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Sanctuary Cities and the Federal Government Power Struggle: How Sanctuary Cities are Fighting Back

Conor Grealish

Recently, President Trump signed an executive order that would limit federal funding to sanctuary cities that do not comply with the administration's immigration policies.¹ The purpose of the order is to increase the "national security and public safety of the United States."² The order claims that the actions of sanctuary cities have caused "immeasurable harm" to the safety of the American people and that "many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety."³ Generally, sanctuary cities are known as cities that do not honor the requests of the federal government to detain individuals who may be considered illegal immigrants.⁴

The administration does not provide any statistical analysis over whether this statement is actually true.⁵ Rather, the administration cites anecdotal evidence of illegal immigrants committing violent crimes as the reason for this new executive order.⁶ Despite these incidents of violent crimes committed by illegal immigrants, statistical evidence actually demonstrates illegal immigrants are less likely to commit violent crimes than native-born citizens. Data from the 2010 American Community Survey shows "roughly 1.6 percent of immi-

¹ Ilya Somin, *Why Trump's Executive Order on Sanctuary Cities is Unconstitutional*, WASH. POST (Jan. 26, 2017), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/26/constitutional-problems-with-trumps-executive-order-on-sanctuary-cities/?utm_term=.d13c8fce57d5

² White House, *Text of Trump's Executive Order on Interior Immigration Enforcement*, FOX NEWS, (Jan. 25, 2017), <http://www.foxnews.com/politics/2017/01/25/text-trump-executive-order-on-enhancing-public-safety-in-interior-united-states.html>

³ White House, *supra* note 2.

⁴ Tal Kopan, *What are Sanctuary Cities, and can they be Defunded?*, CNN, (Feb. 6, 2017), <http://www.cnn.com/2017/01/25/politics/sanctuary-cities-explained/>

⁵ Richard Perez-Pena, *Contrary to Trump's Claims, Immigrants are Less Likely to Commit Crimes*, N.Y. TIMES, (Jan. 26, 2017), https://www.nytimes.com/2017/01/26/us/trump-illegal-immigrants-crime.html?_r=0

⁶ Perez-Pena, *supra* note .

grant males age 18-39 are incarcerated, compared to 3.3 percent of the native-born.”⁷

Trump’s immigration order not only targets illegal immigrants who in the past committed violent crimes, it also targets illegal immigrants who committed non-violent crimes. For example, on March 3, 2017, Immigration and Customs Enforcement (ICE) agents brought Romulo Avelica-Gonzalez into custody for a decade old drinking under the influence (DUI) conviction after he dropped his daughters off at school.⁸ Beyond the traumatic experience of having their father arrested right in front of them at school, the family will now have to figure out how pay rent and other expenses that Mr. Avelica-Gonzalez provided for them.⁹ This incident illustrates how deporting a single illegal immigrant has second and third order consequences for everyone relying on this individual.

Enforcement of this order is not limited to just illegal immigrants who have previously committed crimes. The order also allows ICE officers, under their own judgment and without due process; to detain individuals they believe “pose a risk to public safety or national security.”¹⁰ The order further authorizes state and local officials to perform the functions of an immigration officer; however, it is unclear whether not asking an individual’s immigration status willfully violates the order.¹¹¹²

The danger of losing millions of dollars in federal funds is a real threat to sanctuary cities and has already caused the Mayor of Miami, Carlos Gimenez, to remove Miami’s status as a sanctuary city.¹³ Several other mayors have followed Mayor Gimenez in removing their sanctuary city status.¹⁴ In a survey of

⁷ Walter Ewing, Daniel E. Martinez, and Ruben G. Rumbaut, *The Criminalization of Immigration in the United States*, American Immigration Council, (July 13, 2015), <https://www.americanimmigrationcouncil.org/research/criminalization-immigration-united-states>

⁸ Jade Hernandez, *Undocumented Dad Taken by Ice while Dropping Kids Off at School*, ABC 7, (March 3, 2017) <http://abc7.com/news/undocumented-dad-taken-by-ice-while-dropping-kids-off-at-school/1782230/>

⁹ Jade Hernandez, *supra* note 8.

¹⁰ White House, *supra* note 2.

¹¹ White House, *supra* note 2.

