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Legal Sidebar

"Sanctuary" Jurisdictions: Legal Overview

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Several state and local jurisdictions have adopted policies that limit their cooperation with federal agencies charged with immigration enforcement. Some observers and policymakers describe these states and municipalities as "sanctuary" jurisdictions, though there is no agreement as to whether the term applies to a particular entity. Since taking office on January 20, 2025, President Trump has issued several executive orders (EOs) relating to "sanctuary" jurisdictions, including Protecting the American People Against Invasion, Ending Taxpayer Subsidization of Open Borders, and Protecting American Communities from Criminal Aliens. Since the EOs were issued, multiple lawsuits have been filed by various cities and states, as well as by the Department of Justice (DOJ), relating to "sanctuary" policies. This Legal Sidebar provides a brief overview on what may be considered to be a "sanctuary" jurisdiction and summarizes pending litigation. This Sidebar also identifies several considerations for Congress. For further discussion regarding "sanctuary" jurisdictions' policies, see this CRS In Focus.

What Is a "Sanctuary" Jurisdiction?

There is no legal definition in federal statute for what constitutes a "sanctuary" jurisdiction. Some observers have used different methodologies to identify states or municipalities as "sanctuary" jurisdictions. In addition, while some government entities have, at times, described themselves as "sanctuary" jurisdictions, others have disputed being labeled as such, particularly when those jurisdictions have authorized some degree of cooperation with federal immigration authorities.

One recently issued EO defines a "sanctuary" jurisdiction as one that interferes "with the lawful exercise of Federal law enforcement operations." Another EO defines "sanctuary" jurisdictions as those "that obstruct the enforcement of Federal immigration laws." The Attorney General issued a memorandum on February 5, 2025, that defines "sanctuary" jurisdictions as those that "refuse to comply with 8 U.S.C. § 1373, or willfully fail to comply with other applicable federal immigration laws."

Jurisdictions described by observers as having "sanctuary" policies typically limit state or local law enforcement assistance with federal immigration authorities in enforcing *civil* violations of federal immigration law that would render aliens removable from the United States. Jurisdictions that restrict state or local participation in civil immigration enforcement activities may still permit state or local law enforcement to assist in enforcing *criminal* violations of federal immigration law. Some measures adopted by state and local governments that bar police from assisting in the enforcement of federal criminal

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immigration laws are closely related to civil immigration violations, including laws that penalize an alien's unlawful entry, presence, or employment in the United States.

In seeking to limit cooperation, some states and localities have adopted measures that either prevent or restrict police officers from arresting individuals solely for alleged civil immigration law violations. In addition, some jurisdictions may restrict state or local government agencies from sharing information with federal immigration authorities. For example, some jurisdictions have adopted policies stating that the police cannot ask a person his or her immigration status unless it is part of a criminal investigation, thereby limiting the circumstances when state and local law enforcement might collect information relevant to federal immigration authorities. Other policies adopted by some jurisdictions more broadly limit officials from obtaining information about a person's immigration status unless required by law.

In addition, some jurisdictions may limit law enforcement's ability to honor an immigration detainer issued by the federal government. As discussed in more detail in this CRS Legal Sidebar, immigration officials within the Department of Homeland Security (DHS) may issue detainers for aliens who are in the custody of a state or local law enforcement agency (LEA). Through a detainer, DHS formally requests that a state or local LEA hold an alien in custody for up to forty-eight hours after the alien would otherwise be released so that DHS may acquire custody of the alien to facilitate his or her removal. A detainer request is permissive, and LEAs have the option of complying with these requests. Several federal courts have also confirmed that detainer requests are not "compulsory commands" to LEAs.

Recent Executive Actions

Shortly after President Trump took office for a second term, his Administration issued a number of directives intended to deter states and localities from implementing "sanctuary" policies. EO 14159, "Protecting the American People Against an Invasion," seeks to, among other things, limit federal funds to "sanctuary" jurisdictions; directs the Secretary of DHS and the Attorney General to "evaluate and undertake any other lawful actions, civil or criminal" against jurisdictions that interfere with enforcement of federal immigration law; and instructs the Secretary of DHS to ensure compliance with 8 U.S.C. §§ 1373 and 1644 (two federal statutes, discussed in more detail below, that bar measures that prevent state and local governments from voluntarily communicating with federal immigration officials regarding individuals' immigration statuses). On February 5, 2025, the Attorney General issued a memorandum (AG Memo) detailing how "sanctuary" jurisdictions would no longer receive federal funds from DOJ.

