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# The Sanctuary Cities Debate Explained

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## Navigating Sanctuary: City Responses to Shifting Immigration Policies

November 14, 2018

In a globalizing world, the influence and impact of cities might be overlooked. Yet cities increasingly shape local responses to immigrant communities, while often coming into conflict with federal policies.

To highlight the role of cities as advocates, policymakers, and leaders, Perry World House (PWH) hosted representatives from major U.S. cities at the forefront of immigration policy and action. City solicitors and directors of offices of immigrant affairs came together with researchers and journalists from across the country at PWH to discuss their cities' responses to shifting immigration policies and share lessons learned for intra-governmental collaboration.

This workshop was made possible with support from Cities for Action and Penn's Institute for Urban Research.





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# About the Authors



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In an era of contested border policies, rising nationalism, continued human migration, and a global pandemic, “sanctuary cities” remain controversial. The term first captured the attention of Americans in 2015 and became a target of President Donald Trump’s restrictive approach to immigration. Despite White House rhetoric and reactionary policies, many leaders in cities, counties, and states are responding in their communities, in the press, and, most notably, in the courts to affirm the vital role immigrants—documented and undocumented—play in these communities.

Sanctuary cities made headlines again as the nation grapples with the unprecedented coronavirus (COVID-19) pandemic. Trump threatened to withhold federal assistance to state and local governments for COVID-19 relief, contingent on changing policies around sanctuary cities.<sup>1</sup> Yet many undocumented workers are at risk in essential positions in the health care and food-supply chain industries. Others have lost their jobs in the construction and restaurant industries, but are ineligible for funds from the federal government’s economic

relief package.<sup>2</sup> U.S. Immigration and Customs Enforcement (ICE) has also drawn criticism for continuing to arrest undocumented immigrants during shelter-in-place orders and for crowded and unsanitary conditions in detention facilities amid the outbreak.<sup>3</sup>

As a result, sanctuary cities will continue to dominate conversations and policymaking during COVID-19 and beyond. Yet, the term suffers from a lack of clarity and definitional agreement. The history of immigrant sanctuaries in the United States and around the world is both long and complicated. Today, many still believe that this designation is about churches and other places of worship providing immigrants protection from deportation.<sup>4</sup> But on the political front, sanctuary jurisdictions refer to the level of cooperation between a local entity and federal authorities with regard to enforcement of immigration policy. Partisanship largely explains the differences in perception and interpretation as well.

This explainer—prepared by two lawyers with experience in city government who have participated in immigration policymaking and litigation about federal funding for sanctuary cities—untangles these competing narratives and answers key questions to advance a better understanding of sanctuary cities. The questions are manifold and include: Why have sanctuary cities become a contested issue? What is a sanctuary city? Do these cities share common policies or practices? Is there more crime in sanctuary cities? Where does the debate stand now? While this is a developing situation, this document provides an overview of the current state of play, how the country got here, and resources from experts for those who want to learn more.

To address these and other related questions, the University of Pennsylvania’s Perry World



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House hosted a convening, “Navigating Sanctuary: City Responses to Shifting Immigration Policies,” on November 14, 2018. City officials, lawyers, and researchers who focus on immigration came together to discuss their cities’ policies on interactions between local and federal law enforcement and with immigrant communities. Philadelphia Mayor Jim Kenney, who participated in the conversation, said, “Philadelphia is leading the way in changing the nation’s discourse on immigration.”

## Why Have Sanctuary Cities Become a Contested Issue?

The dispute between local jurisdictions and the federal government began in earnest when President George W. Bush’s administration put in place the Secure Communities program in 2008. Historically, state and local law enforcement agencies had sent the fingerprints of all individuals arrested and booked into custody to the Federal Bureau of Investigation (FBI) to be checked against the national criminal history database and generate a person’s criminal history. Under Secure Communities, however, for the first time, the FBI sent these fingerprints to ICE so that ICE could check its own database to determine if the person was eligible for deportation. ICE used this information to generate detainers, which are requests to local jurisdictions to voluntarily hold individuals until ICE agents arrived to take them into custody and begin civil deportation proceedings.

Many cities, counties, and states began to object to Secure Communities on the grounds that many of the people ensnared were not the hardened criminals or violent offenders that ICE claimed it was targeting. To the contrary, many of these individuals had no prior criminal convictions; had their current

charges dismissed; and/or had committed minor, nonviolent offenses. Jurisdictions also grew concerned that the program violated the immigrants’ due process and civil rights, including through racial profiling.<sup>5</sup> As a result, many of these localities began to decline ICE’s detainer requests and instead implemented policies requiring that ICE present a judicial criminal warrant for the continued detention of any individual.

