



# **“Sanctuary” Policies in New York State:** *Disentangling Local Law Enforcement from Federal Immigration Enforcement*

## **What is a “sanctuary” jurisdiction?**

“Sanctuary” city or county is not a legal term, nor is it a term with an agreed-upon meaning. The term signals to its audience the idea that the jurisdiction is committed to protecting and supporting its immigrant communities and delivering non-discriminatory services to all of its residents – but far more important are the actual policies and laws in place to ensure that protection and support. Most importantly, any city or county that claims to provide “sanctuary” for immigrants should commit to disentangling the work of local police officers, jails and probation officers from federal immigration enforcement.

The agencies responsible for enforcement of federal immigration law are U.S. Immigration and Customs Enforcement (ICE), which conducts enforcement in the interior, and U.S. Customs and Border Protection (CBP), which conducts enforcement at and near borders and ports of entry. Border Patrol officers work for CBP. ICE and CBP are both agencies in the U.S. Department of Homeland Security.

## **What policies can a city or county adopt to abstain from federal immigration enforcement?**

- Local jails, police officers and probation officers should be prohibited from honoring any ICE detainer or other ICE or CBP request to hold an individual in jail beyond their ordinary release (the moment that person would normally be released upon completion of sentence, or on bail, supervised release, or recognizance), absent a judicial warrant. The New York State Attorney General has affirmed in guidance to all police and sheriff’s departments in the state that “compliance with ICE detainers or requests for immigration holds is *voluntary*—not mandatory.”<sup>1</sup>

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<sup>1</sup>See Office of the Attorney General, “Guidance Concerning Local Authority Participation In Immigration Enforcement And Model Sanctuary Provisions” (Jan. 2017) at 4, available at [https://ag.ny.gov/sites/default/files/guidance.concerning.local\\_authority.participation.in\\_immigration.enforcement.1.19.17.pdf](https://ag.ny.gov/sites/default/files/guidance.concerning.local_authority.participation.in_immigration.enforcement.1.19.17.pdf).

- Local jails, police officers and probation officers should not delay the posting of bail and/or release from custody because of an individual's immigration status or receipt of an ICE detainer or other ICE or CBP request without a judicial warrant.
- Local jails, police officers and probation officers should be prohibited from expending resources and personnel time for purposes of assisting federal immigration enforcement, including by sharing information regarding a person's custodial status, release date or address, absent a judicial warrant.
- Local police and sheriff's departments should commit to decline any request from DHS to enter into a 287(g) agreement. The 287(g) program deputizes local law enforcement officers to act as federal immigration agents within their local jurisdictions. Currently, there are no 287(g) agreements in New York State.
- Local jails should commit to decline to provide land, office space or office equipment to ICE, and should not permit ICE or CBP to access anyone in jail custody absent a judicial warrant.
- Local police and sheriff's departments and probation offices should clarify to their officers that they should not investigate violations of federal immigration law.
- Local government resources should not be used to create or assist in the creation of any federal registry based on race, gender, sexual orientation, gender identity or expression, religion, ethnicity or national origin.
- All local government employees, including local law enforcement officers, should be prohibited from inquiring into a person's immigration status unless required by law – for example, for purposes of establishing eligibility for a public benefit for which verification of citizenship or satisfactory immigration status is required.
- All local government employees, including local law enforcement officers, should be prohibited from contacting ICE or CBP for interpretation assistance. Instead, interpretation services for use by local government employees, including local law enforcement, should be funded to facilitate communication with limited English proficient individuals.

The New York State Attorney General's 2017 "Guidance Concerning Local Authority Participation in Immigration Enforcement and Model Sanctuary Provisions" contains model language for local cities and counties seeking to adopt many of these recommendations. The New York Civil Liberties Union urges all jurisdictions in New York State to adopt "sanctuary" policies and is available to provide assistance in this process.

## Why do these proposals make good policy sense?

*Local law enforcement involvement in federal immigration enforcement harms public safety.*

- The Major Cities Chiefs Association,<sup>2</sup> the Presidential Task Force on 21<sup>st</sup> Century Policing,<sup>3</sup> the New York State Sheriffs' Association,<sup>4</sup> the New York State Police<sup>5</sup> and the New York State Attorney General<sup>6</sup> have all adopted positions or policies opposing such entanglement on the grounds that it harms public safety.
- Police know from experience that trust between immigrant communities and police is undermined when police are believed to be working with federal immigration officials. Immigrant witnesses and victims are less likely to report crimes and helpful intelligence, whether or not they themselves have legal status, for fear that they or their family members will be questioned or even detained.
- Federal immigration law is among the most complex bodies of law in the United States. The training that would be required for local law enforcement officers to understand it would be extremely costly and take time from the work of keeping their communities safe.

*Local law enforcement involvement in federal immigration enforcement can expose local police or sheriff's departments to civil liability, and ultimately create massive costs to taxpayers.*

- Numerous federal courts have found state and local governments may be liable for honoring ICE detainees.<sup>7</sup>
- ICE has erroneously issued hundreds of detainers that have led to the unlawful detention of non-deportable immigrants and U.S. citizens.<sup>8</sup>
- Federal immigration enforcement actions are sometimes accompanied by racial profiling or Fourth Amendment violations that violate people's rights and can expose law enforcement to costly litigation.

*Local law enforcement agencies have no legal obligation to assist in immigration enforcement.*

- The New York State Attorney General has analyzed the U.S. and New York constitutions and other applicable law and concluded that policies limiting or

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<sup>2</sup> See Major Cities Chiefs Association, "Immigration Policy" (2013), available at [https://www.majorcitieschiefs.com/pdf/news/2013\\_immigration\\_policy.pdf](https://www.majorcitieschiefs.com/pdf/news/2013_immigration_policy.pdf).

<sup>3</sup> See President's Task Force on 21st Century Policing, "Final Report of the President's Task Force on 21st Century Policing" (May 2015) at 18 (Action Item 1.9.1), available at [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>4</sup> On file with the NYCLU.

<sup>5</sup> See State Police Executive Memo #14-48, issued December 30, 2014, on file with the NYCLU. The State Park Police has adopted a substantially equivalent policy.

<sup>6</sup> See, *supra*, n. 1.

<sup>7</sup> See, e.g., *Orellana v. Nobles Cty.*, 2017 WL 72397 (D. Minn. Jan. 6, 2017); *Morales v. Chadbourne*, 793 F.3d 208, 211 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cty.*, 2014 WL 1414305 (D. Or. Apr. 11, 2014).

<sup>8</sup> See Transactional Records Access Clearinghouse, "ICE Detainers Placed on U.S. Citizens and Legal Permanent Residents" (Feb. 2013), available at <http://trac.syr.edu/immigration/reports/311/>

prohibiting local law enforcement entanglement with federal immigration enforcement are legal.<sup>9</sup>

**Can the federal government cut off funding to cities or counties that adopt these policies?**

- The executive branch cannot unilaterally cut all federal funding to local jurisdictions.
- Congressional action is required to change conditions on certain federal grants.
- There are legal limits to the types of requirements that can be attached to any particular federal grants program. For example, funding conditions must be germane to the purpose of the federal spending and must not be “so coercive as to pass the point at which pressure turns into compulsion.”<sup>10</sup>

For more information, please contact Ruthie Epstein, deputy advocacy director, New York Civil Liberties Union, at [repstein@nyclu.org](mailto:repstein@nyclu.org), or your local NYCLU office.

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<sup>9</sup> See, *supra*, n. 1.

<sup>10</sup> *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2604 (2012).