particular rule against local law enforcement asking about an individual's immigration status. While the vast majority of counties still allow inquiries into immigration status, the number of counties prohibiting the practice grew from 1% at the end of 2015 to 4% at the beginning of 2018.
- **General Ban on Immigration Enforcement:** 114 counties, or about 4%, have a general rule against spending time or resources on immigration enforcement or participating in joint operations involving immigration enforcement. In the remaining 3,026 counties, county employees may use local resources to assist ICE in their federal immigration enforcement operations.

Frequency of Common County-level Policies in 2017		
Type of Policy	Total Number of Counties in 2017	Percentage of Counties in 2017
No 287(g) agreement	3084 counties	98%
No ICE detention contract	2,945 counties	94%
Limits ICE Holds	760 counties	24%
Restricts notifications to ICE about release dates or other information	169 counties	6%
Limits on ICE access to local jails and/or ICE interrogations of detainees	117 counties	4%
Prohibits inquiries into immigration status and/or place of birth	119 counties	4%
General prohibition on participating in immigration enforcement	114 counties	4%

Violating the Constitution: A Spotlight on ICE Detainers

The map and tables in this report provide a brief evaluation of how involved county agencies and resources are with the deportation system. But the different policy choices in our rubric are not all equal.

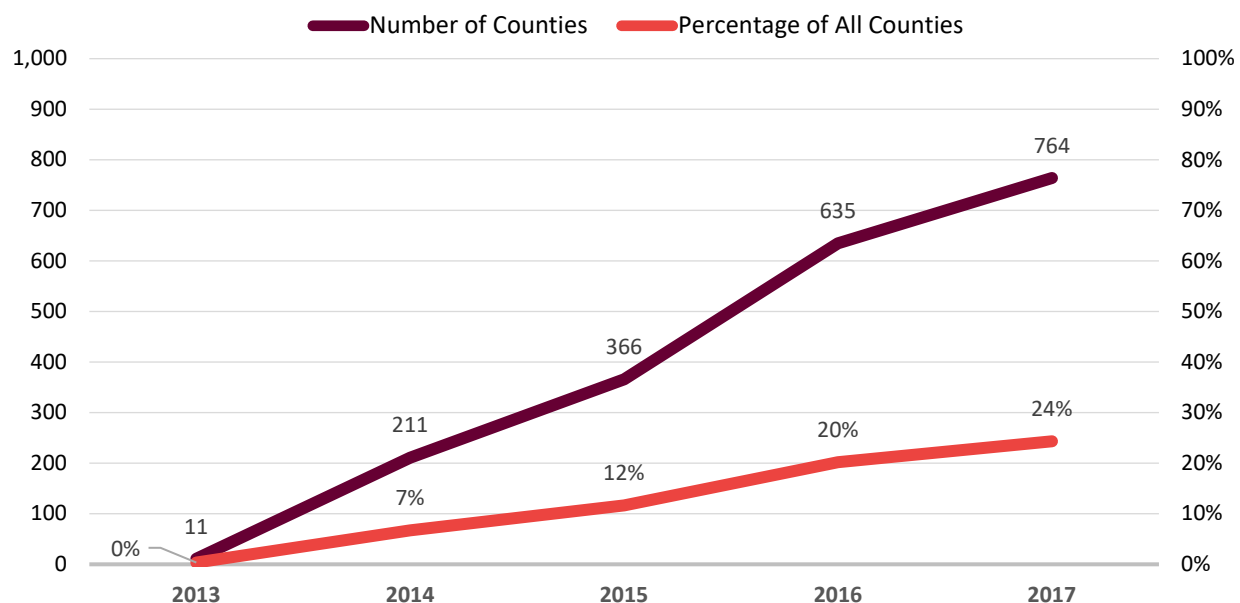
One critical policy choice is the decision whether to comply with an ICE detainer. ICE detainers have been a central mechanism of immigration enforcement over the last 10 years, yet they have been repeatedly found to be illegal in court. The thousands of counties who continue to hold immigrants beyond their release date on ICE detainers are doing so in violation of the Constitution.

The Trump Administration has repeatedly called out “sanctuary cities” that do not hold people on ICE detainers as “lawless.” But it is ICE it that is violating the law, as well as the localities that are following DHS’s bidding on ICE detainers, because they are detaining people in violation of the Fourth Amendment.

ICE detainers are not warrants and do not meet basic Fourth Amendment requirements. Consequently, counties that hold a person in custody on an ICE detainer may be liable for unlawful detention. Many federal courts have ruled that holding someone on an ICE detainer request is an illegal arrest in violation of the Fourth Amendment. In 2017, more courts across the country continued to issue rulings that local agencies do not have legal authority to hold people based on civil immigration violations. The most recent decisions from 2017 are indicated in the timeline on pages 21-22. For more information about the various court decisions on local authority and ICE detainers, see our [summary of these court decisions](#).

ILRC has been tracking ICE detainer policies since 2013. In that time, as community advocates pressed their local governments for better policies and as federal courts issued rulings that holding people for ICE beyond their release date was constitutionally questionable, more and more counties have changed their policies and refuse to hold individuals on ICE detainers. ICE detainers are far from the only way that local law enforcement agents interact with ICE, which is why we evaluate local involvement on a spectrum. But ICE detainers have been a key mechanism for driving high numbers of deportations.

COUNTIES THAT FOLLOW THE FOURTH AMENDMENT





Violating the Constitution: A Spotlight on ICE Detainers

As of late 2017, more than 760 counties have policies against holding people on ICE detainers. Despite the aggressive immigration enforcement tactics of the Trump administration and the constant threats and attacks on localities that do not agree to do whatever ICE wants, this number has increased steadily over the last few years. When ILRC began tracking ICE detainer policies nationwide in 2013, immigrant rights advocates were fighting the Secure Communities Program and had won policies limiting detainers in a handful of counties. Most jurisdictions believed they were mandatory orders, not requests. In 2014, federal court decisions clarified that ICE detainers were merely requests, and ruled that holding people for ICE based merely on a detainer was illegal. Based on invigorated local advocacy and fear of liability, more and more counties determined that they would not comply. In the face of this insurrection and the failure of Secure Communities, the Obama administration announced that it was terminating the Secure Communities Program and replacing it with the Priority Enforcement Program. However, these changes were largely cosmetic, and the rejection of ICE detainer requests continued to spread.