Despite the Obama administration’s suspension of the Secure Communities program between 2014 and 2017, ICE continued to issue detainer requests, asking local jurisdictions to hold immigrants that ICE wanted to pick up. The issue of sanctuary cities received renewed national attention in 2015 following the shooting and death of Kate Steinle in San Francisco, a sanctuary city. Though the shooter was later identified as an undocumented immigrant who had been deported five times for nonviolent offenses and had recently been arrested for marijuana possession and sales, San Francisco did not notify ICE of his release or immigration status. A jury later found that the shooting was accidental.

Subsequently, opponents of sanctuary policies highlighted violent offenses committed by undocumented persons in an effort to create public and political pressure against jurisdictions with those policies. The Steinle case became a rallying cry against sanctuary cities and a centerpiece of Trump’s 2016 presidential campaign. On the stump, he promised, “We will end the sanctuary cities that have resulted in so many needless deaths.”<sup>6</sup> Defunding federal support to so-called sanctuary cities, building a wall on the border with Mexico, and implementing a travel ban on individuals from majority-Muslim countries to the United States stood as central



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pillars of Trump's campaign and subsequent actions as president.

On January 25, 2017, just five days into office, Trump issued Executive Order: Enhancing Public Safety in the Interior of the United States (EO 13768) to defund sanctuary jurisdictions, defined as those that “willfully refuse to comply with 8 U.S.C. 1373,” which states that government officials cannot prevent communication to or receiving information from the Immigration and Naturalization Service (INS) about an individual's citizenship or immigration status.<sup>7</sup> <sup>8</sup> The Executive Order sought to disqualify these jurisdictions from receiving any federal grants, except those for law enforcement. The Department of Justice (DOJ) announced an additional policy in July 2017 that further restricted federal funding by making the primary source of federal criminal justice funds for states and local authorities—the Edward Byrne Memorial Justice Assistance Grants (Byrne JAG)—contingent on their compliance with 8 U.S.C. 1373 and a set of conditions, essentially preventing sanctuary jurisdictions from receiving millions of dollars.

In November 2017, a federal district court in California permanently blocked implementation of this Executive Order on the grounds that it was unconstitutional in its attempt to usurp congressional budgetary authority, to defund programs unrelated to immigration, and to coerce local governments to change their policies.<sup>9</sup> That ruling was upheld by a federal court of appeals in August 2018. Many of the jurisdictions that were denied their Byrne JAG funding have also sued the DOJ and have largely been successful in stopping the DOJ from imposing immigration-related conditions on these grants.<sup>10</sup> However, in February 2020, an appellate court supported the DOJ's position

that it could impose conditions on these grants.<sup>11</sup>

## What is a Sanctuary City?

Despite all the controversy and rhetoric, there is no consensus or legal definition of the term “sanctuary city.” Consequently, the phrase is often misunderstood or appropriated for political purposes. The absence of any definitional agreement thus makes it impossible to identify how many sanctuary jurisdictions—cities, counties, and states—exist across the United States.

Use of the term “sanctuary” in the United States first became popular in the 1980s.<sup>12</sup> At that time, the federal government refused to grant asylum to Central Americans who arrived in the United States after fleeing regional violence and civil war. In response, a number of religious organizations declared themselves sanctuary sites and subsequently provided shelter, food, and protection to these refugees in defiance of federal authorities.<sup>13</sup> In 1989, San Francisco used the term “City of Refuge” to refer to its resolution prohibiting the use of municipal funds to aid immigration enforcement.<sup>14</sup> Many see today's sanctuary cities as a continuation of the same ethos, despite the difference in terminology.<sup>15</sup>

“Sanctuary” has at least two operational conceptions. First, it is still often associated with religious establishments. While many religious sites around the world still provide a form of protection to refugees and migrants, this relationship is conceptually different from that between sanctuary cities and refugees or migrants who reside within them. This conflation has led many to erroneously consider sanctuary cities to be modern jurisdictions that harbor undocumented persons or illegally shield them in violation of





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federal law. However, modern sanctuary jurisdictions, according to one example of city code, do “not interfere in any way with the federal government’s lawful pursuit of its civil immigration activities, and presence in such localities will not immunize anyone to the reach of the federal government.”<sup>16</sup> The second operational conception of sanctuary jurisdictions defines them through a legislative and policy lens, encompassing a set of shared policies that create an administrative and financial distinction between local and federal law enforcement, particularly with regard to the enforcement of immigration policy.

