

Spotlight: Sanctuary cities' necessity and legality

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Immigrants run in the rain towards the tents at migrant housing location at Floyd Bennett Field, Tuesday, Jan. 9, 2024, in New York. New York City will evacuate the nearly 2000 immigrants housed in tents at the site due to an impending storm. Photo: Mary Altaffer

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The mayors of New York City, Chicago, Boston and Denver appeared before a congressional task force in Washington on Wednesday to defend the “sanctuary” designation of their cities.

The term “sanctuary” has been applied to cities, states and municipalities that limit or restrict cooperation with federal immigration enforcement. The term is undefined in any U.S. laws.

Rep. James Comer of Kentucky, chair of the House Oversight Committee, opened the hearing by stating, “The mayors here today each lead so-called sanctuary cities, and let’s be clear. These policies only create sanctuary for criminals. Sanctuary policies violate federal immigration law by protecting criminal aliens at the expense of the American people. Sanctuary cities and states refuse to cooperate with federal immigration enforcement efforts and harbor illegal aliens.”

The mayors were quick to reject these ideas. All four of the invited mayors — Eric Adams of New York City, Michelle Wu of Boston, Mike Johnston of Denver and Brandon Johnson of Chicago — cited consistently reduced crime rates in their cities, the importance of community trust and the necessary role immigrants play in city success.

Still, one of President Trump’s Inauguration Day executive orders called for lawful actions against sanctuary jurisdictions and to withhold federal funds from these areas. A Feb. 5 memorandum from the Office of the Attorney General stated that sanctuary jurisdictions would be denied Department of Justice funds due to the unlawfulness of sanctuary policies. The memorandum also attempted to define “sanctuary jurisdictions” as state or local jurisdictions that refuse to comply with Section 1373 of the U.S. Code which says “a Federal, State or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

Under this memorandum, a “sanctuary jurisdiction” can also be defined as any locale that “willfully fail to comply with other applicable federal immigration laws.” Comer reiterated these sentiments in his opening statement.

Adams walked a thin line at Wednesday’s hearing, stuck between defending the popularity of sanctuary policies in New York City and aligning with the Trump administration’s stance on immigration. At the hearing, many Republican

lawmakers praised Adams. Most of the questions Adams fielded from Democratic lawmakers present were more about his indictment and alleged quid pro quo with Trump than about New York's sanctuary policies.

"Federal law did not allow me to stop buses from entering New York City," Adams said in his opening statement. "State law requires me to provide all in our city with housing and meals and to educate children. City law makes it unlawful to collaborate with ICE [Immigration and Customs Enforcement] for civil enforcement."

What is a sanctuary city, really?

Sanctuary cities, policies or jurisdictions have no legal definition. According to the American Immigration Council, sanctuary policies may include: "Offering English-language classes; issuing municipal identification documents and driver's licenses to all residents; ensuring that immigrants have equal access to bail; establishing policies to make it easier for noncitizen victims of crime to obtain necessary documents from law enforcement agencies in order to pursue certain immigration relief; and training criminal prosecutors and public defenders on the immigration consequences of convictions and plea deals."

Essentially, sanctuary policies make life easier for immigrants — both documented and undocumented.

In New York City, and in the other cities represented at Wednesday's hearing, this sanctuary status protects immigrants who enroll for public school and prohibits landlords from discriminating against tenants on the basis of immigration status. Sanctuary policies also mean the city provides "know your rights" workshops, healthcare to all people, identification cards regardless of immigration status and immigration law and citizenship services free of charge.

Although local law enforcement is required to ask about a witness's or victim's immigration status, that information is protected under New York City law.

These policies are important. Documented and undocumented immigrants are less likely to report crimes out of fear of police harassment based on their immigration status. Sanctuary policies that protect immigrants and their

information create a sense of community trust and encourage immigrants to utilize city services such as the police, schools, homelessness services, legal services and health services. Without this trust, immigrants retreat from these services and put themselves and their communities at risk.

In early 2025, when Trump made his first threats to immigrants, many parents pulled their kids from school, and undocumented people stopped showing up to food pantries out of fear that ICE would show up. Recently, immigrants have stopped showing up to important immigration court hearings because of a rumor that they would be picked up by ICE — even though there have been no reports to substantiate the rumor.

Sanctuary policies do not affect voting, passports and the ability to get a Social Security Number or partake in Social Security funds. These actions are limited by citizenship status. The path to citizenship remains a federal jurisdiction.

Sharing Information

Lawmakers opposed to sanctuary policies cite Section 1373(a) of U.S. code Title 8. Section 1373(a) states: “a Federal, State or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

The plain text of Section 1373, however, does not require officials to collect information regarding citizenship or immigration status. It also doesn't mention detainers (which we'll get to).