¹² Jasmine C. Lee, Rudy Omri, and Julia Preston, *What are Sanctuary Cities?*, N.Y. TIMES, (Feb. 6, 2017), https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html?_r=2

¹³ Brent Griffiths, *Mayors to Trump: ‘Don’t Punish Us’*, POLITICO, (Jan. 30, 2017), <http://www.politico.com/magazine/story/2017/01/mayors-cities-president-trump-approval-disapproval-policy-214713>

¹⁴ Bob Adelman, *Number of Former Sanctuary Cities Reversing Policy*, THE NEW AMERICAN, (Feb. 13, 2017), <https://www.thenewamerican.com/usnews/immigration/item/25366-number-of-former-sanctuary-cities-reversing-policy>

46 mayors, two-thirds believed this order could pose significant problems for their cities' treasuries.¹⁵

Sanctuary Cities' Humble Beginnings

In the early 1980s, faith communities began practicing some of the policies sanctuary cities have today, by providing refuge for people fleeing violence in Guatemala and El Salvador.¹⁶ Several church community leaders began their own "underground network" to take in refugees and literally provide them sanctuary.¹⁷ Some of these leaders were eventually indicted for harboring illegal aliens.¹⁸ Rather than deterring people from setting up similar programs, more than 500 faith groups began similar practices.¹⁹ In 2014, a federal judge ruled it was not constitutional for local officials to hold suspected undocumented immigrants in jail for forty-eight hours so ICE officials could detain them.²⁰ Since that ruling, 364 counties and thirty-nine cities joined those faith groups in developing policies that now label them sanctuary cities.²¹

While there is no collective definition for what constitutes a sanctuary city, or county for that matter, they are generally understood to be cities where local officials do not inquire about a person's immigration status.²² Many of the country's largest cities have both codified laws and informal policies that afford them sanctuary city status.²³ However, not all of these policies are similar.²⁴ Undocumented immigrants traveling from one sanctuary city to another may have drastically dissimilar experiences when interacting with local law enforcement officials.²⁵

¹⁵ Griffiths, *supra* note 13.

¹⁶ Amanda Sakuma, *No Safe Place*, MSNBC, (2017), <http://www.msnbc.com/specials/migrant-crisis/sanctuary-cities>

¹⁷ Sakuma, *supra* note 15.

¹⁸ Sakuma, *supra* note 15.

¹⁹ Sakuma, *supra* note 15.

²⁰ Sakuma, *supra* note 15.

²¹ Sakuma, *supra* note 15.

²² Lee, Omri, and Preston, *supra* note 12.

²³ Kopan, *supra* note 4.

²⁴ Sakuma, *supra* note 15.

²⁵ Sakuma, *supra* note 15.

Chicago: Welcoming Undocumented Immigrants

Messaging the term “sanctuary cities” can be somewhat misleading since these cities do not directly provide refuge for immigrants.²⁶ While many would consider Chicago a sanctuary city, Chicago actually considers itself a “Welcoming City.”²⁷ Chicago has codified a “Welcoming City Ordinance” and all city organizations fall under the provisions of this ordinance.²⁸ The basic provisions of the ordinance state that local officials will not investigate the citizenship status of an individual nor discriminate against an individual based on citizenship unless a law or a court mandates it.²⁹

Chicago also implemented the Chicago New Americans Plan, which is a twenty-seven-point plan intended “to improve the day-to-day lives of immigrants while promoting Chicago’s economic growth and cultural vitality.”³⁰ Under this plan, Chicago launched its first citizenship program in 2015.³¹ The program created Welcome Stations set up in Chicago Public Libraries that provided immigrants with information concerning naturalization as well as other additional services in the languages spoken in their communities.³² In addition to this initiative, Mayor Rahm Emanuel also hosted naturalization ceremonies every quarter, reinforcing the message of the importance of becoming a citizen.³³

The Chicago New American Plan also focuses on providing better opportunities for immigrant children. For example, under the Chicago Star Scholarship Program, if a student graduates from a Chicago Public School with a 3.0 GPA or higher, the city will provide an associate degree at City Colleges of Chicago for free.³⁴ Mayor Emanuel opened this program to undocumented immigrants who would otherwise not qualify for state or federal funding.³⁵ Of the 492 students who received funding for their education, fifty-six percent

²⁶ Interview with Seemi Choudry, Director, Office of New Americans, Mayor’s Office, City of Chicago, in Chicago, IL. (March 13, 2017)

²⁷ Interview with Seemi Choudry, *supra* note 25.