Even in the face of threats and attacks from the Trump administration, local advocates continue to show their elected officials that holding people for ICE is illegal and may result in significant liability for local governments. Nonetheless, most counties still comply with these requests and may have done little or no legal analysis of their own risk of liability for unlawfully detaining people. **Regardless of local priorities and politics, arresting and detaining immigrants in violation of the Fourth Amendment is not an acceptable local practice. Yet our data suggests that more than 2,350 counties are continuing to hold people on ICE detainers, in violation of the detainees' fundamental rights.**

Measuring the Strength of Local Sanctuary Policies

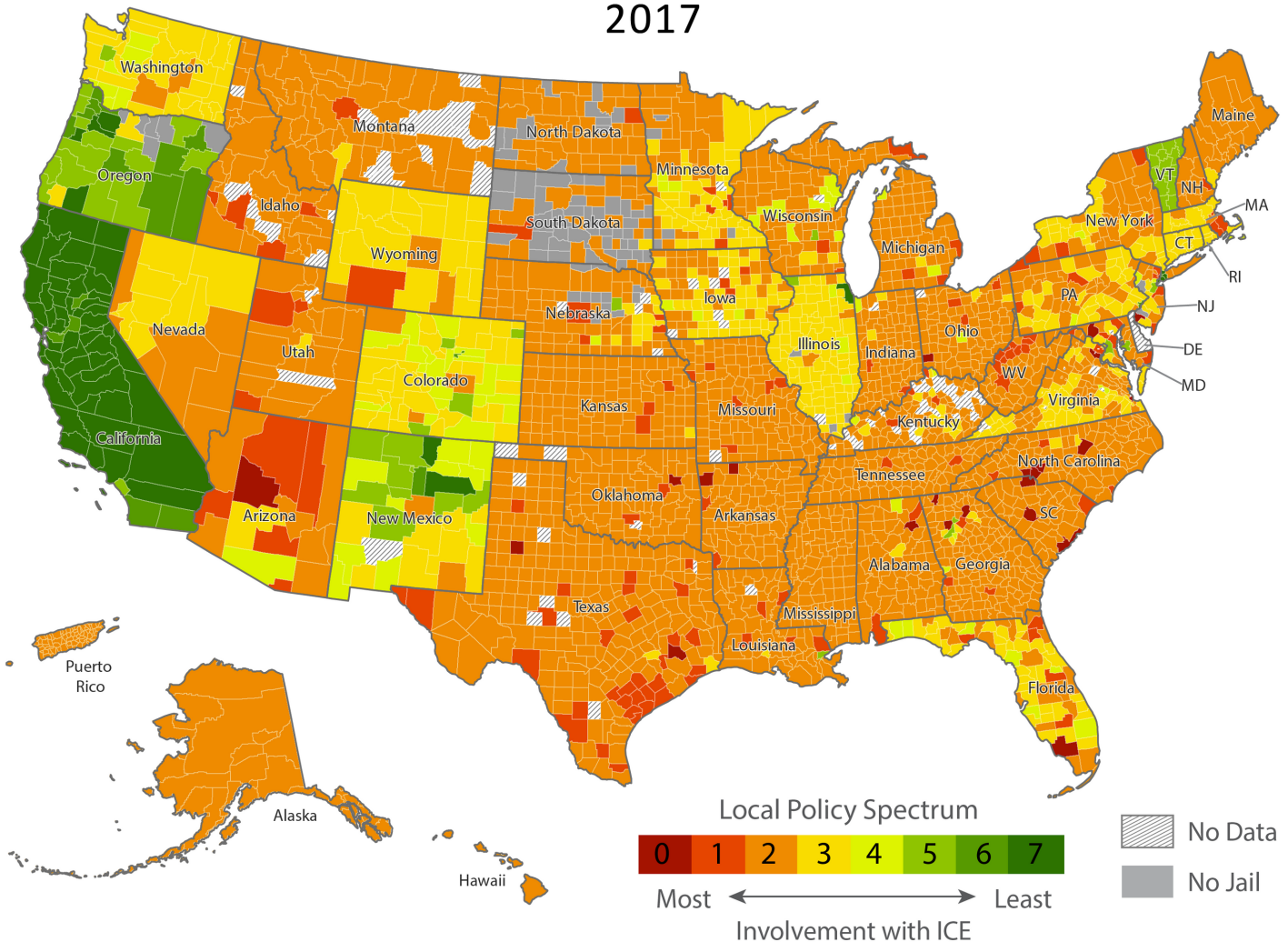
As with our initial [Searching for Sanctuary report](#), we gathered the raw data we had for each county on its various policies, and then aggregated the totals per county. For each policy choice, counties got a 1 if they regulated the issue, or a zero if there was no known policy limitation. **Counties with a total of 0 are the most heavily involved in immigration enforcement, while a total of 7 identifies the counties that have disentangled themselves the most from ICE.** In counties without their own jail, we assigned them the total of the county whose jail they used, or if that information was unknown, we removed that county from our analysis.

Based on which policies and practices a county has in place, each county was assigned a total. Because the total of factors is cumulative, in the visuals to follow counties of the same color do not necessarily have the same policies, but rather offer the same number of types of assistance to ICE. Each county that has adopted 3 of the policy choices above did not necessarily choose the same three as any other county with a total of 3. However, the general trends of these totals have many commonalities.

As has been true for many years, most counties provide some level of voluntary assistance to ICE. However, policies limiting assistance to ICE have spread at the local level, and because of state laws. At least 130 counties now have policies substantially restricting the use of their resources for immigration enforcement – having policies that cover 5 or more aspects of interactions with ICE.

