

An Initiative of the [Center for Law and Social Responsibility's](#)
Human Rights and Immigration Law Project

Sanctuary City Initiative:¹ Summary of Arguments in Favor

The aim of this summary is to inform and support local communities, cities, counties and states as they consider how best to protect all of the residents within their communities, regardless of immigration status.

I. Overview

The term “sanctuary” is often used to refer to a constellation of protective measures that local governments may undertake. The term “sanctuary city” is not defined by statute, nor does it have any technical or legal significance,² rather the term is commonly used to define localities that have limited their involvement with federal immigration enforcement, in a variety of possible ways.³ While reasons may vary, localities typically justify these policies by asserting: 1) a primary objective of protecting the health, safety, and welfare of all residents within their communities, regardless of immigration status, 2) concern that without these policies, residents may be less willing to interact with local government officials, potentially undermining law enforcement’s ability to access crime victims and witnesses, endangering public health, and undermining the goals inherent in having an educated populace, and 3) they have the right to set their own priorities and make their own decisions about allocation of resources, without federal interference.

¹ This summary was written by Professor Dina Francesca Haynes, Director of the Human Rights and Immigration Law Project, with the help of Raquel Muscioni and Michael Fulton. It draws, in part, from a White Paper, authored by law professors specializing in immigration, criminal law, and constitutional law: Annie Lai, Christopher Lasch, Ingrid Eagly, Juliet Stumpf, Linus Chan, Elizabeth McCormick, Dina Francesca Haynes, and Virgil Wiebe. Excellent further resources on this issue include: National Immigrant Justice Center, National Immigration Law Center, National Day Laborer organization, and Asian Americans Advancing Justice.

² Recently, several media outlets have explored what might constitute a “sanctuary city.” These reports have issued in reaction to triggering events, such as political threats or a high -profile crime. Michael Pearson, *What’s a ‘sanctuary city,’ and why should you care?*, CNN (July 8, 2015), <http://www.cnn.com/2015/07/06/us/san-francisco-killing-sanctuary-cities/>. Similarly, the *Washington Post* ran a “fact-checker” piece after Donald Trump during the campaign threatened to withdraw funding for “sanctuary cities.” Michael Ye Hee Lee, *What exactly are ‘sanctuary cities’ in immigration policy?*, THE WASHINGTON POST (Sep. 7, 2016), <https://www.washingtonpost.com/news/fact-checker/wp/2016/09/07/what-exactly-are-sanctuary-cities-in-immigration-policy/>.

³ This variety and disparity makes it challenging to count and identify sanctuary jurisdictions: “[t]he difficulty in estimating the precise number of jurisdictions stems, at least in part, from conflicting interpretations as to what constitutes a sanctuary policy.” Michael Garcia, *“Sanctuary Cities”: Legal Issues*, CONGR. RES. SERVICE (July 15, 2009), <https://www.ilw.com/immigrationdaily/news/2011,0106-crs.pdf>. However imprecise the definition, the Trump administration has pledged to undertake the effort of identifying such jurisdictions. Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

II. Benefits of supporting immigrants and adopting sanctuary policies

There are many economic, legal and moral reasons that affect a community's decision to support and show respect for immigrants and mixed status families, by limiting their cooperation with the federal authorities or otherwise adopting legislation, ordinances, or policies to become a "sanctuary," "welcoming," or "human rights" city. Many, even possibly most, immigrants live in "mixed status" families, meaning that within one family, some may be citizens or lawful permanent residents, while others have DACA, are out of status, or never had status.⁴ Policies that affect any one member of the family have an impact on the entire family and all of its members, and these impacts ripple out into the larger community.