²⁸ Interview with Seemi Choudry, *supra* note 25.

²⁹ Kopan, *supra* note 22.

³⁰ *The Chicago New Americans Plan*, (Dec. 4, 2012), <https://www.cityofchicago.org/content/dam/city/depts/mayor/Office%20of%20New%20Americans/NewAmericanBookletfullplan.pdf>

³¹ Interview with Seemi Choudry, *supra* note 25.

³² Interview with Seemi Choudry, *supra* note 25.

³³ Interview with Seemi Choudry, *supra* note 25.

³⁴ Interview with Seemi Choudry, *supra* note 25.

³⁵ Melissa Sanchez, *Undocumented Students Benefit Most from Free City Colleges Program*, CHICAGO REPORTER, (Sept. 28, 2016), <http://chicagoreporter.com/undocumented-students-benefit-most-from-free-city-colleges-program/>

were undocumented immigrants.³⁶ Private institutions have also adopted similar polices. For example, Northwestern University implemented a policy that would increase financial assistance for academically qualified undocumented immigrants.³⁷

Chicago also created a legal protection fund, dedicating \$1.3 million towards a twelve-month program with the goal of providing accessibility of immigration attorneys.³⁸ The city apportioned the money in two different ways. First, by providing funding for the Board of Immigration Appeals and accredited community based immigration organizations for outreach and awareness.³⁹ The remaining funds were distributed to the National Immigrant Justice Center, which provides legal services for immigrants.⁴⁰

Chicago founded, along with New York and Los Angeles, Cities for Citizenship, which coordinates immigration initiatives with almost thirty other cities with similar immigration policies.⁴¹ Cities for Citizenship helps provide avenues for immigrants to obtain citizenship and increase economic activity in the immigrant communities.⁴² Chicago has also coordinated with seventeen other mayors to send then President-elect Trump a letter strongly encouraging Trump to maintain the Deferred Action for Childhood Arrival program (DACA).⁴³ This program effects over 750,000 immigrant youth and is “granted to individuals who are in removal proceedings or who have orders of removal.”^{44,45}

Although, Chicago has implemented policies that are immigrant friendly, citizens of Chicago are still concerned Trump’s immigration policies are still effective.⁴⁶ For example, citizens cite recent searches at public transportation stops as evidence that the Department of Homeland Security is searching for

³⁶ Sanchez, *supra* note 34.

³⁷ Alan Cabbage, *Northwestern Establishes Chicago Star Scholars Program*, NORTHWESTERN NOW, (April 14, 2016), <https://news.northwestern.edu/stories/2016/04/chicago-star-scholars-program-city-colleges-of-chicago/>

³⁸ Interview with Seemi Choudry, *supra* note 25.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Zach Ewell, *What is Cities for Citizenship*, NEWSMAX, (Aug. 1, 2015), <http://www.newsmax.com/FastFeatures/Cities-for-Citizenship/2015/08/01/id/665000/>

⁴³ Interview with Seemi Choudry, *supra* note 25.

⁴⁴ Interview with Seemi Choudry, *supra* note 25.

⁴⁵ *DACA (Deferred Action for Childhood Arrivals)*, IMMIGRATION EQUALITY, (2015), <http://www.immigrationequality.org/get-legal-help/our-legal-resources/path-to-status-in-the-u-s/daca-deferred-action-for-childhood-arrivals/>

⁴⁶ Interview with Seemi Choudry, *supra* note 25.

undocumented immigrants.⁴⁷ However, that is not the case. The Chicago Police Department is merely conducting anti-terrorism searches it is required to conduct based on funding it receives from the Department of Homeland Security.⁴⁸ The Chicago Police Department's activities are still governed by Chicago's Welcoming City Ordinance and police officers cannot search for identification of any individual for the purposes of determining if they are undocumented immigrants.⁴⁹

Overall, this balancing act between the federal and local government powers concerning undocumented immigrants is ongoing and has yet to provide a clear conclusion. Each city, with their unique policies and political situations, may respond differently to presidential pressure to strictly comply with federal regulations. In the mean time, sanctuary cities provide undocumented immigrants the ability to experience the same freedoms and liberties United States citizens get to enjoy without the fear of unnecessary deportation by local officials.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*