

FEDERALISM: SANCTUARY JURISDICTIONS



Image Credit: David Geitley Sierralupe | Flickr.com

BY ELLEN LEMPRES '18

“Sanctuary jurisdictions” have a complex history in California. Sanctuary jurisdictions do not have a set or universal legal definition; however, the term refers generally to jurisdictions—cities, counties, or even states—that limit federal immigration authorities’ ability to interfere with local law enforcement.¹ Jurisdictions declare themselves to be “sanctuaries,” thus the definition fluctuates by location. Despite this variation, sanctuary jurisdictions are generally places that decline to hold arrested immigrants in jail due to their citizenship status.² In sanctuary jurisdiction, usually an individual is arrested for an offense unrelated to his or her immigration status, but his or her fingerprints are sent to the FBI and Immigration and Customs Enforcement to check upon his or her citizenship status.³ If Immigration and Customs Enforcement discovers that this individual is undocumented, it submits a detainer request to the county jail, mandating that the individual be held for an extended period of time in order to begin the process of deportation.⁴ In addition, there are some jurisdictions that do not even ask about immigration status, as well as jurisdictions that offer municipal identification cards to undocumented immigrants. Now, according to the Department of Homeland Security, it is voluntary whether a county complies with this

federal request.⁵ In sanctuary jurisdictions, the arrested undocumented individual is released once his or her ordinary sentence is complete.⁶ In short, sanctuary jurisdictions do not comply with these detainer requests.⁷ Currently, the entire states of California, Connecticut, New Mexico, and Colorado, as well as major cities like Washington, D.C., Arlington, Va., Philadelphia, New York City, Boston, Baltimore and New Orleans are sanctuary jurisdictions.⁸ In total, there are over 300 sanctuary jurisdictions nationwide.⁹ The issue of federalism here revolves around the different decisions of counties or cities, leading to discrepancies between national and local policies.¹⁰

President Trump campaigned in 2016 on confronting sanctuary jurisdictions.¹¹ In an executive order, “Executive Order: Enhancing Public Safety in the Interior of the United States,” on January 25, 2017, within a week of assuming office, President Trump explained that “Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.”¹² In this order, Trump further underscores that keeping these individuals in

the United States is “contrary to the national interest.”¹³ According to expert Phil Torrey, this executive order targets a broader group of individuals for deportation. Whereas previously deportation required a conviction, Trump’s executive order will include those “who have had any sort of interaction with local law enforcement at all, including just an arrest.”¹⁴ Moreover, the order “direct[s] executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.”¹⁵ In this way, Trump’s executive order called upon the Department of Justice and the Department of Homeland Security to withhold “federal funds, except as mandated by law.”¹⁶ Additionally, Trump’s executive order also requested that the Department of Homeland Security report localities with sanctuary policies and publish lists of criminal acts committed by illegal immigrants.¹⁷

There has been great variation in reaction to President Trump’s executive order. In Texas, for instance, Gov. Greg Abbott (R) has already blocked funding to Texas counties that have implemented sanctuary policies.¹⁸ In this case, the Texas Senate passed a measure that disallows state funding to localities that have adopted sanctuary policies.¹⁹ Similar state legislation blocking funding has been introduced in Ohio, Tennessee, Florida, North Carolina, Iowa, Idaho, and Pennsylvania.²⁰ Moreover, since his executive order, Miami-Dade county has dropped its standing as a sanctuary county.²¹ On the other hand, many Democrat-led states took immediate action to ensure that Trump’s executive order will not affect undocumented immigrants in their states.²² Since Trump’s executive order, major cities such as Oakland, Los Angeles, New York, Chicago, and Washington D.C. reaffirmed their sanctuary policies.²³ Indeed, on January 31, San Francisco sued Trump over his executive order, arguing that the order is an unconstitutional overreach of presidential power and that his order violates the 10th Amendment.²⁴ California legislators are crafting laws that give legal defense funds for undocumented individuals involved in immigration raids.²⁵ Similarly, Oregon Governor Kate Brown has disallowed state agencies from asking about immigra-