Strength of County Level Sanctuary Protections 2017		
Strength of Policy	Total Number of Counties in 2017	Percentage of Counties in 2017
7 - Most comprehensive protections	60 jurisdictions	2%
6 - Among the strongest policies	19 jurisdictions	1%
5 - Substantially limit the use of any local resources from being used for immigration enforcement	51 jurisdictions	2%
4 - Do not offer significant resources to help ICE/CBP but may offer substantial passive assistance	84 jurisdictions	3%
3 - Generally reject requests to hold people on ICE detainees but may spend other resources on immigration enforcement	489 jurisdictions	16%
2 - May participate in immigration enforcement without analyzing whether it is legal or good policy	2068 jurisdictions	66%
1 - Formally contract with ICE to detain immigrants or enforce civil immigration law	141 jurisdictions	4%
0 - Go out of their way to spend local resources on immigration enforcement	24 jurisdictions	1%
8 - No jail	80 jurisdictions	3%

COUNTY POLICIES ON ASSISTING IMMIGRATION ENFORCEMENT 2017



- **Level 0 and 1:** The red and dark red jurisdictions spend substantial local time and resources on civil immigration enforcement, whether under a 287(g) agreement, by contracting with ICE to detain immigrants, or both.
- **Level 2:** The orange jurisdictions generally do not have formal MOUs or contracts with ICE, but nonetheless are willing to hold immigrants on detainers, provide extensive information about individuals in county custody to ICE, and generally grant requests that ICE makes of them. We are concerned that most of these counties may be regularly violating the Fourth Amendment by detaining immigrants without probable cause or legal authority.
- **Level 3:** The yellow counties, by and large, offer more limited assistance to ICE, and are largely defined by their rejection of ICE detainers. Because multiple federal courts have found ICE detainers to be illegal, these jurisdictions will not hold anyone for transfer to ICE, although they are willing to provide ICE notice of when someone in custody will be released and other information or assistance.
- **Level 4 and 5:** The yellow-green and light green counties go further in disentangling the local criminal legal system from immigration enforcement, generally by declining ICE detainers, by limiting ICE's ability to interrogate individuals while in local custody, by refraining from asking about immigration status or place of birth, or by otherwise enacting policies that they will not assist in any civil immigration enforcement.
- **Level 6 and 7:** The green and dark green jurisdictions have the most comprehensive protections to prevent local resources from going to civil immigration enforcement.

Created Jan 2018 by Victoria Beckley

This map is also available **online in interactive form**, with live county-by-county data on local policies and what local jails have told ICE they are willing to assist on.

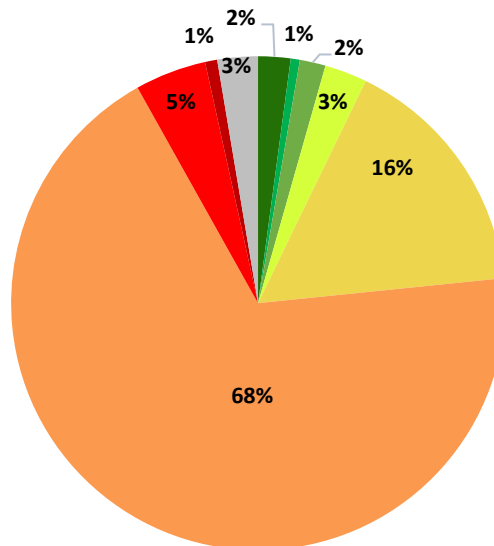
Visit: www.ilrc.org/local-enforcement-map

Measuring the Strength of Local Sanctuary Policies

While the national map demonstrates the widespread entanglement between ICE and county law enforcement, there are exceptions. Many counties do limit ICE's influence and reduce interference with local law enforcement. As we can see in the chart below, there are more than 130 counties with policies covering 5 or more aspects of immigration enforcement. These policies reflect an affirmative effort to save local resources for local priorities and disconnect those functions from civil immigration enforcement. Counties in California, Illinois, Oregon, New York, and New Mexico have local policies that cover all 7 policy issues in our rubric. This reflects their community's commitment to public safety and maintaining separation between county law enforcement and ICE.

However, only 5 percent of counties in the nation have total of 5 or more, and even in these counties, ICE may still have significant access to local aid. Most counties, around 74%, will generally grant ICE whatever help they ask for, often without even analyzing whether it is legal to do so. They will generally hold individuals in custody beyond their release date based on ICE detainers, despite the federal court decisions finding this activity unconstitutional. See page 10-11 for more on ICE detainers.

Most Counties Do ICE's Work For Them



- 7 - Most comprehensive protections
- 6 - Among the strongest policies
- 5 - Substantially limit the use of any local resources from being used for immigration enforcement
- 4 - Do not offer significant resources to help ICE/CBP but may offer substantial passive assistance
- 3 - Generally reject requests to hold people on ICE detainers but may spend other resources on immigration enforcement
- 2 - May participate in immigration enforcement without analyzing whether it is legal or good policy
- 1 - Formally contract with ICE to detain immigrants or enforce civil immigration law
- 0 - Go out of their way to spend local resources on immigration enforcement
- 8 - No jail



