Sanctuary Cities

The Definition of a Sanctuary City

There is no standard definition for what makes a municipality a “sanctuary city.” Generally, jurisdictions are considered “sanctuary cities” when they enact or implement ordinances, local laws or policies of noncooperation with federal immigration authorities in the enforcement of federal immigration law.

Some definitional elements of sanctuary city policies include:

- “Policies or laws that limit the extent to which law enforcement will go to assist the federal government on immigration matters.”
- Policies that disregard requests from Immigration and Customs Enforcement (ICE) to hold indefinitely immigrant inmates beyond their detention dates (commonly known as “detainers”).
- Policies that bar local police from asking for proof of citizenship and from arresting immigrants who lack documentation unless they are suspected of committing other criminal offenses.

The term “sanctuary city” is a misnomer, and some have confused sanctuary city policies with the idea that immigrants in these communities are protected from any immigration enforcement action brought against them. Contrary to this common misconception, nothing in a sanctuary city policy prevents federal enforcement actions.

There also is confusion about the difference between a “sanctuary city” and the “sanctuary movement” in churches, wherein undocumented who are in danger of being deported take refuge in a church and seek protection or “sanctuary” there. While both share the word “sanctuary” in their names, these two concepts are not synonymous with one another.

Why The “Sanctuary City” Issue is in the Public Eye Now

Sanctuary cities have long been an issue with immigration restrictionists in Congress and with both Republican and Democratic Administrations. Indeed, even the Obama Administration has opposed the concept, challenging Cook County Illinois, in particular, in its efforts to shield itself from calls for cooperation with the federal government in immigration enforcement actions.

The issue emerged as a powerful federal legislative issue in 2015 after the death of Kate Steinle in San Francisco, California. On July 1, 2015, Ms. Steinle, a U.S. citizen, was killed by Juan Francisco López Sánchez, an undocumented felon who had been previously deported from the country. López Sánchez had been released from prison in April 2015, but the local city government did not honor a detainer request by ICE for his custody. Subsequent to Ms. Steinle’s death, several bills to penalize sanctuary cities gained new steam in Congress; The U.S. House of Representatives passed some of them. However, none were enacted into law.

President-Elect Donald J. Trump addressed the issue of sanctuary cities extensively during his campaign, expressing strong criticism of such jurisdictions and pledging that he would make ending sanctuary cities a top 100-Days priority, if elected.

In the wake of recent elections, many cities and mayors have publically stated that they will renew protections for unauthorized immigrants and sanctuary city policies in their communities. Currently, mayors of Seattle, Los Angeles, Chicago, New York, San Francisco, Newark,

---

3 Id.
Providence, and Baltimore have reaffirmed their “sanctuary” policies.⁴

The Catholic Church’s Position on Sanctuary Cities

While USCCB has never categorically expressed support for or opposition to sanctuary cities, it has spoken out against specific pieces of legislation that would have curtailed sanctuary city activity.

On October 19, 2015, Most Reverend Eusebio Elizondo, then-Chairman of the USCCB Committee on Migration, wrote to the full Senate expressing the Committee on Migration’s opposition to S. 2146, the “Stop Sanctuary Policies and Protect Americans Act of 2015.” Bishop Elizondo wrote in that letter that “in our view, the legislation would undermine public safety, harm poor communities and individuals, and remove discretion from the courts, thus increasing the costs of enforcement and incarceration.” He concluded the letter by asserting, “it is our strong view that S. 2146 is an overreach and would make our communities more dangerous for U.S. citizens and others.”

On February 11, 2015, another representative of USCCB’s Committee on Migration spoke publically on behalf of the committee against federal legislative efforts to have local police carry out federal immigration enforcement actions.⁵ At that time, Most Reverend Gerald F. Kicanas, Bishop of Tucson, Arizona, testified before the House Judiciary Subcommittee on Immigration and Border Security on behalf of the USCCB Committee of Migration, of which he was a consultant, on the Catholic Church’s perspective on interior immigration enforcement legislation. He expressed the Church’s opposition to H.R. 2280, the Strengthen and Fortify Enforcement (SAFE) Act, asserting that it “would criminalize undocumented immigrants and those who offer them basic needs assistance.”


In 2016, USCCB opposed an effort to force local entities to engage in immigration enforcement, in part, by cutting off funding to non-compliant jurisdictions. USCCB’s Committees on Migration and Domestic and Social Development along with Catholic Charities USA came out against S. 3100, the “Stop Dangerous Sanctuary Cities Act.”⁶ This bill would have allowed and pressured state and local law enforcement agencies and officials to act as agents of the Department of Homeland Security (DHS) when conducting local law enforcement and community actions.⁷ In addition, S. 3100 would have denied certain public works and economic development grants, as well as Community Development Block Grants (CDBG), to jurisdictions identified as “sanctuary jurisdictions.”⁸

The Case Against Sanctuary Cities

Opponents of sanctuary cities assert that immigrants are guests in the United States and that when they commit heinous crimes, they are removable under federal immigration law and should be removed so they cannot continue to commit crimes in the United States. They contend that sanctuary cities, however, permit criminal immigrants to remain in the country and to continue to commit crimes that victimize both U.S. citizens and law-abiding immigrants.