tion status.²⁶ Many are skeptical that Trump’s order could violate Supreme Court precedent regarding federalism, citing *South Dakota v. Dole*, a case in which the Court determined that federal funding can only be withheld if it relates “to the federal interest in the project.”²⁷ Other cases have deemed that the federal government cannot commandeer the processes of local governments. For instance, the decision in the Brady gun control law dictated that “the federal government may neither issue directives requiring the states to address particular problems, nor command the states’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program,” as “such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”²⁸ Similarly, the *National Federation of Independent Businesses v. Sebelius* addressed issues of withholding federal funding for individual state decision-making. In this decision, a majority of the Court found it unconstitutionally coercive for the federal government to eradicate all Medicaid funding for noncompliance in the Medicaid expansion program under the Affordable Care Act.²⁹

Since this order there has also been significant movement in the “sanctuary campus” movement, a movement spurred by President Trump’s executive order that calls for universities to protect undocumented students from deportation.³⁰ This movement focuses primarily on the Deferred Action for Childhood Arrival program, which is a program that allows deferred deportation action for undocumented students in universities. In this way, the “sanctuary campus” movement affirms students’ right to privacy about their immigration status, as well as their right to remain in their educational institutions.³¹ Again, though, there is no set definition of a “sanctuary campus,” thus campuses who have embraced this term have done so mostly as a reaffirmation of their commitment to undocumented students. ■

WORKS CITED

¹ Lee, Jasmine C., Rudy Omri, and Julia Preston. "What Are Sanctuary Cities?" *The New York Times*. *The New York Times*, 03 Sept. 2016. Web. 3 Apr. 2017.

² Cameron, Darla. "How Sanctuary Cities Work, and How Trump's Executive Order Might Affect Them." *The Washington Post*. N.p., 25 Jan. 2017. Web. 3 Apr. 2017.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Kopan, Tal. "What Are Sanctuary Cities, and Can They Be Defunded?" *CNN*. *Cable News Network*, 25 Jan. 2017. Web. 3 Apr. 2017.

⁹ Ibid.

¹⁰ Cameron.

¹¹ Matthew Green, and Jessica Tarlton. "What Are Sanctuary Cities and How Are They Bracing for Trump's Immigration Crackdown? (with Lesson Plan)." *KQED*. N.p., 7 Feb. 2017. Web. 1 Apr. 2017.

¹² United States of America. *The White House*. *Executive Order: Enhancing Public Safety in the Interior of the United States*. N.p.: n.p., n.d. *The White House*. *The United States Government*, 25 Jan. 2017. Web. 1 Apr. 2017.

¹³ Ibid.

¹⁴ Cameron.

¹⁵ United States of America.

¹⁶ Ibid.

¹⁷ Cameron.

¹⁸ Wilson, Reid. "GOP States Move to Block Sanctuary Cities after Trump Order." *The Hill*. N.p., 09 Feb. 2017. Web. 28 Mar. 2017.

¹⁹ Ibid.

²⁰ Ibid.

²¹ Ibid.

²² Ibid.

²³ Green and Tarlton.

²⁴ Ibid.

²⁵ Wilson.

²⁶ Ibid.

²⁷ Cameron. Web. 3 Apr. 2017.

²⁸ "Supreme Court Strikes down Background Check for Gun Buyers." *CNN*. *Cable News Network*, 27 June 1997. Web. 19 Apr. 2017.

²⁹ "National Federation of Independent Businesses v. Sebelius." *Oyez*, <https://www.oyez.org/cases/2011/11-393>. Accessed 18 Apr. 2017.

³⁰ Preston, Julia. "Campuses Wary of Offering 'Sanctuary' to Undocumented Students." *The New York Times*. *The New York Times*, 26 Jan. 2017. Web. 19 Apr. 2017.

³¹ Ibid.