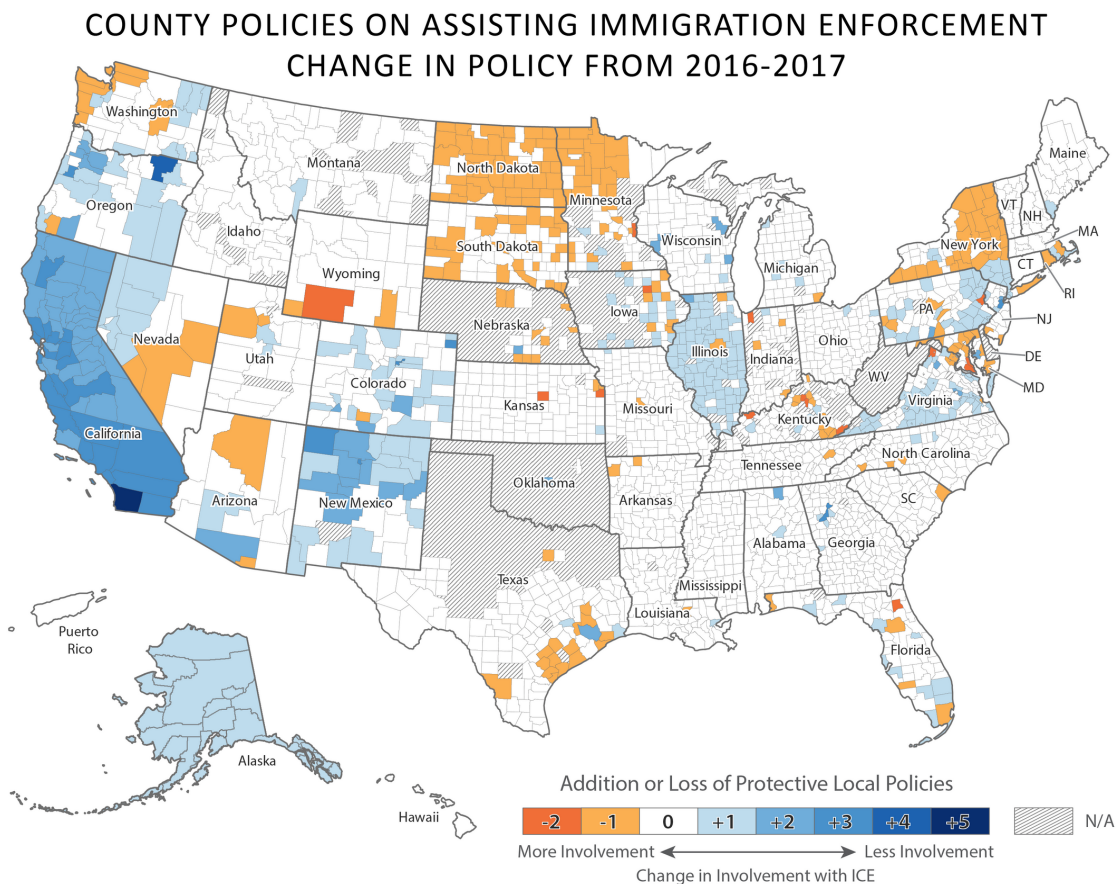
Via the adoption and strengthening of sanctuary policies, **city, county and state governments can and must limit their local law enforcement involvement** in the federal work of deportations.

2016-2017: Changes in Local Police Involvement in Deportations

Local policies change over time, in response to changing community dynamics and strong organizing. Over the course of 2017, many counties adopted new policies limiting their involvement with ICE. In 2017, 410 counties increased their protections against being co-opted into immigration enforcement, many of them in multiple ways. At least 99 counties strengthened their policies by more than one factor. Counting the specific different policy choices that counties enacted separately, there was an increase in 540 protections within those 410 counties.

In contrast, a smaller number of counties moved the other direction: agreeing to allow more resources towards immigration enforcement than they had before. In 2017, approximately 244 counties showed a slight increase in their willingness to spend resources on immigration enforcement. This was usually seen through a small change of just one factor, totaling 259 different policy changes in those 244 counties. Therefore, despite the fractiousness of these issues and the constant threats from the Trump Administration, many more counties moved away from involvement with ICE.

The map below shows the changes in policy from our data in 2016 to 2017. Some of these changes may reflect improvements in data quality, not necessarily policy changes (for example, South Dakota, North Dakota, and New York).





Over 400 counties now have **stronger limitations on engaging in immigration enforcement than they did a year ago.**

People Power: Examples of Sanctuary Wins in 2017

In spite of the hateful rhetoric and attacks of the Trump administration, communities and organizers have pushed local governments across the country to enact policies distancing their own agencies and resources from the federal government’s anti-immigrant agenda. The following list represents just a few of the many ordinances, resolutions, and administrative policies enacted in 2017.

County-Level Sanctuary Policies:

In February 2017, **Maricopa County, AZ** announced that they would no longer honor ICE requests to detain inmates beyond the period of time allowed by state law.

In February 2017, **Travis County, TX** passed a policy to prohibit local law enforcement from honoring ICE detainees unless a criminal exception applies.

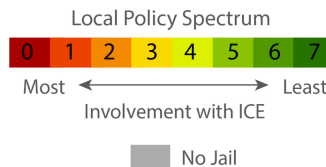
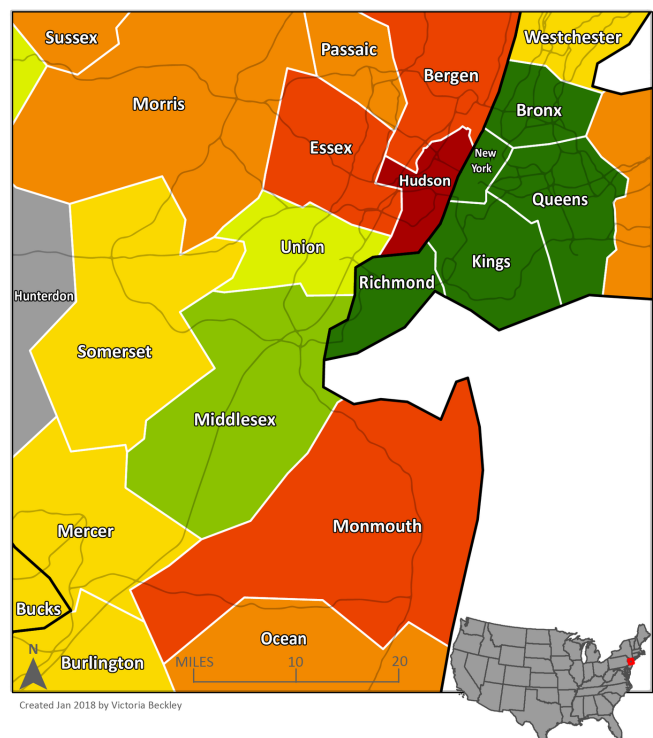
In April 2017, **Baltimore County, MD** passed an executive order prohibiting law enforcement agents from inquiring about immigration status or detaining anyone past their release date without a judicial warrant. The order also prohibits withholding benefits based on immigration status.