To define a “sanctuary jurisdiction” as one that does not comply with Section 1373, as Trump wants to do, seemingly doesn't recognize that sanctuary cities and states already share a lot of information regarding citizenship and immigration status with the Department of Homeland Security (DHS).

According to the Georgetown Law Journal, in a note on sanctuary cities, “Every jurisdiction still shares fingerprint data upon arrest with the Federal Bureau of Investigation (FBI), which in turn shares this information with the DHS for immigration status checks.”

Immigrant crime and detainers

Every mayor present at Wednesday's hearing refuted claims that sanctuary policies protected criminals.

Adams explained, "Overall crime was down across New York City last year and we have now had three straight months of double digit declines in major crimes." He reminded the commission, "To be clear, a sanctuary city classification does not mean our city will ever be a safe haven for violent criminals." New York City is the safest big city in America.

Multiple studies in the last year disprove the assertion that immigrants are major perpetrators of violent crime and that America is going through a "migrant crime wave." In fact, some studies found that immigrants are less likely to commit crimes than U.S.-born Americans.

Still, the myth persists. Republican lawmakers frequently cite high-profile cases of violent crime committed by undocumented immigrants, such as the incident of Laken Riley, a 22-year-old University of Georgia student who was killed while out on a run by a migrant who entered the country illegally.

Trump's order to remove all illegal immigrants who have committed violent crimes is no easy task. It is difficult and resource-intensive for ICE to find and deport immigrants once they've been installed in a city. The agency heavily relies on compliance with local law enforcement to find and detain undocumented immigrants. One method is by issuing a detainer, a nonbinding request from ICE that local law enforcement maintain custody of an undocumented individual in local or state jails for up to 48 hours past the time the individual was to be released and notify federal immigration authorities prior to release. The extra time allows for ICE to arrange to take over custody of the individual.

The New York State Office of the Attorney General issued updated immigration guidance in January that states "State law bars state and local law enforcement officers from arresting and detaining individuals for civil immigration violations alone — even if federal immigration authorities have issued a detainer or administrative arrest warrant."

Because of state laws like this, detainers are vital to immigration enforcement efforts. ICE is not allowed to arrest individuals in New York State based on status alone, so jumping on to a current arrest is one of the more effective ways of passing undocumented immigrants into ICE custody for potential deportation. The Laken Riley Act, which Trump signed at the end of January, aims to expand the number of crimes an undocumented immigrant can be detained for, including petty theft and shoplifting.

In New York City, where the police department has a surveillance system on par with the CIA, ICE officers rely on cooperation with the NYPD to carry out surveillance and detain individuals. However, state immigration guidance “recommends that, unless presented with a judicial warrant, [local enforcement agencies] should not provide sensitive information

that is not generally available to the public, such as information about an individual’s release details or home address” to ICE.

The threat to withhold federal funds

Although members of the Trump Administration continue to assert that funds will be withheld from cities and states that have sanctuary policies, there isn’t really legal ground to do so.

The 10th Amendment to the U.S. Constitution states “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

The Anti-Commandeering Doctrine, upheld through multiple Supreme Court cases, represents the recognition of limits on congressional authority — Congress can require states to do something but cannot force them to comply. In the case of sanctuary cities, Congress can require states to work with ICE, but forcing them to do so, via withheld funds or otherwise, is illegal.

Under the same doctrine, funds can’t be withheld as punishment for non-compliance. Congress can encourage states by offering funds, as it did in 1984 when Congress offered highway funds to states that raise the legal drinking age, but cannot take funds away.

During Trump's first term, then-Attorney General William Barr conditionally offered grant funding if the City and County of San Francisco effectively rolled back its sanctuary policies. The city and county sued. In 2020, the Ninth Circuit Court of Appeals ruled that the US Attorney General cannot coerce local jurisdictions into adopting specific immigration policies or undo "sanctuary" policies by using conditional funding. The coercion through funds was found unconstitutional under the Anti-Commandeering Doctrine. This decision was limited to the State of California and not applicable nationwide.

So are sanctuary cities legal?

Throughout Wednesday's hearing, lawmakers repeatedly insisted that these mayors were committing a crime and that their city's sanctuary laws and policies were illegal. This isn't true. As stated, these cities are in compliance with Title 8 Section 1373.

Even if Trump passes a law defining "sanctuary jurisdictions" as ones that do not comply with Title 8 Section 1373, he cannot threaten to pull federal funding. Further, a judge would still need to decide that these jurisdictions truly are not compliant with Title 8 Section 1373 to declare the sanctuary practices illegal.

Throughout the hearing, Adams, Johnson, Johnston and Wu seemed determined to continue to protect the rights of all their constituents — regardless of citizenship status.