A. Economic

- a. Social Security: "Earnings by unauthorized immigrants result in a net positive effect on financial status generally, and that this effect contributed roughly \$12 billion to the cash flow of the program" for the year 2010 alone,⁵ because undocumented people pay into this system, but cannot benefit from it.
- b. Taxes: Undocumented persons are estimated to contribute \$11.64 billion in state and local taxes each year.⁶
 - Billions of dollars in tax revenues are estimated to have been generated from President Obama's deferred action programs.
 - In California alone, the economic benefits of tax revenue from residents with DACA are estimated at \$904 million.⁷
- c. Housing Market: The presence of immigrants in the US is estimated to have contributed a total of "\$3.7 trillion in housing wealth."⁸
 - Immigrant families contributed an estimated \$10,000 to the value of the typical homes in Arizona and New Mexico (states hit hardest by the recession of 2008).⁹
- d. Medicare: Undocumented immigrants contributed approximately \$35.1 billion dollars to the Medicare Trust Fund alone between 2000 and 2009.¹⁰

⁴ Hansi Lo Wang, Alyson Hurt, Camila Domanoske, NPR, Mar. 8, 2017, (citing Pew Research Center asserting that 2/3 of undocumented people have been in the US for 10 years or longer, and Migration Policy Institute for the statistics that 1/3 of undocumented persons above the age of 15 have US citizen children, while 14% have a US citizen or green card holder spouse), <http://www.npr.org/sections/thetwo-way/2017/03/08/517561046/how-americas-idea-of-illegal-immigration-doesnt-always-match-reality>

⁵ Stephen Goss et al, Actuarial Note, *Effects of Unauthorized Immigration on the Actuarial Status of the Social Security Trust Funds* (April 2013), https://www.ssa.gov/oact/NOTES/pdf_notes/note151.pdf, (emphasis added). For example, in 2013 "[t]he Congressional Budget Office estimated federal costs of over \$20 billion in four years for H.R. 2278, the Strengthen and Fortify Enforcement Act, which would enhance state and local immigration law enforcement roles." *Legislative Threats to Undermine Community Safety Policies: The Costs of Entangling Local Policing and Immigration Law*, National Immigrant Justice Center and National Immigration Law Center (Oct. 2015), http://www.immigrantjustice.org/sites/immigrantjustice.org/files/NILC_NIJC_CommunitySafetyFactSheet_201510.pdf [hereinafter *Legislative Threats*].

⁶ Niall McCarthy, *How Much Tax Do America's Undocumented Immigrants Actually Pay?* FORBES (Oct. 6, 2016).

⁷ See *Topline Fiscal Impact of Executive Action Numbers for 31 States*, CENTER FOR AM. PROGRESS, <http://www.scribd.com/doc/248189539/topline-fiscal-impact-of-executive-action-numbers-for-31-states>.

⁸ McCarthy, *supra* note 6.

⁹ See e.g., *The Economic Benefits of Fixing Our Broken Immigration System*, The White House, President Obama (July 10, 2013, 1:20PM) <https://obamawhitehouse.archives.gov/blog/2013/07/10/economic-benefits-fixing-our-broken-immigration-system>.

¹⁰ Esther Yu Hsi Lee, *No, Undocumented Immigrants Aren't A Burden On The Health Care System*, THINK PROGRESS (June 24, 2015),

<https://thinkprogress.org/no-undocumented-immigrants-arent-a-burden-on-the-health-care-system-39560e0bcdf7#.n>

B. *Social and Moral*

- a. Education: Immigrant students who feel safe at school, increasing the likelihood that they will attend regularly, matriculate through secondary school, and graduate with a high school diploma or certificate of completion and become productive members of society – ultimately fulfilling *Plyler's* legacy.¹¹
 - When parents or students are detained at school, waiting for school buses, or while dropping off or picking up their children from school, communities report an immediate reduction in school attendance.¹²
 - The holding in *Plyler v. Doe*,¹³ followed up with a letter from the Department of Education,¹⁴ requires that employees of public school systems not reveal (or ask) the status of their students.
 - The rationale, set forth in *Plyler*, is that all of society benefits when all of its children are educated, and all of society suffers when some of its children are not.
- b. Public Health: Healthy Communities: Widespread fear of seeking medical attention is widely understood as a public health concern for the entire community. Accordingly, some cities have promulgated further guidance on this particular issue.

