**Trump’s Executive Orders against Immigrants**

On January 25 Trump signed “[Executive Order: Enhancing Public Safety in the Interior of the United States](https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united),” regarding sanctuary cities and counties (or “jurisdictions”). It calls for federal-state cooperation on immigration law enforcement and cutting federal funds from jurisdictions that refuse to comply.

The order has sparked public outcry and has generated many questions as to its constitutionality and potential impacts on immigrant communities. According to the [National Immigration Law Center](https://www.nilc.org/issues/immigration-enforcement/exec-order-deportations-sanctuary-cities/), it:

* “Calls for tripling the number of officers available for immigration enforcement,
* Drastically expands who the government considers a priority for deportation,
* Makes it easier to deport immigrants without due process,
* Threatens to take away critical federal funding from jurisdictions that have sought to build trust with their immigrant residents.”[[1]](#endnote-1)

Section 9 of the Executive Order primarily deals with “Sanctuary Jurisdictions.”

*Sec. 9. Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.*

1. *In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.*

One issue with the Order is that it defines sanctuary jurisdictions as localities “that willfully refuse to comply with 8 U.S.C. 1373.” However, most jurisdictions with sanctuary policies do not typically violate that law (more below).  Secondly the order gives the Secretary of Homeland Security discretion to designate any jurisdiction as noncompliant.

**Before the Orders, Sanctuary Cities Already Operated in Compliance with Federal Law**

Sanctuary policies typically do not violate federal immigration law 8 USC § 1373 or other federal laws. According to the Immigrant Legal Resource Center (ILRC), “there are many varieties of local policies that might be considered ‘sanctuary policies.’

* Unless these policies limit communication with DHS about individuals’ citizenship or immigration status, they do not violate 8 USC § 1373.
* Cities and counties around the country have policies against local officials questioning individuals about their immigration status; such rules do not conflict with 8 USC § 1373 unless they limit communication with DHS about immigration status.
* Policies that limit or prohibit compliance with immigration detainers and requests for notice of release dates do not violate 8 USC § 1373. Immigration detainers are explicitly not mandatory and so electing not to respond to them is entirely within the discretion of local law enforcement.”[[2]](#endnote-2)

Again, according to ILRC, “Nothing in federal law requires localities to enforce the Immigration and Nationality Act and regulations; to the contrary, immigration regulation and enforcement are federal functions...There is no violation of federal law in declining ICE detainers.”[[3]](#endnote-3) These fact sheets from the [ILRC](https://www.ilrc.org/sites/default/files/resources/8_usc_1373_factsheet_-_2017_final.pdf) and the [Public Law Group](http://publiclawgroup.com/2017/01/27/can-the-president-defund-sanctuary-cities/) further elaborate on the intricacies of federal immigration law 8 USC § 1373.

Because expanded use of local law enforcement resources in assisting ICE is voluntary, different sanctuary cities have varying degrees to which they assist federal immigration authorities. Click [here](https://www.ilrc.org/local-enforcement-map) for a map of that variance, and to see your jurisdiction’s own level of involvement.

**Declining Detainer Requests by DHS is Legal**

When a local law enforcement agency books an immigrant for an offense his fingerprints are mandatorily sent to the FBI. ICE, if they believe an inmate is undocumented, can submit what is called a detainer request to the local jail. As noted, complying with these requests is voluntary.[[4]](#endnote-4)

It is unclear if the Order will make it illegal to decline detainers. It requires reporting on such activities in Section 9:

1. *To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.*

**Can Federal Funding be Cut from Sanctuary Cities? Is the Order Constitutional?**

 The Trump Order calls for federal funding to be cut from jurisdictions that fail to comply.

 *Sec. 2. Policy. It is the policy of the executive branch to…*

1. *Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;*

Multiple sources indicate that Trump’s attempt to cut federal funding to sanctuary cities is likely unconstitutional. The Washington Post has reported that it’s questionable whether Trump can cut federal funding, noting that legal experts have cited Supreme Court decisions indicating that “funding can only be withheld if it is relevant ‘to the federal interest in the project.’ Cities, counties and states with sanctuary policies get federal money from dozens of different departments, most of which are not related to immigration.”

Two areas of funding that may fall within the requisite area of relevance are State Criminal Alien Assistance Program (SCAAP) grants and other Justice Department law enforcement grants. Already, many sanctuary cities only get a small, if any, amount of money from the SCAAP, according to the Post analysis.

Furthermore, questions are being raised about the constitutionality of the order. Some cities like San Francisco have already begun filing lawsuits against the administration over the Executive Order.

**For more information, legal research and talking points**: Visit the National Immigration Law Center’s Toolkit: <https://www.nilc.org/issues/immigration-enforcement/sanctuary-city-toolkit/>

1. NILC <https://www.nilc.org/issues/immigration-enforcement/exec-order-deportations-sanctuary-cities/> [↑](#endnote-ref-1)
2. ILRC <https://www.ilrc.org/sites/default/files/resources/fact_sheet_on_usc_1373_and_bja_funding_july_2016.pdf> [↑](#endnote-ref-2)
3. ILRC <https://www.ilrc.org/sites/default/files/resources/fact_sheet_on_usc_1373_and_bja_funding_july_2016.pdf> [↑](#endnote-ref-3)
4. WaPo <https://www.washingtonpost.com/graphics/national/sanctuary-cities/> [↑](#endnote-ref-4)