EO 14218, "Ending Taxpayer Subsidization of Open Borders," directs federal agencies to ensure that funding to "States and localities do not, by design or effect, facilitate the subsidization or promotion of illegal immigration, or abet so called 'sanctuary' policies that seek to shield illegal aliens from deportation." On April 24, 2025, the Department of Transportation (DOT) wrote a letter to all recipients of DOT funding reminding them of their duty to comply with federal law, "including cooperating with and not impeding" DHS and ICE enforcement of immigration law, and that failure to do so could result in loss of federal funding. EO 14287, "Protecting American Communities from Criminal Aliens," directs the Attorney General, in coordination with the Secretary of the DHS, to "publish a list of States and local jurisdictions that obstruct the enforcement of Federal immigration laws (sanctuary jurisdictions)" and directs federal agency heads to "identify appropriate Federal funds to sanctuary jurisdictions, including grants and contracts, for suspension and termination." For "sanctuary" jurisdictions that "remain in defiance of Federal law," the order requires the Attorney General and the Secretary of DHS to "pursue all necessary legal remedies and enforcement measures to end these violations and bring such jurisdictions into compliance with the laws of the United States." On August 5, 2025, DOJ published the list of "sanctuary" jurisdictions as required by EO 14287, including 13 states, 18 cities, and four counties.

Constitutional Considerations

As discussed below, lawsuits have been brought challenging both the legality of "sanctuary" policies and federal measures that seek to deter them. In adjudicating these challenges, courts must frequently consider the scope of states' authority to decline federal requests for assistance, whether state or local measures are preempted by federal immigration law, and whether federal efforts to deter "sanctuary" measures are consistent with the Constitution's federalism-based limitations on the federal government's ability to compel states or localities to enforce federal policies.

The Supremacy Clause and Preemption

The Supreme Court has held that the federal government has plenary power over immigration, including as to the entry and removal of aliens. Pursuant to that power, Congress has enacted a comprehensive set of rules, largely codified in the Immigration and Nationality Act, that govern the admission and removal of aliens, along with conditions for aliens' continued presence within the United States.

Under the Supremacy Clause of the U.S. Constitution, federal law preempts conflicting state or local measures, rendering them unenforceable. Questions arise as to what extent a state and local "sanctuary" policy, which may appear to be in conflict with the federal government's immigration authority, is enforceable. When a state passes a law or policy that attempts to regulate immigration, either directly or indirectly, the Supreme Court has generally held that, under the Supremacy Clause, federal law will typically preempt the state law or policy. On the other hand, the Court has recognized that not every state measure "which in any way deals with aliens is a regulation of immigration and thus per se preempted." For a more detailed discussion on preemption in the immigration context, see this CRS report.

Federalism-Based Limitations

Even though the federal government has extensive power to preempt state and local policies and laws that touch on immigration, that power is not absolute. The U.S. Constitution establishes a system of dual sovereignty between the federal government and the states, which is confirmed by the Tenth Amendment's reservation of the powers not delegated by the Constitution to the national government "to the States respectively, or to the people." The Supreme Court has held that the anti-commandeering doctrine, which is rooted in the Tenth Amendment, instructs that "even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts" on behalf of the federal government. The Court most recently applied the anti-commandeering doctrine in 2018 in *Murphy v. NCAA*, where it struck down a federal law that prohibited state and local governments from authorizing sports gambling because federal law "dictate[d] what a state legislature may and may not do" and, as a result, states were "put under the control of Congress."

In the immigration context, the anti-commandeering doctrine has been discussed in cases involving immigration detainers. For example, in *Galarza v. Szalczyk*, the U.S. Court of Appeals for the Third Circuit (Third Circuit) held that, if states and localities were forced to comply with immigration detainer requests, they would have to use their funds and resources "to effectuate a federal regulatory scheme" in violation of the anti-commandeering doctrine. The Third Circuit also held that the requirement "to detain federal prisoners at state expense is exactly the type of command that has historically disrupted our system of federalism." In addition, some federal courts have also held that states or localities honoring detainer requests may be violating the Fourth Amendment when the requests lack a probable cause determination. Some states and localities have argued that honoring constitutionally defective detainers may subject them to civil liability.

Congress may also not use its spending power to place conditions on funds distributed to the states that require them to take certain actions that Congress otherwise could not directly compel the states to perform. To meet constitutional scrutiny, generally a funding condition (1) must provide clear notice to the recipient of what actions are required in exchange for federal funds and the consequences for noncompliance, (2) must be related to the underlying purpose of the spending, (3) cannot be coercive to the point it turns into compulsion, and (4) cannot induce states to otherwise act unconstitutionally. As discussed in this CRS report, during the first Trump Administration, some courts ruled that restrictions imposed by DOJ upon "sanctuary" jurisdictions' eligibility for certain grant awards were unconstitutional funding conditions.