C. *Law Enforcement*: Noncitizens and individuals in mixed status families are deterred from interacting with police if they know that law enforcement may inquire about immigration status.

- Reduced reporting of crime negatively impacts communities, requiring local police to work harder to solve and deter crime and keep residents safe.
- A hostile immigration policy deprives individuals of the right to equal protection in access to police services on the basis of national origin and generally cities believe that abiding by the Constitution is their priority.¹⁵
- Holding non-citizens on ICE detainers results in law suits against police, costing local cities.¹⁶ The federal government's efforts have serious economic consequences for local communities—including settlements for unlawful detainers, loss of revenue and tax

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¹¹ Sonali Kohli, *ICE agents won't be going onto Los Angeles public school campuses*, L.A. TIMES (Feb. 9, 2016), <http://www.latimes.com/local/education/lausd/la-me-edu-ice-agents-school-campuses-20160209-story.html>; *Durham School Board Passes Resolution to Oppose Student Immigration Raids*, WRAL (Feb. 11, 2016), <http://www.wral.com/durham-school-board-passes-resolution-to-oppose-student-immigration-raids/15353656/>.

¹² Melinda D. Anderson, *How Fears of Deportation Harms Kids' Education*, THE ATLANTIC (Jan. 26, 2016), <http://www.theatlantic.com/education/archive/2016/01/the-educational-and-emotional-toll-of-deportation/426987/>.

¹³ *Plyler v. Doe*, 457 U.S. 202, 216–18 (1982).

¹⁴ Letter from the U.S. Department of Education & the U.S. Department of Justice, Civil Rights Division, Dear Colleague Letter: School Enrollment Procedures (May 8, 2014), http://images.politico.com/global/2014/05/08/plyler_dcl_-_05-05-14.html (discussing undocumented immigrants shall not be denied education); see also *Reporting Requirements: Who Has a Duty to Report Undocumented Immigrants? Fact Sheet*, <http://scjustice.org/wp-content/uploads/2012/07/reporting-requirements-factsheet-2012.pdf> (“School employees, like teachers and principals, have no duty to report undocumented students or their parents.”).

¹⁵ See Letter from Thomas E. Perez, Assistant Attorney Gen., U.S. Dept. of Justice, to Joseph Maturo, Jr., Mayor, Town of East Haven 8–10 (Dec. 19, 2011), <https://www.justice.gov/opa/pr/justice-department-enters-settlement-agreement-reform-east-haven-conn-police-department> (describing police department's practice of patrolling locations where Latinos congregated and following vehicles with a Latino driver in an attempt to enforce immigration laws).

¹⁶ See e.g., *Miranda-Olivares v. Clackamas County*, 2014 WL 1414305 (U.S. D.C. D. Ore. 2014); *Cruz v. Multnomah County*, 381 P.3d 856 (2016); *Onadia v. City of New York*, 44 N.Y.S.3d 882 (2017); *Mercado v. Dallas County, Texas*, 2017 WL 169102 (2017) (discussing claims made by individuals seeking relief for municipalities' violation of the Fourth Amendment for detaining the individuals after their criminal sentence).

- dollars, the cost of enforcement, and costs of litigation.¹⁷
- Law enforcement that abides by sanctuary policies generally see a reduction in claims of racial profiling and lawsuits on that basis.¹⁸

III. General Impact of Anti-Immigrant Policies and Practices

Some sub-federal units have been determined to adopt anti-immigrant policies, including but not limited to 287(g) cooperation in which local law enforcement are deputized for use as “force multipliers” for the federal government. Although these jurisdictions often cite immigrant driven crime as their primary justification, there is no evidence to support this belief.¹⁹ Anti-immigrant policies and practices have yielded negative consequences within many communities.