In June 2017, **Middlesex County, NJ** changed its policies to prohibit local law enforcement agents from detaining or transferring inmates to ICE’s custody without a judicial warrant, and to inform inmates of their rights before ICE conducts an interview.

In August 2017, **Denver County, CO** passed an ordinance to limit its employees from using any city funds or resources to assist ICE in investigating, detaining, or arresting persons without a judicial warrant. The ordinance also prohibits 287(g) contracts and denies ICE access to its jails.

In November 2017, **Marion County, IN** Sheriff’s Department made a stipulated agreement against detaining someone based on a civil immigration violation, requiring probable cause of a new criminal offense to detain anyone.

COUNTY POLICIES ON ASSISTING IMMIGRATION ENFORCEMENT:
NEW JERSEY 2017



People Power: Examples of Sanctuary Wins in 2017

City-Level Sanctuary Policies:

In January 2017, **Santa Ana, CA** passed an ordinance to prohibit its employees from inquiring into or disclosing a person's immigration status to an outside agency. The ordinance also prohibits employees from using city resources for immigration enforcement purposes.

In February 2017, **Oak Park, IL** passed an ordinance that prohibits its employees from requesting or investigating a person's immigration status, coercing or threatening deportation, or conditioning the city's benefits and services on someone's immigration status. In addition, the ordinance prohibits any detentions based solely on ICE requests if they are not accompanied by a judicial warrant, and rejects requests to assist in any immigration enforcement operation.

In February 2017, the **City of Santa Fe, NM** passed an ordinance to prohibit city employees from inquiring about a person's immigration status or disclosing sensitive information about a person to outside agencies.

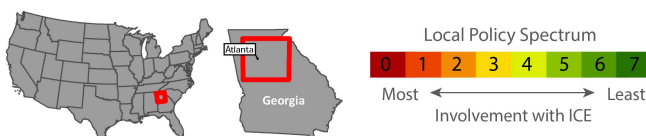
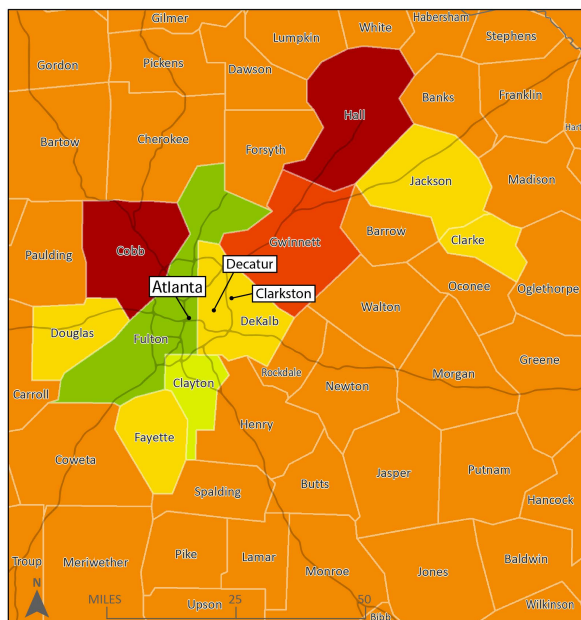
In April 2017, the **City of Providence, RI** passed an ordinance to prohibit local law enforcement from inquiring about a person's immigration status or detaining someone pursuant to an ICE request, as well as reforms to address biased policing against communities of color. The ordinance also allows local officers to accept foreign identification cards.

In April 2017, the **City of Lansing, MI** passed an executive order prohibiting its employees from asking about or recording any information relating to a person's immigration status or to enter into any 287(g) agreement with ICE. The order also forbids employees from stopping or arresting anyone solely based on immigration status.

In September 2017, the **City of Atlanta, GA** passed a resolution that prohibited local law enforcement from arresting, detaining, extending detention of, or transferring custody to ICE, on the basis of an ICE request without a judicial warrant. The cities of Decatur and Clarkston also passed new policies.

Several counties in the Atlanta area also limit their involvement with ICE to varying degrees.

COUNTY POLICIES ON ASSISTING IMMIGRATION ENFORCEMENT:
NORTHERN GEORGIA 2017





People Power: Examples of Sanctuary Wins in 2017

State-Level Sanctuary Policies:

The most impactful interactions between state and local agencies and ICE are at the county level. But city and state agency policies are also important, and states can pass laws regulating activity state-wide.

In 2017, five states enacted statewide policies restricting the use of their agencies' time, money, or other resources from being spent on immigration enforcement or helping ICE. California passed the most comprehensive state law, limiting involvement in immigration enforcement throughout the state, while Illinois and Oregon also passed legislation banning all detention on ICE holds and restricting any inquiry into immigration status, respectively. In addition, the governors of New York and Washington directed all state-level agencies not to ask about immigration status in carrying out their duties, unless otherwise required by law in order to perform the service.

In contrast, the state of Texas passed sweeping legislation that sought to make compliance with ICE requests for enforcement assistance mandatory for all Texas law enforcement agencies, and banned local policies limiting assistance in immigration enforcement. The law has been challenged in federal courts and partially enjoined; its ultimate fate will take a long time to sort out. **Despite the relentless pursuit of the Trump Administration's anti-immigrant agenda at the Texas statehouse and governor's mansion, organizers in Texas have continued to push their city and county governments to limit participation in immigration enforcement to what extent they still can, and to scale back the criminal law enforcement machinery that puts so many Texas residents at risk of arrest, detention and deportation.**

In more muted efforts, Mississippi, Georgia, and Indiana also passed much narrower laws limiting a few types of sanctuary policies, but with negligible actual effects.