## Do Sanctuary Cities Share Common Policies or Practices?

Although no consensus exists as to the legal definition of a sanctuary city, sanctuary jurisdictions do share some common policies. Generally, sanctuary cities (as well as other sanctuary jurisdictions, such as counties and states) direct their local law enforcement agencies to refrain from actively assisting ICE and other federal agencies with enforcing federal civil immigration law. Many of these localities prefer to refer to themselves as “welcoming cities”—that is, cities that have policies to welcome all individuals and promote the inclusion of residents in local civil society regardless of their immigration status.

Whether they identify as sanctuary jurisdictions or not, localities are identified as such by the federal government if they have in place one or more of the following three policies or practices:

- **A prohibition on the use of local funds and resources to assist ICE in enforcing federal civil immigration law. Local jurisdictions distance themselves from ICE in order to**

**foster trust with immigrant communities and public safety, meaning that local police forces will not deputize their agents to enforce immigration law or fund ICE activities.**

- **A prohibition on city officials requesting or obtaining individuals’ immigration status and citizenship information and sharing this information with federal immigration authorities. This policy responds to undocumented immigrants’ fear that their status will be disclosed and potentially shared with ICE if they access city services or report crimes. Access to city services is not based on citizenship status or documentation, and police will not ask for proof of citizenship or legal residency from those with whom they interact, both those reporting crimes and those arrested for criminal offenses.**
- **A requirement that ICE provide a judicial criminal warrant to hold undocumented persons or take them into federal custody. Several courts have ruled that holding individuals in federal custody without a legal warrant is a violation of their Fourth Amendment rights. To avoid liability for violating individuals’ constitutional rights, jurisdictions require judicial criminal warrants, which are signed by a judge, to hold individuals until they are transferred to ICE custody, rather than ICE’s detainer requests, which are intended for use only if ICE has reason to believe an individual is likely to escape before a warrant can be obtained.** <sup>17 18 19 20 21</sup>

Although it is a common misconception, sanctuary jurisdictions do not prevent ICE from enforcing federal immigration law in their jurisdictions, even if agents are targeting undocumented persons with no criminal records. These jurisdictions may not facilitate