A. Economics

- Localities have experienced significant economic losses after enacting anti-immigrant ordinances, such as Hazelton, Pennsylvania; Farmers Branch, Texas; and Escondido, California.²⁰
 - Immigration detention and removal programs are costly to administer, have a tremendous social and economic cost, and those costs are felt most keenly at the local level.²¹
 - Federal detention programs are expensive.²² As a consequence, the federal government has attempted to shift costs by co-opting local and state level authorities to assist it with achieving its deportation goals.

B. Social and Moral

a. Education

- The fear of deportation can cause undocumented parents to keep their children home from school, resulting in years of lost education.²³ As articulated in *Plyler v Doe*, education failures in one part of the community negatively affect the entire

¹⁷ See, e.g., *Legislative Threats*, *supra* note 4 (discussing Harris County, Texas spent over \$45 million to detain immigrants for ICE during 2012 and 2013 and that Colorado spent \$13 million per year to enforce federal immigration laws).

¹⁸ Wayne A. Cornelius, et al., *Giving sanctuary to undocumented immigrants doesn't threaten public safety—it increases it*, L.A. TIMES (Feb. 2, 2017, 4:00PM), <http://www.latimes.com/opinion/op-ed/la-oe-sanctuary-cities-trump-20170202-story.html> (discussing evidence that “Secure Communities” encouraged racial profiling).

¹⁹ Mona Chalabi, *Fact-checking Trump: how often do immigrants in the US commit crimes?* The Guardian, Mar. 3, 2017, <https://www.theguardian.com/us-news/2017/mar/03/immigration-crime-donald-trump-fact-check>, reviewing and endorsing empirical evidence that first immigrants commit considerably less crime than citizens.

²⁰ Philip E. Wolgin & Angela Maria Kelley, *Your State Can't Afford It, The Fiscal Impact of States' Anti-Immigrant Legislation*, CENTER FOR AM. PROGRESS, (July 5, 2011), <https://www.americanprogress.org/issues/immigration/reports/2011/07/05/9952/your-state-cant-afford-it>.

²¹ Goss et al., *supra* note 4.

²² Judith A. Greene, *The Cost of Responding to Immigration Detainers in California Justice Strategy* (Aug. 22, 2012), <http://www.justicestrategies.org/sites/default/files/publications/Justice%20Strategies%20LA%20CA%20Detainer%20Cost%20Report.pdf>.

²³ For example, in 2011, Alabama enacted the Beason-Hammon Alabama Taxpayer and Citizen Protection Act. The Monday after the Act went into effect, 2,200 of the state's 34,000 Hispanic students – or 6.5% – were absent from school. Paul Easton, *School Attrition Through Enforcement: Title VI Disparate Impact and Verification of Student Immigration Status*, 51 B.C. L. REV. 313, 316, 321 (2013) (citing Jaclyn Zubrzycki, *Immigration Statute has Alabama Schools in Legal Balancing Act*, EDUC. WEEK, at 16, (2011), WLNR 21906125). In the first week of its implementation, Alabama school personnel observed a “sudden exodus” of Hispanic students from public schools. Specifically, this includes the absence or withdrawal of 200 Hispanic students in Montgomery County; 200 in Huntsville; 107 in Albertville; and approximately 20 students in Shelby Mark Guarino, *Hispanics Leave School in Face of Alabama's Tough Immigration Law*, CHRIS. SCI. MONITOR (Oct. 1, 2011), <http://www.csmonitor.com/USA/2011/1001/Hispanics-leave-school-in-face-of-Alabama-s-tough-immigration-law>.

country.²⁴

- An unexpected side effect can be the loss of income within the community, as parents remained home with children who were afraid to attend school.²⁵

b. Public Health: When the immigrant community is fearful of interacting with government officials, medical providers see an immediate drop off in health care appointments across the Latino population, as mixed status families are fearful for their undocumented relatives and refrain from all but emergency interaction.