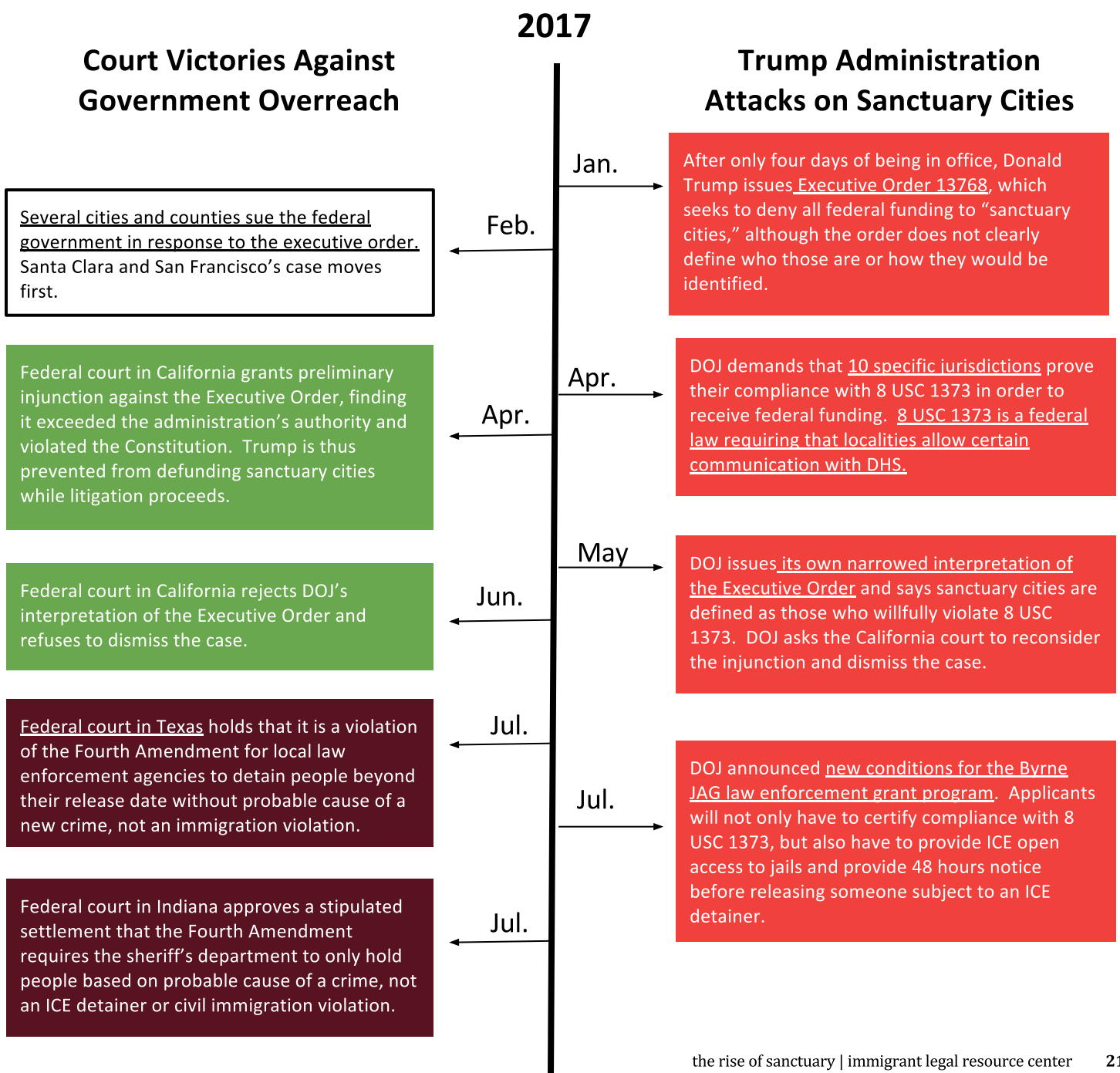
Winning in the Courts: The Law Sides With Sanctuary Cities

Legend
Trump Administration Attacks
Court Victory Against Trump Attacks
Court Ruling Against ICE Detainers
Important Procedural Steps

As local and federal policies have been shifting over the course of 2017, the courts have played an important role as well. The timeline below shows the constant threats and attempts at coercion from the Trump administration, and the contrasting court decisions that have consistently ruled against the federal government’s illegal maneuvers.

In 2017, six federal court decisions ruled against the Trump Administration’s attempts to strip funding from sanctuary jurisdictions – and none ruled in favor of the federal government. Additionally, four federal courts issued new rulings against ICE detainers and immigration warrants, building on the many other cases in recent years. See [ILRC’s Detainer Cases Summary](#).

A centerpiece of these threats from the federal government is 8 USC 1373, a federal statute regarding the sharing of immigration status information enacted in 1996. For more information, see [ILRC’s explanation of 8 USC § 1373](#).



Winning in the Courts: The Law Sides With Sanctuary Cities

Legend
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2017

Court Victories Against Government Overreach

Trump Administration Attacks on Sanctuary Cities

Supreme Judicial Court of Massachusetts finds that neither federal nor state law provides legal authority for local and state officers to hold someone on an ICE detainer.

Jul.

Federal court in Washington issues restraining order prohibiting Yakima County jail from holding or transferring immigrants to federal custody based solely on an ICE administrative warrant.

Aug.

DOJ singles out four cities and threatens their participation in the "Public Safety Partnership" unless they allow ICE greater access and cooperation.

Aug.

Federal court in Illinois grants preliminary injunction against the DOJ's new Byrne JAG funding conditions. DOJ may not require ICE access to jails or notice of release, but may continue to require certification of compliance with 8 USC 1373.

Aug.