Key Federal Statutes

The primary federal statutes addressing "sanctuary" policies are 8 U.S.C. §§ 1373 and 1644. Section 1373 bars any restriction on a federal, state, or local governmental entity or official's ability to send or receive information regarding "citizenship or immigration status" to or from federal immigration authorities. Section 1644 similarly bars these measures. State or local entities, however, are not required to share information with federal immigration authorities. Courts have disagreed as to whether these laws permissibly preempt conflicting state or local policies or instead run afoul of the anti-commandeering doctrine. In 1996, the Second Circuit rejected a constitutional challenge to Sections 1373 and 1644 and held that these statutes prohibited state and local governments from restricting "the voluntary exchange" of information between federal and state authorities and did not compel state authorities to administer and enforce a federal regulatory program. The Second Circuit also held that the Tenth Amendment does not give states and local entities an "untrammeled right to forbid all voluntary cooperation by state or local officials with particular federal programs." In 2018, two federal district courts decided that Section 1373 violated the anti-commandeering doctrine. Among other things, the courts held that Section 1373 displaces "local control of local officers" and prevents the cities from detaching themselves from federal immigration enforcement. The courts' decisions in these cases were affirmed on appeal but without the appellate courts reaching the issue of Section 1373's constitutionality.

There is also a question as to what information Sections 1373 and 1644 cover. For example, "sanctuary" jurisdictions contend that these provisions are narrow and cover the sharing of information about immigration status but not, for example, the release date of an alien held in state or local custody.

Recent Litigation

The second Trump Administration has filed a number of suits against jurisdictions that it claims have implemented "sanctuary" policies preempted by federal law. Some jurisdictions, in turn, have brought suit challenging executive efforts to limit federal funding for jurisdictions believed to impede federal immigration enforcement efforts. During the first Trump Administration, multiple lower courts rejected efforts by the first Trump Administration to condition a state or local government's eligibility for certain federal grants upon its cooperation with federal immigration enforcement efforts. It is unclear whether these new initiatives will be treated differently.

City and County of San Francisco v. Trump

In 2025, a group of plaintiffs sued the Trump Administration and moved to block recent executive actions targeting "sanctuary" jurisdictions. The plaintiffs argue that, in the absence of congressional authorization to impose immigration enforcement conditions on federal funding, the executive actions, including EOs 14159 and 14218 and the AG Memo, violate separation of powers principles. The plaintiffs argue that these actions also violate the Spending Clause because the funding conditions are ambiguous, they cannot

be applied because Congress already appropriated some of those funds to the states and localities, there is no nexus between most categories of the relevant funding and immigration enforcement, and the conditions limiting federal funding are unconstitutionally coercive to the point of compulsion. The plaintiffs further claim that the executive actions violate their Fifth Amendment rights because they do not meaningfully define key terms, granting the Attorney General and DHS Secretary authority to subjectively determine what qualifies as a "sanctuary" jurisdiction and discretionarily deny federal funds through an unknown process. The plaintiffs next claim that the executive orders violate the anti-commandeering doctrine of the Tenth Amendment because the orders force them to either give up federal funding or "acquiesce to Defendants' unconstitutional assertion of power over local policymaking." Finally, the plaintiffs claim that the AG Memo violates the Administrative Procedure Act because it is unconstitutional, was issued "in excess of statutory authority," is arbitrary and capricious, and needed to provide a better justification for the change in policy.

On April 24, 2025, the federal district court granted a preliminary injunction, concluding that the plaintiffs were likely to prevail on each of these claims. On April 28, 2025, President Trump issued EO 14287, which also relates to "sanctuary" jurisdictions. On May 9, 2025, the federal district court issued an order clarifying the preliminary injunction because it had not considered EO 14287 in the decision to grant the preliminary injunction on April 24, 2025, and held that no government action that "postdates the Preliminary Injunction can be used as an end run around the Preliminary Injunction Order." In June 2025, the defendants appealed the preliminary injunction to the Ninth Circuit. On August 7, 2025, the plaintiffs filed a second amended complaint for declaratory and injunctive relief. On August 22, 2025, the district court granted a motion to include 34 more localities as plaintiffs and extended the preliminary injunction to cover them. The court also clarified that the injunction also reaches conditions the Department of Housing and Urban Development placed on certain grants because the grants do not share "a nexus with immigration enforcement." On August 26, 2025, the Trump Administration filed a motion to dismiss. A hearing on the motion to dismiss is scheduled for November 5, 2025.

Similar lawsuits were filed in Massachusetts and Rhode Island. In Massachusetts, two cities sued the Trump Administration and filed a motion for a preliminary injunction on June 3, 2025. In Rhode Island, several states, including Rhode Island, filed two separate lawsuits against the Trump Administration—one relating to federal funding for victims of crimes and another relating to federal transportation grants and cooperating with federal immigration enforcement. As of the date of publication, these lawsuits remain pending.

