

# Sanctuary Jurisdictions: Congressional Action and President Trump's Interior Enforcement Executive Order

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President Trump's executive order (EO) "[Enhancing Public Safety in the Interior of the United States](#)" issued on January 25, 2017, seeks, among other things, to penalize "[sanctuary jurisdictions](#)." The latter is an informal term referring to states and localities that [limit their cooperation with federal agencies on immigration law enforcement](#). In the immigration context, the EO may raise [legal questions](#) about the extent to which states and localities must comply with federal immigration law enforcement efforts and the potential consequences for not cooperating with these efforts.

## What Are Sanctuary Jurisdictions?

Sanctuary jurisdictions, which are not officially defined, are states and localities with policies that typically involve the following:

- noncompliance with [requests to detain foreign nationals](#) (aliens) temporarily pending transfer of custody from the jurisdiction to the Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE), or with requests to notify ICE of a foreign national's impending release from incarceration;
- restricting information sharing about foreign nationals between local law enforcement agencies and ICE; and/or
- restricting the use of local resources for federal immigration enforcement activities.

## How Many Sanctuary Jurisdictions Are There?

Although there is no official count of sanctuary jurisdictions, [the Immigrant Legal Resource Center](#) (ILRC) reports that at least five states (California, Connecticut, Oregon, Rhode Island, and Vermont); dozens of cities, including Chicago, New York, Los Angeles, New Orleans, and Washington, DC; and hundreds of counties limit their assistance to federal immigration law enforcement agencies. It is difficult to track the exact number or current policies of sanctuary jurisdictions at any given point, because jurisdictions may periodically change their policies regarding their level of cooperation with ICE.

## Why Have Sanctuary Jurisdictions Emerged?

Some jurisdictions have adopted sanctuary policies because they object to ICE's removal of aliens who, apart from having entered or remained in the United States in violation of federal immigration law, have [relatively minor or no criminal records](#).

Other jurisdictions have done so because of [concerns about potential legal liability](#) for violating aliens' constitutional rights if the jurisdiction were to detain an alien after the alien would otherwise be released for the state or local offenses. Still others, desiring to focus on their own law enforcement duties, have objected to [devoting local resources for immigration law enforcement](#), something generally viewed as a federal responsibility.

Critics of sanctuary jurisdictions contend that they impede the work of federal immigration officers in ways that could result in serious crimes committed by aliens who could have been removed. Others contend that sanctuary jurisdictions encourage aliens to enter or remain in the United States in violation of federal immigration law by protecting those doing so from immigration law enforcement.

## Legislation in the 114<sup>th</sup> Congress

Several legislative proposals introduced in the 114<sup>th</sup> Congress sought to restrict federal funding to sanctuary jurisdictions. For example, [H.R. 3009](#) would have penalized jurisdictions that violated [8 U.S.C. §1373](#) (which bars restricting information sharing on an individual's citizenship or immigration status with federal agencies) by withholding funding for two Department of Justice grant programs: the [Community-Oriented Policing Services Program](#) and the [Edward Byrne Memorial Justice Assistance Grant Program](#). Similarly, [H.R. 3128](#) would have withheld [Federal Emergency Management Agency](#) funding from non-compliant jurisdictions.

Other legislation, such as [S. 2146](#), would have, in addition to penalizing sanctuary jurisdictions, deemed jurisdictions that comply with immigration detainers to be acting as agents of DHS and made provisions to limit their liability for compliance with such detainers.

## Current Legislative Efforts

Legislation on sanctuary jurisdictions introduced in the 115<sup>th</sup> Congress is similar to that of the 114<sup>th</sup> Congress. [H.R. 83](#) seeks to withhold all federal assistance (as defined in [31 U.S.C. §7501\(a\)\(5\)](#)) from jurisdictions that violate 8 U.S.C. §1373. Similarly, [H.R. 400](#) seeks to withhold several economic development grant funds from jurisdictions that either violate 8 U.S.C. §1373 or do not comply with ICE detention requests or requests for notification. In contrast, [H.R. 748](#) would *prohibit* the withholding of federal funding for jurisdictions that do not comply with such requests.

## Questions on the Interpretation of the EO

President Trump's EO calls for the Attorney General and DHS Secretary to take steps to withhold funding from jurisdictions that willfully refuse to comply with 8 U.S.C. §1373; allows DHS to designate jurisdictions as sanctuaries; and directs the Attorney General to take "appropriate enforcement action" against a jurisdiction that violates 8 U.S.C. §1373 or otherwise prevents or hinders federal immigration enforcement.

The broad language of the EO has raised questions that may make it difficult to assess the EO's potential effects on particular jurisdictions. For example, Section 9(a) explicitly defines sanctuary jurisdictions as entities that "willfully refuse to comply with 8 U.S.C. §1373." However, some jurisdictions that ILRC currently classifies as sanctuary jurisdictions could be seen to comply with 8 U.S.C. §1373. Instead, they have been so classified because they have declined to honor at least some immigration detainers. [Courts have ruled](#) that states and localities are not required to honor immigration detainers. In addition to defining sanctuary jurisdictions as noncompliant with 8 U.S.C. §1373, the EO also grants DHS the authority to designate *any* jurisdiction as a sanctuary jurisdiction.

Questions may also arise over the EO's penalties for sanctuary jurisdictions. The EO states that sanctuary jurisdictions are not eligible to receive federal grants, but it does not specify to which grants this ban applies. Section 9(a) also

penalizes "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*." The section also states that the Attorney General shall take "appropriate enforcement action" against sanctuary jurisdictions, without further specifying the meaning of "appropriate" or "enforcement action."

Section 9(a) includes the caveat "to the extent consistent with law." It is unclear the degree to which this reference might limit the application of funding restrictions in particular contexts.