Opponents of sanctuary cities are not limited, however, to those who seek to use state and local law enforcement officials to deport criminal immigrants. Many sanctuary city opponents also want to use state and local law enforcement officials as a force to remove even non-criminals who are present in the United States without authorization, such as children and workers who have not committed any crimes. They justify this by contending that “illegal immigrants” take jobs from

⁷ Id. at § 2.
⁸ Id. at § 4.
The Case in Support of Sanctuary Cities

While every piece of legislation should be reviewed on a case-by-case basis, there are some general public policy arguments for supporting reasonable sanctuary city policies.

- **Having local officials enforce federal immigration law erodes community trust and does not prevent crime.** Statistics show that a cooperative relationship between law enforcement and immigrant communities enhances public safety and reduces crime. In contrast, greater involvement of local police in immigration enforcement has significantly heightened many immigrants’ fear of the police, contributing to their social isolation and exacerbating their mistrust of law enforcement authorities. Public safety strategy, including building trust through community policing, is a matter of legitimate concern to city government. Congress should defer to the expertise of these local leaders to create and foster community safety responses.

- **Allowing local enforcement of federal immigration law has led to lower crime reporting by immigrants and less information sharing between immigrant communities and local police.** Rather than feeling safer because of increased police involvement in immigration enforcement, many immigrants feel less safe and feel that they can no longer go to local law enforcement to report being the victims of or witnesses to crime. To this end, a recent study on Latino communities undertaken by the University of Illinois Chicago reported that 45% of Latinos surveyed stated that they are less likely to voluntarily offer information about crimes and 45% are less likely to report a crime because they are afraid the police will ask them, or people they know, about their immigration status due to increased local enforcement efforts on behalf of the federal government.

What “Sanctuary Cities” Can and Cannot Do

In recent years, numerous individuals have brought lawsuits against their cities for carrying out allegedly unlawful detainer holds. These suits have included constitutional challenges, such as Fourth and Tenth Amendment

---

9 UNIVERSITY OF ILLINOIS AT CHICAGO, INSECURE COMMUNITIES: LATINO PERCEPTIONS OF POLICE INVOLVEMENT IN IMMIGRATION ENFORCEMENT (MAY 2013), http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

10 Id.

Sanctuary cities may cite the desire to avoid such litigation as part of the justification for passing their sanctuary city ordinances. While cities may argue that they should be permitted to exist as sanctuary cities, the new Administration and Congress may attempt to punish sanctuary cities through efforts to cut federal funding from local budgets across the country. Depending on a sanctuary city’s specific policy, the Administration may be able to cut certain funding, such as Edward Byrne Justice Assistance Grant (JAG) Program funding, without an action by Congress. The U.S. Department of Justice recently issued guidance clarifying that grantees of this funding must comply with all applicable federal laws, including laws which prohibit state or local officials from restricting the exchange of information with federal officials regarding an individual’s immigration status. Accordingly, if a sanctuary city’s policy restricts information sharing with federal officials, it would already be subject to such funding cuts. However, any changes in federal funding due to a city’s refusal to carry out a detainer request would almost certainly have to be approved by Congress.

Individual Bishops’ Public Comments on this Issue

- Most Reverend Salvatore J. Cordileone, Archbishop of San Francisco, issued a statement on July 24, 2015, in which he expressed support for the City of San Francisco’s “right to exercise reasonable and appropriate discretion in the handling of immigrant detainees, consistent with their need to maintain public safety.” He called for greater cooperation between local and federal but cautioned that “just and humanitarian policy should not be abandoned because of flaws in the system. Rather, proper authorities should make prudent adjustments in the application of the law in order to protect the public safety of all those living in our country.”

- Most Reverend Joe Vasquez, Bishop of Austin, was critical of HB 12, a Texas anti-sanctuary city bill in April of 2011, stating that the issue is a “moral one, not just a political one” and that the Texas bishops’ opposition to the measure “stems from the belief that every person is created in God’s image.” Continuing, he said, “[The bill] would prohibit a municipality from adopting a policy that prohibits employees from inquiring about the immigration status of a person lawfully detained or arrested. This bill threatens public safety and endangers the civil and constitutional rights of Texas residents. It is an expensive way to make our cities less safe and our schools less safe.”

12 In 2014, a federal court in Oregon determined that detainer orders violate the Fourth Amendment’s prohibition of holding someone without probable cause. Miranda-Olivares v. Clackamas Cnty., No. 3:12-cv-02317-ST, slip op. at 21 (D. Or. April 11, 2014). In addition, some individuals have argued that such orders violate the 10th Amendment’s separation of powers between federal and local authorities. Moreno et al. v. Napolitano et al., No. 11-cv-05452 (N.D. Ill September 29, 2012); Brizuela v. Feliciano, No. 3:12-cv-00226-JBA (D.Conn. February 13, 2012). As a result of this line of argument, the 3rd Circuit has interpreted detainers to be voluntary requests. Galarza, 745 F.3d at 644-45 (finding that any other reading would put detainer requests in conflict with the 10th Amendment).


15 Note, however, that the law does not impose any affirmative obligation on the state or local officials to collect information or take specific actions (such as comply with detainer requests).