Sept.

DOJ seeks emergency stay of the Illinois court's injunction and appeals to the Seventh Circuit.

Federal court in Illinois denies emergency stay request of its injunction and leaves the DOJ's funding conditions blocked.

Oct.

Oct.

DOJ sends follow up letters to the 10 jurisdictions they threatened in April, giving them two months to demonstrate that their policies do not conflict with 8 USC 1373. DOJ asserts an interpretation of 8 USC 1373 far beyond its common interpretation.

Federal court in Pennsylvania grants a second preliminary injunction against the DOJ's new Byrne JAG funding conditions.

Nov.

Nov.

DOJ sends 29 new letters to jurisdictions across the country warning that according DOJ's interpretation, they are not in compliance with 8 USC 1373.

Federal court in California grants summary judgment and issues permanent injunction against the Executive Order defunding sanctuary cities, finding it unconstitutional and prohibiting the Trump administration from implementing it.

Nov.

Jan.

2018

DOJ threatens 23 cities with subpoenas regarding their communication with ICE.

Pending court decisions in January 2018:
 -> State of California injunction against DOJ
 -> Seventh Circuit appeal of Illinois ruling against DOJ Byrne JAG conditions
 -> Illinois district court rehearing based on DOJ letters
 -> Ninth Circuit appeal of ruling against Executive Order

And the fight goes on...

Sanctuary Policies in Immigrant-Populous Counties

Our policy analysis is useful for evaluating what practices are common across the U.S. in various states and counties, but it is important to recognize that the immigrant population in the U.S. is not evenly dispersed across the country.

The total foreign-born population in the U.S. is approximately 41,717,000 people, with 29% of this population (12.1 million people) living in one of the 10 counties listed below. **9 million of those immigrants - nearly a quarter of the entire foreign-born population - live in counties with strong protections, where their local elected officials have recognized the importance of disentangling local government from federal immigration enforcement.**

While some counties with large immigrant populations have not yet responded to the needs of their immigrant residents, most of these counties recognize the value of the immigrant community and have acted to limit their involvement with ICE and CBP.

Policies in the 10 Most Immigrant-Populous Counties			
County	State	Immigrant Population ¹	ILRC Totals
Los Angeles County	California	3,485,700	7
Miami-Dade County	Florida	1,363,200	2
Cook County	Illinois	1,108,400	7
Harris County	Texas	1,106,800	2
Queens County ²	New York	1,100,700	7
Kings County ³	New York	972,300	7
Orange County	California	950,700	6
San Diego County	California	758,500	6
Santa Clara County	California	704,100	7
Maricopa County	Arizona	595,300	3

1 Demographic data came from the Migration Policy Institute's Data Hub. For more information, please visit: <http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county>.

2 Queens County is a part of New York City.

3 Kings County is a part of New York City.



Local entanglement with ICE impacts not only immigrants, but **their families and the communities they are a part of. In the U.S., almost 17.5 million children (including U.S. citizens) have at least one parent who is foreign-born. The **threat of losing a parent looms over these children** on a daily basis.**

The Road Ahead: Sanctuary in 2018

Via the adoption and strengthening of sanctuary policies, city, county and state governments can and must limit their involvement in the federal work of deportations. As the Trump administration makes plans to surveil, arrest, detain, and deport immigrants at a breathtaking pace in 2018, the time is ripe for the many jurisdictions that have not yet done so to set clear policy boundaries that disentangle local officers from ICE. Now more than ever, strong sanctuary policies help keep families together and the fabric of local communities intact, rather than torn apart by the jailing and deporting of loved ones.

Even amidst the voracious xenophobia and racism in the leadership of the DOJ and DHS, over the past year communities have continued to respond with resilience and to organize at the local level, demanding that their city and county officials act to protect immigrants and restrict the use of local resources going to federal enforcement.

As a result, over 400 counties moved to decrease their engagement with ICE in the last year. Beyond counties, hundreds of cities and municipal agencies enacted policies to reduce discrimination against immigrants and separate their municipal functions from immigration authorities. Nearly 1 in 4 immigrants in the U.S. today – approximately 9 million individuals – reside in counties with strong sanctuary protections (a "5" "6" or "7" in the ILRC's analysis) that have recognized the importance of disengaging from the work of deportations.

In the federal courts, the DOJ's efforts to restrict federal funding to certain localities on the basis of their sanctuary policies were stymied. The courts also continued to criticize the use of ICE detainers, which has been one of the major mechanisms for sweeping immigrants into detention and deportation proceedings. Rather than embrace the comprehensive anti-immigrant police state that the administration envisions, the courts have continued to find that local governments have extremely limited authority to engage in immigration enforcement.

Yet over the past year, the Trump Administration has also succeeded in expanding immigration enforcement. Not all regions opposed his anti-immigrant agenda, and more than 25 new jurisdictions formed 287(g) agreements to actively partner with ICE on immigration enforcement. Immigration detention also expanded.

Looking ahead, the Trump Administration is determined to ramp up deportations and to keep singling out and attacking jurisdictions with strong sanctuary policies.



The Road Ahead: Sanctuary in 2018

- We must not forget that it is ICE and its enforcement agents – who illegally profile, discriminate against, and detain immigrants without adherence to their basic constitutional rights – that are in violation of the law, not the localities who are legally and rightfully enacting policies to protect their residents.
- Though the adoption of sanctuary policies have seen a steady increase, today they still remain in the minority across the nation. Since Election Day 2016, a number of mayors, governors and other elected officials have vocalized their support of and solidarity with immigrants. While welcome, those words are not enough to prevent the co-opting of local resources for detention and deportation. We urge elected officials to join the growing wave of jurisdictions who are doing right by their immigrant residents by backing up those promises with enforceable law and policy. Community members and advocates across the country will continue to organize local campaigns in their cities, counties and states to take action in favor of sanctuary policies.
- The courts will also continue to play an important role in holding the federal government's abuses at bay. Current pending litigation challenges the scope of local authority to detain immigrants for ICE, and to make arrests under the 287(g) program when no state law authority exists, as well as to limit the executive branch's efforts to coerce localities through new conditions on federal grants.