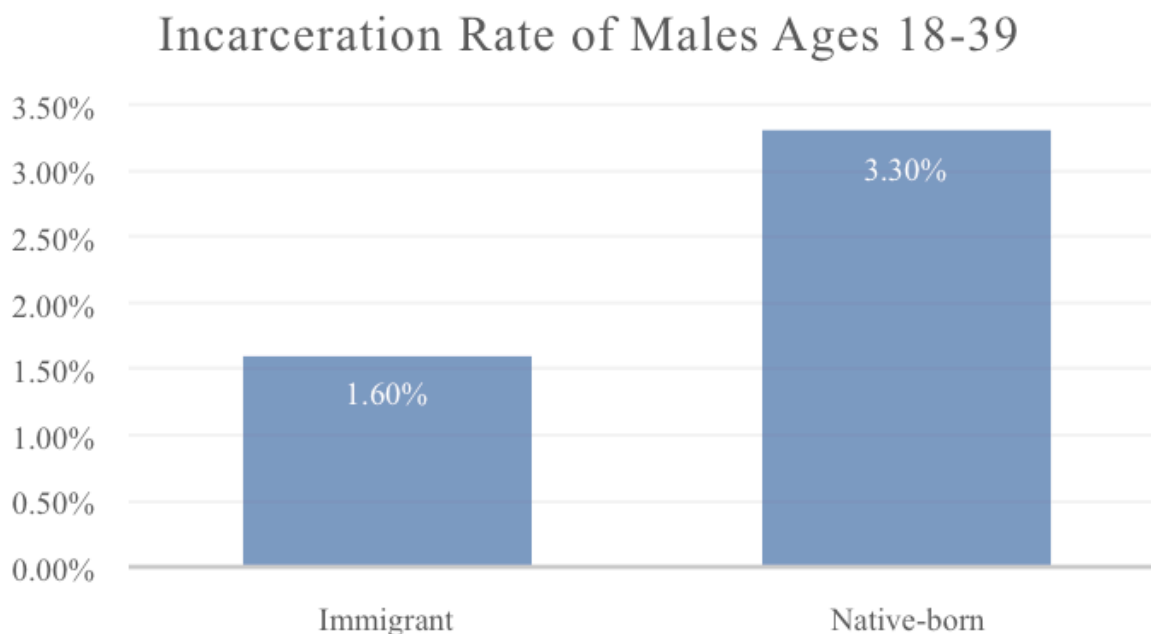


Figure 1: America Immigration Council<sup>56</sup>

the work of ICE, but they do not interfere with or prevent the work of federal authorities. These jurisdictions also continue to work with federal law enforcement in other ways. For example, local authorities share the records of those arrested, hold individuals when presented with a judicial criminal warrant, and often partner with the federal government through joint task forces.

Some local jurisdictions do actively cooperate with the federal government under “287 (g) agreements,” which deputize local agents to perform the functions of federal immigration agents.<sup>22</sup> These localities are also more likely to give ICE agents access to their local prisons and to agree to hold individuals without provision of a judicial criminal warrant.<sup>23</sup> Ultimately, local jurisdictions are responsible for maintaining order and safety in their communities, and various localities have chosen to enforce all, some, or none of the above policies as a result of local circumstances.

## Is There More Crime in Sanctuary Cities?

Critics of sanctuary jurisdictions often allege an increased risk of violent crimes committed by undocumented immigrants. Trump also echoes this rhetoric. In March 2018, he tweeted: “California’s sanctuary policies ... put the safety and security of our entire nation at risk. Thousands of dangerous & violent criminal aliens are released as a result of sanctuary policies, set free to prey on innocent Americans. THIS MUST STOP!” However, as shown below, research on this subject demonstrates such claims are unfounded. Undocumented immigrants are less likely to be convicted of a crime than native-born individuals. Cities with sanctuary policies have lower crime rates than their non-sanctuary counterparts.<sup>24</sup> As displayed in Figure 1 above, 1.6 percent of immigrant men between the ages of 18 and 39 are convicted of crimes and incarcerated in the United States. This is half the rate of U.S.-born individuals in the same demographic.



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There has also been an inverse relationship between crime and immigration to the United States in the past few decades, with an increase in immigration since 1990 paralleled by a decrease in crime over the same period.<sup>25</sup> While this does not prove that immigration has caused a reduction in crime rates, it repudiates Trump's claims and tweets that immigrants have caused an increase in crime in the United States.<sup>26</sup>

Tom K. Wong, an associate professor of political science at the University of California San Diego, researches the effects of sanctuary policies on crime rates. In a report written for the Center for American Progress, he found that on average 35.5 fewer crimes are committed per 10,000 people in sanctuary counties, as compared with non-sanctuary counties of a similar size. Additionally, Wong found that the poverty rate is on average 2.3 percent lower, and unemployment is about 1 percent lower in sanctuary counties.<sup>27</sup>

## Where Does the Sanctuary City Debate Stand Now?

Conflicting court rulings and disputes between local jurisdictions and the federal government are likely to come to a head in the near future. As noted above, a February 2020 appellate court ruling upheld Trump and the DOJ's decision to withhold funds from sanctuary jurisdictions unless they comply with specific conditions that favor ICE. This ruling directly contradicted three other federal appellate court decisions that held that the DOJ could not withhold these funds.<sup>28</sup> Additionally, the Trump administration has asked the U.S. Supreme Court to hear arguments in its lawsuit against the state of California, claiming that the California Values Act of 2017 illegally undermines federal authority by prohibiting state and local police from assisting federal

immigration officials.<sup>29</sup> Though the Supreme Court has not yet heard any case involving sanctuary cities, it may only be a matter of time before the Court decides to step in to resolve conflicting decisions in the lower courts and conclusively define the federal government's authority in this area.

This explainer addresses some of the key questions at the center of the national debate about sanctuary cities and provides reliable facts around the pressing issues that dominate the debate. It demystifies what constitutes a sanctuary city or jurisdiction; highlights the reasons these policies are so contested; debunks the assertion that undocumented immigrants increase crime rates in a community; and explains the effects of ICE's actions and of the different relationships between local and federal law enforcement on communities.

## Learn More About Sanctuary Cities

For more information about the history of sanctuary practices and current debates, check out these resources from experts who attended the Perry World House workshop.