- Even *perceived* discrimination by health care providers is associated with several negative health outcomes in minority patients, regardless of immigration status—including delays in seeking treatment, a lower rate of following doctors' treatment instructions, and lower rates of patients returning for follow up appointment.²⁶
- Putting off preventative care increases the burden on emergency care facilities and increases hospitalizations. A recent study found that if the number of preventable hospitalizations among Latinos (both citizen and non-citizen) were brought down to the rates of non-Latino Whites, the United States could save approximately \$900 million in hospitalization costs.²⁷

IV. Legal and Constitutional Concerns with Anti-Immigrant Policies and Practices

A. Legal Concerns

a. Threat of Withdrawal of Funds

- President Donald Trump has stated he would seek to pull all federal funding from “sanctuary” cities.²⁸ The Executive Order (EO) relies on Title 8, Section 1373 of the United States Code (“Section 1373”), which provides that local governments may not prohibit or restrict any government entity or official from “sending to, or receiving from, [federal immigration officials] information regarding the citizenship or immigration status . . . of any individual.”
- Several lawsuits have been filed in response to the executive order: *San Francisco v. Trump*,²⁹ *City of Chelsea, City of Lawrence v. Donald J. Trump* (jointly),³⁰ and *County of Santa Clara v. Trump*³¹

b. The lawsuits argue that Executive Order No. 13768 is unconstitutional

i. It is unconstitutional on its face

1. It exceeds Executive authority in using spending power threats, a power held by the Legislative branch under Art. I,³² and

²⁴ Plyler v. Doe, 457 U.S. 202, 216–18 (1982).

²⁵ Jay Reeves, *Alabama Hispanics Halt to Protest Tough, New Immigration Law*, NBC News, http://www.nbcnews.com/id/44879612/ns/us_news-life/t/alabama-hispanics-halt-work-protest-tough-new-immigration-law/#.WDC9-zY0now (last updated Oct. 12, 2011).

²⁶ Williams DR & Mohammed SA, *Discrimination and Racial Disparities in Health: Evidence and Needed Research*. J. BEHAV. MED. Feb; 32(1):20-47 (2009).

²⁷ Thomas R. Frieden, MD, MPH, *CDC Health Disparities and Inequalities Report*, CDC (2013), <https://www.cdc.gov/mmwr/pdf/other/su6203.pdf>.

²⁸ Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

²⁹ See generally Complaint, City and County of San Francisco v. Donald J. Trump, No. 00485 (N.D. Cal. filed Jan. 1, 2017).

³⁰ See generally Complaint, City of Chelsea, City of Lawrence v. Donald J. Trump, No. 1:17-cv-10214 (D. Mass. filed Feb. 8, 2017).

³¹ See generally Complaint, City of Santa Clara v. Donald J. Trump, No. 5:17-cv-00574 (N.D. Cal. filed Feb. 3, 2017).

³² *Youngstown Sheet & Tube Co. v Sawyer*, 343 US 579 (1952)

2. It is overbroad, vague and ambiguous.³³
- ii. It violates principles of federalism
 1. In threatening to withhold all funds, it overreaches, violating the 10th amendment by commandeering local authorities, and forces them to reallocate their budgets and resources while guessing about how to do that.³⁴
 2. It is unconstitutionally coercive in threatening federal funds in a manner inconsistent with the tests and parameters set out by the Supreme Court.³⁵
 3. It asks localities to honor detainers in such a way that violates the 4th amendment.³⁶
 4. It attempts to alter the conditions so drastically that it “puts a gun to the head” of localities, in violation of Supreme Court guidance.³⁷
- iii. Jurisdictions have also responded by instituting “don’t ask” policies, in which employees are restricted from inquiring into immigration status. If the information is not obtained, the entity cannot be deemed to have violated § 1373.
- c. Health Insurance Portability and Accountability Act (HIPAA)
 - A major consideration for undocumented immigrants and people in mixed status families is whether their undocumented status will be revealed when they seek health care. Under the Health Insurance Portability and Accountability Act (commonly known as “HIPAA”), all information provided by a patient for the purposes of obtaining health care is protected.³⁸
 - Federal anti-sanctuary measures, including §1373 do not repeal or override the privacy protections of federal statutes, including HIPAA.³⁹