At the ILRC, we will continue to support communities that wish to disengage with racist and destructive federal immigration agencies who bring fear, heartbreak, and abuse to immigrant communities. We will educate local advocates, organizers, elected officials, and community members about the law and about their avenues for enacting progressive local policies that protect and serve all their residents, regardless of race, ethnicity, national origin, or immigration status. We will partner with other legal and community organizations to show the need for stronger and more sweeping reforms of the criminal legal system, as well as the immigration system.

We will continue our work to keep families where they belong – together.

APPENDIX: Sanctuary Policy Rubric

In an era in which Immigration and Customs Enforcement (ICE) has increasingly become a rogue agency, and where trust between communities of color and local enforcement is fragile at best, it is especially important to draw a distinct and clear line between local law enforcement and ICE. A policy making clear that local government is not complicit in deportations is crucial to protecting immigrant communities from discrimination and destruction.

The ILRC chose these seven common policy factors to assess the ways that localities can separate themselves from immigration enforcement:

1. ICE Detainers (Holds)

In recent years, ICE detainers (aka ICE holds) have fueled the highest numbers of deportations in American history. ICE uses detainers – which are not judicial warrants - to ask local jails to hold immigrants even after they are supposed to be released under state law, so that ICE can take them into custody. ICE does not reimburse jails for the cost of this detention. Federal courts and even ICE have acknowledged that compliance with ICE holds is voluntary. Moreover, courts have ruled that detention on an ICE detainer is unconstitutional, that ICE holds are not enforceable warrants, and that the use of ICE detainers exceeds ICE's own legal authority as well as the authority of local agencies to detain someone. In spite of this, thousands of jails across the country continue to accept ICE detainers and provide free holding cells for ICE, risking liability for unlawful detention.

2. 287(g) Agreements

Under a 287(g) agreement, a local jurisdiction enters into a contract with ICE to deputize and train select local law enforcement agents to enforce civil immigration laws. This means that the same local officials responsible for protecting public safety are given the authority to act as ICE agents by identifying and funneling immigrant community members into the deportation system. A 287(g) agreement means that it is not safe for immigrants to interact with law enforcement. The 287(g) program has been rife with issues of racial profiling and abuse of authority. 287(g) contracts are entirely voluntary and do not come with any reimbursement for the staff, time, or other resources the city and county spend doing ICE's work.

3. ICE Detention Contracts

An ICE detention contract, also called an IGSA (Intergovernmental Service Agreement), is a contract between a local government and the federal government that allows ICE to rent bed space from local jails to detain immigrants in deportation proceedings. These contracts mean that local jails are literally profiting from the business of deportation. When immigration detention is intermingled with local criminal jail, the line between local police and immigration agents is blurred. When a jail has contracted to enter into this type of business with ICE, ICE agents regularly enter the jail and there may be increased information-sharing with ICE regarding inmates not in ICE custody. These issues are not lost on the immigrant community, who see that their local officers work closely with ICE and that immigrants who come into contact with local police may be at risk.

APPENDIX: Sanctuary Policy Rubric

4. Notifications to ICE

ICE requests that local jails provide all kinds of information on the people in their custody, such as their place of birth, work or home address information, and when they will be released. Especially in counties with policies that they will not prolong detention based on ICE detainers, ICE wants local officials to provide ICE with advance notice when immigrants will be released from custody, so that ICE agents can be present and take custody right at that time. Transferring immigrants directly to ICE makes the local jurisdiction an active accomplice to deportations. Like most other ways that county jails facilitate deportations, sharing residents' information with ICE and notifying them of individuals' cases contributes to the perception that any encounter with local law enforcement is a direct threat.

5. ICE Access to Jails and Local Detainees for Interrogations

ICE agents physically work in many local jails. Jails may voluntarily provide them free office space or a dedicated workstation, access to the local jail databases, booking lists of all the individuals in custody, access to inmates for interrogations about their immigration status, and more. Depending on local practice, ICE agents may come to a jail on a regular schedule to arrest individuals and to interrogate them about their immigration history. This is among the more harmful forms of assistance that jails offer, as immigrants and their information are exposed to ICE without any of the protections of the criminal legal system (i.e. no Miranda rights, no public defender, etc.) This kind of operational intertwinement further blurs the lines between local law enforcement and ICE for immigrant communities and undermines their access to equal treatment in the criminal legal system. Local law enforcement should stay out of the business of deportation by limiting these harmful practices.

6. Inquiries About Immigration Status or Place of Birth

Immigration status is not a criminal matter and is generally beyond the purview of local law enforcement. Nevertheless, police and sheriffs often ask people, particularly people of color, about their immigration status or place of birth. This is deeply problematic for a number of reasons. To start, immigration status is extremely complex and only a legal expert should attempt to make such a determination. Further, such information is often thereafter shared with ICE, who may use it to try to deport that individual. Finally, such practices are frequently a result of unconstitutional racial and ethnic profiling, and are the first step for local agents with animosity against immigrants to abuse their authority and detain the person for ICE.

7. General Assistance with Immigration Enforcement

Some communities enact policies with general prohibitions on engaging in immigration enforcement, to clarify that local law enforcement are separate from immigration. In some cases, they specifically prohibit local officers from participating in joint task forces with ICE. These provisions are important guidance to local officers that, in individual decisions and actions, they should be focusing on local priorities, not immigration. Like directives not to inquire into immigration status, prohibitions on joint task forces or other involvement in deportations can help to limit and discourage discrimination and profiling against immigrant communities.



We encourage and stand prepared to advise city, county and state officials in **adopting sanctuary policies to send a clear message to the residents in their communities: that they side with welcoming, not exclusion; with fair treatment, not family separation; with dignity, not detention; and with refuge, not retaliation.**