### **"Immigration 101: What is a Sanctuary City?" on the America's Voice blog**

Sanctuary jurisdictions generally operate in accordance with the law. It is illegal for local authorities to hold any individual, regardless of legal status, if that individual has not allegedly committed a crime. Further, many police departments support immigrant-friendly policies, as they foster trust between the police and undocumented immigrants. The Trump administration has tried to work around these issues through court proceedings and executive orders, but it has been mostly



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unsuccessful. [Read more here.](#)

## **Sanctuary Cities: The Politics of Refuge by Loren Collingwood and Benjamin Gonzalez O'Brien (Oxford University Press, 2019)**

Collingwood and O'Brien's book discusses the media framing, public opinion, and policy influences around sanctuary cities. The authors conduct a comprehensive analysis of sanctuary policies and their relationship with crime rates, finding no increase in crime following the adoption of sanctuary policies. [Read a summary here.](#)

## **"Interview with Professor Bill Hing on Threats to Federal Funding for Sanctuary Cities" on the Immigrant Legal Resource Center website<sup>30</sup>**

In an audio interview, Hing discusses the effects of terminating federal funding to sanctuary cities. He addresses the legal challenges, including constitutional limitations that the federal government will face from cutting off funding to sanctuary cities. [Listen here.](#)

## **"Sanctuary Cities, Explained" by Dara Lind in Vox<sup>31</sup>**

Lind discusses how the culture war surrounding the issue of sanctuary jurisdictions has wedged the issue between conservatives and progressives. Using a more aggressive tone than in recent years, the Trump administration has pointed to the deterioration of American values in large cities and the overwhelming crime rates as reasons to override sanctuary cities, while progressives consider diversity and inclusion to be cornerstones of the American identity and are increasingly willing to defend this viewpoint. [Read more here.](#)

## **"Alternative Facts in the War on Immigrants" by Philip L. Torrey in the Harvard Law & Policy Review<sup>32</sup>**

Torrey discusses the "propaganda campaign" used by Trump and Republicans to claim that undocumented immigrants are violent criminals. He summarizes several studies on rates of crime committed by immigrants, demonstrating the inaccuracy of many of the administration's claims. [Read more here.](#)

## **"Sanctuary and the City" by Domenic Vitiello in The Metropole<sup>33</sup>**

Detailing the history of sanctuary cities in the United States before the controversy swirled around them, this piece focuses on the role that Philadelphia has played in the development of these jurisdictions. Vitiello explains the role of Philadelphia's Quaker heritage and active Sanctuary Movement advocates in engaging leaders to protect undocumented immigrants. [Read more here.](#)

## **Welcoming New Americans? Local Government and Immigrant Incorporation by Abigail Fisher Williamson (University of Chicago Press, 2018)<sup>34</sup>**

Williamson examines why and how local governments undertake measures to protect undocumented immigrants in their areas through four case studies of new immigrant destinations, drawing on surveys of current government officials within local municipal governments. Beyond looking at the impact of integration policies on immigrants, her book also addresses how various incorporation practices affect a community's prior residents and government officials. [Read a review here.](#)



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## **“The Effects of Sanctuary Policies on Crime and the Economy” by Tom K. Wong for the Center for American Progress<sup>35</sup>**

Furthering the analysis discussed in this piece, Wong uses an ICE dataset to determine the social and economic trends exhibited by sanctuary counties as compared with their non-sanctuary counterparts. Among other findings, Wong states that “economies are stronger in sanctuary counties—from higher median household income, less poverty, and less reliance on public assistance to higher labor force participation.” [Read more here.](#)

## Endnotes

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30 Bill O. Hing is a professor and the director of the Immigration and Deportation Defense Clinic, as well as Dean's Circle Scholar at the University of San Francisco.

31 Dara Lind is a senior correspondent for Vox, where she has covered immigration for over a decade.

32 Philip L. Torrey is the managing attorney of the Harvard Immigration and Refugee Clinical Program, as well as a lecturer on law at Harvard Law School.

33 Domenic Vitello is an associate professor of city and regional planning at the University of Pennsylvania's Weitzman School of Design. His research focuses on immigration, civil society, and sanctuary.

34 Abigail Fisher Williamson is an associate professor of political science and public policy & law at Trinity College, where she researches immigration policy and urban politics.

35 Tom K. Wong is an associate professor of political science at the University of California San Diego, and the director of their International Migration Studies Program minor. His research focuses on the politics of immigration, citizenship, and migrant "illegality."

36 See Ewing, Martínez, and Rumbaut, 2015.





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