B. *Additional Constitutional Concerns*

- a. A number of federal courts have held that detainer-based detention by local law enforcement agencies violates the Fourth Amendment.
- b. Tenth Amendment:
 - The federal government may create laws directly regulating immigration, but it cannot carry out that regulatory program by conscripting state and local government officials, especially where doing so overrides validly enacted local policy designed to protect the public health, safety or welfare of local residents.⁴⁰
 - The federal government currently does not compensate state and local officials for resources they expend to detain individuals solely for immigration enforcement purposes. Requiring state and local officials to become “force multipliers” and comply with such federal requests would improperly compel

³³ NFIB v Sebelius, 132 S. Ct. 2566 (2012).

³⁴ NFIB v Sebelius, 132 S. Ct. 2566 (2012).

³⁵ S. Dakota v Dole, 483 U.S. 203 (1987)

³⁶ Morales v Chadbourne 793 F.3d 208 (1st Cir. 2015)

³⁷ NFIB v Sebelius, 132 S. Ct. 2566 (2012)

³⁸ Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936, 45 CFR §§ 160, 164 (2016). However, HIPPA § 164.512(j) permits disclosures of protected health information to law enforcement in limited situations, in order to avert a serious threat to health or safety.

³⁹ Elizabeth M. McCormick, *Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and A Poor Substitute for Real Reform*, 20 LEWIS & CLARK L. REV. 165 (2016)

⁴⁰ See Bond v. United States, 134 S. Ct. 2077, 2086 (2014) (describing “broad authority to enact legislation for the public good” retained by states); see also Kelley v. Johnson, 425 U.S. 238, 247, 96 S. Ct. 1440, 1445, 47 L. Ed. 2d 708 (1976) (“The promotion of safety of persons and property is unquestionably at the core of the State’s police power”).

states to “absorb the financial burden” of implementing a federal program.⁴¹

c. Fourteenth Amendment:

- Congress may not use its spending power coercively, impose new conditions without notice, nor induce state and local government action that is itself unconstitutional.⁴² Any attempt by federal officials to induce them to violate the Constitution would be an “illegitimate exercise of the Congress’ . . . power”).⁴³
- With regard to K-12 public schools, attempts to collect information about undocumented students can serve to discourage enrollment and therefore violate the equal protection mandates of *Plyler v. Doe* and Title VI.

V. Conclusion

The foregoing establishes that any threatened risks that might be associated with becoming a “sanctuary city,” or of declaring one’s locality a “safe space” are outweighed by the social, economic and moral benefits that emanate from such a self-designation. Immigrant-inclusive policies are on strong federal constitutional footing and, within the federalist scheme, plainly a power that the states and their political subdivisions may exercise without interference of the federal immigration authorities.

Immigrant-inclusive policies recognize and appreciate each resident who lives in the jurisdiction and calls that place home. This vision of the city or state as inclusive of each person into the civic community stabilizes families, encourages healthy economic activity, and promotes strong democratic public institutions. When an individual calls the community home, and commits to contribute the best he or she can to the best interests of that community, the city or state reciprocates by extending its protection, and in turn benefits from the residents’ commitment to the community.

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⁴¹ *Galarza v. Szalczyk*, 745 F.3d 634, 644 (3d Cir. 2014) (quoting *Printz v. U.S.*, 521 U.S. 898, 930 (1997)).

⁴² *South Dakota v. Dole*, 483 U.S. 203, 210 (1987) (describing four federalism-based limits on the use of Congress’ conditional spending power).

⁴³ *Id.* at 210–11.