United States v. Illinois and *United States v. New York*

In early 2025, the Trump Administration sued various "sanctuary" jurisdictions on preemption and related grounds. In *United States v. Illinois*, the federal government challenged provisions of Illinois laws that "have the purpose and effect of making it more difficult for, and deliberately impeding, federal immigration officers' ability to carry out their responsibilities in those jurisdictions." The laws in question, according to the federal government, severely limit or prohibit cooperation with federal immigration officials by preventing state and local LEAs from honoring civil detainer requests or providing basic information about aliens, among other things. The federal government argues that these provisions generally prevent the federal government from being able to effectively detain and remove unlawfully present aliens and expressly violate Sections 1373 and 1644 "with respect to the information-sharing and maintenance restrictions." The defendants (including Illinois, Cook County, Chicago, and several individually named defendants, such as Illinois Governor J. B. Pritzker) filed multiple motions to dismiss, principally claiming that their laws are not preempted by federal law and that they are protected by the Tenth Amendment's anti-commandeering doctrine. On July 25, 2025, the federal district court agreed with the defendants, granted the motions to dismiss, and gave the federal government an opportunity to amend its complaint by August 22, 2025.

The district court first held that the federal government had standing to sue the state and localities but that it had no standing to sue the individually named defendants. The court then held that Sections 1373 and 1644, which pertain only "to information regarding a person's legal classification under federal law," do not expressly preempt the state and city laws in question, as those cover "contact information, custody status, [and] release date," none of which is "directly related to citizenship or immigration status." The court further held that Section 1373 is not a preemptive statute "because it does [not] regulate private actors in language or effect," reminding of the requirement established by the Supreme Court in *Murphy* that for a federal statute to have preemptive effect it must meet this requirement. The court then held that the state and city policies regarding detainers and sharing of information are not conflict preempted because they do not pose an obstacle to immigration law and that collaboration between federal and state authorities regarding these provisions is permissive and not mandatory. Finally, the court held that the challenged state and local laws and policies are protected by the anti-commandeering doctrine. On August 26, 2025, after not receiving an amended complaint from the federal government, the court converted the July 25, 2025, dismissal to one with prejudice and the case was closed. The federal government did not appeal the case.

Similarly, in *United States v. New York*, the federal government is challenging New York's "Green Light Law," which "generally bars the sharing of New York State Department of Motor Vehicles ('DMV') records or information ... with federal immigration agencies" and "requires New York's DMV Commissioner to promptly tip off any ... alien when a federal immigration agency has requested his or her information." The federal government argues that the Green Light Law prevents the federal government from accessing critical information, interferes with its "ability to arrest and remove [] aliens," threatens immigration officers' safety, and prevents the federal government from "sharing information across all its law enforcement agencies unimpeded." On March 25, 2025, the defendants filed a motion to dismiss, principally claiming that the law is a valid exercise of the state's police powers and that it does not conflict with federal immigration law. On April 25, 2025, the federal government filed a motion for summary judgment. The Trump Administration filed a similar lawsuit against Rochester, NY, on April 24, 2025; against Colorado on May 2, 2025; against several cities in New Jersey on May 22, 2025; against New York City, NY, on July 24, 2025; and against Boston, MA, on September 4, 2025. All of these lawsuits remain pending.

Considerations for Congress

Congress has options if it decides to address "sanctuary" jurisdiction laws and policies relating to federal immigration enforcement. Several bills introduced in the House and Senate in the 119th Congress would seek to deter "sanctuary" policies, including by limiting jurisdictions' ability to receive federal funds (see, e.g., No Bailout for Sanctuary Cities Act [H.R. 32], HELD Act [H.R. 1821], Stop Dangerous Sanctuary Cities Act [S. 685], No DOT Funds for Sanctuary Cities Act [H.R. 4565]). Other bills introduced in the 119th Congress would directly or tangentially address "sanctuary" jurisdiction policies. The UPLIFT Act (H.R. 1680) would, among other things, amend and expand the existing federal detainer statute and bar restrictions on state and local LEAs' ability to share information about aliens who are suspected of criminal activity with federal immigration officials. Still other bills would alter "sanctuary" jurisdictions' eligibility for federal benefits and services. The Save SBA from Sanctuary Cities Act of 2025 (H.R. 2931) passed the House on June 5, 2025, and would, among other things, relocate certain offices of the Small Business Administration in "sanctuary" jurisdictions. The No Student Visas for Sanctuary Cities Act of 2025 (H.R. 3237) would limit student visas for institutions in "sanctuary" jurisdictions. The No Tax Breaks for Sanctuary Cities Act (H.R. 1879) would deny tax-exempt status for bonds issued by "sanctuary" jurisdictions. This In Focus provides a list of additional past proposed legislation introduced in the 118th Congress.

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