

EXPANDING SANCTUARY

WHAT MAKES
A CITY A
SANCTUARY
NOW?



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EXPANDING SANCTUARY

WHAT MAKES A SANCTUARY CITY NOW?

Under a “law and order” Trump administration, cities must address the criminalization of Black people, transgender women, and other people of color as a part of the minimum standard in defining a city as a ‘sanctuary’ today.

INTRODUCTION

The term “sanctuary” most recently refers to local policies that limit when and if local law enforcement communicates with, or submits to, (often unconstitutional) requests from federal immigration agents. But in a country where over-policing results in 1 in 3 people being arrested at least once by the age of 23, during a time when evolving technology places fingerprint scanners in the palm of every law enforcement officers’ hand, and as we anticipate the growth in federal agents active in our cities, sanctuary in practice, and as a movement, must evolve.¹

Limiting whether police actively investigate someone’s immigration status, or if immigration authorities have access to jails to do the same, represents the minimum today; not the standard. In addition to local governments finding real ways to limit the federal reach into immigrants’ homes, and putting effective resources into defending and protecting immigrant communities, sanctuary under President Trump requires cities to dismantle the current policing apparatus that acts as a funnel to mass incarceration and the deportation machine.

¹ Maia Szalavitz, Study:1-in-3 American Youth Are Arrested By Age 23, Dec. 19, 2011, available at: <http://healthland.time.com/2011/12/19/study-1-in-3-american-youth-are-arrested-by-age-23/>.

A HISTORY OF SANCTUARY

Sanctuary as related to protecting immigrants came about in the 1980s, referring to churches that declared the need and will to protect Central American immigrants fleeing violence and war in their home countries. The threat was that immigrants faced the threat of deportation upon arrival in the US. At its height, some 500 religious institutions effectively shielded Central American immigrants and their families from being deported by providing shelter and legal resources.²

In the mid 1980s, cities such as Takoma Park, MD, Washington D.C, Cambridge, MA, and Chicago, IL, declared themselves 'sanctuary cities' inspired by the faith-based movements.³ The policies focused on guaranteeing city services to immigrants regardless of citizenship as well as the separation between local law enforcement and immigration enforcement.

The 1980's fight for sanctuary city policies was framed as both a local challenge to what was viewed as immoral federal policy, as well as increasing safety by improving relationships between immigrant communities and local law-enforcement. It was successful in bringing on board thousands of law-enforcement agents who declared themselves to be against being used as immigration enforcement agents.⁴

In the 1990s and early 2000s, local police departments continued to support sanctuary city policies by calling it "good government" Those efforts reignited during the Obama Presidency. Between 2011 and 2014,⁵ in response to local law enforcement unconstitutionally holding people at federal agents' requests, hundreds of local jurisdictions approved policies that limited their collaboration with immigration enforcement and reduced or eliminated the use of immigration detainers.⁶

² Sanctuary Movement, Revolvy.com, available at, https://www.revolvy.com/main/index.php?s=Sanctuary%20movement&item_type=topic.

³ The Original List of Sanctuary Cities, Ohio Jobs with Justice PAC, updated Jan. 18, 2017, available at: <http://www.ojjpac.org/sanctuary.asp>.

⁴ Amanda Peterson Beadle, Why 250 Counties Have Stopped Honoring ICE Detainers, September 22, 2014, available at <http://immigrationimpact.com/2014/09/22/why-250-counties-have-stopped-honoring-local-ice-detainers/>

⁵ Id.

⁶ Brianna Lee, Cities Rebel Against Federal Immigration Enforcement Programs, International Business Times, Oct. 27, 2014, available at <http://www.ibtimes.com/cities-rebel-against-federal-immigration-enforcement-programs-1714228>

The mobilization against what was known as the “Secure Communities Program” and the multiple accompanying legal challenges, led to the November 2014 announcement by the Department of Homeland Security (DHS) that it would discontinue Secure Communities and put forward the Priority Enforcement Program (PEP).⁷ The program continued to rely on communication with local law enforcement to detain immigrants. Although many cities continued to defend their policies, new localities signed up to collude with DHS and provide information of undocumented immigrants under PEP.⁸

After the memorandum shifting to PEP was issued, the Department of Justice (DOJ) and the Obama White House continued to put pressure on localities to comply with the federal law.⁹ In particular, cities and localities were asked to provide information that proved that their policies were consistent with 8 U.S.C. § 1373.¹⁰ Under a Trump administration, the latest attack to sanctuary cities has come in the form of administrative orders, threatening to take away funding for sanctuary cities and reinstating Secure Communities, among a host of other proposals.¹¹

In the defense of sanctuary cities it is important to know that defunding is not a given, despite the executive orders. To start, there are significant questions about the legality of the federal government threatening local funding, including serious constitutional defects.¹² For example, if the policies in question are related to law enforcement, so would the funding being threatened. This means that there will be a fight, both legal and on the ground, before Sanctuary cities would be at risk of losing funding.

⁷ Henry Grabar, Not in Our Town: Can American Cities Stop Trump From Deporting Millions?, Nov. 20, 2016, available at: http://www.slate.com/articles/news_and_politics/cover_story/2016/11/how_cities_could_thwart_donald_trump_s_deportation_plan.html.

⁸ ICE Enforcement and Removal Operations Report 2015, available at: <https://www.ice.gov/sites/default/files/documents/Report/2016/fy2015removalStats.pdf>.

⁹ Grabar, supra note 8.

¹⁰ Id.

¹¹ Id.

¹² Ilya Somin, Why Trump's Executive Order on Sanctuary Cities is Unconstitutional, Jan. 26, 2017, available at: https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/01/26/constitutional-problems-with-trumps-executive-order-on-sanctuary-cities/?utm_term=.08e2705db64e.

CRIMINALIZATION AND ENFORCEMENT

Police, whether they actively collaborate with federal deportation agents or not, currently act as the primary funnel that leads to someone being placed in removal proceedings. The Trump administration has clarified that the President deportation force will first prioritize anyone considered a criminal, expanding that term even further to mean those arrested by police or accused of any crime.¹³ At the same time, his regime has also pledged to vastly increase the presence of law enforcement, disproportionately in communities of color and specifically mentioning cities like Chicago.¹⁴ This would undoubtedly increase the exposure to and frequency of arrest and interaction with law enforcement that results in city residents becoming a priority target for deportation agents. With that clear, defending undocumented immigrants who call our cities home requires protecting them from the racialized policing exposed by the Movement for Black Lives, not just federal immigration agents on the loose and other federal enforcement practices that are normally the focus of immigrant rights groups.

In most major cities, more than half of municipal budgets are dedicated to policing and jails. And in many, the current resurgence of interest in sanctuary for immigrants comes after several years of the renewed effort from Black-led groups to challenge state violence and racist policing.¹⁵ Where possible, one should build upon, not replace the other.

Police, whether they actively collaborate with federal deportation agents or not, currently act as the primary funnel that leads to someone being placed in removal proceedings.

If sanctuary is a pledge to make our cities truly safe for their residents than there are more agencies to address than simply ICE and more people in need of refuge than solely undocumented immigrants.

¹³ Sanctuary Movement, Revolvly.com, available at, https://www.revolvly.com/main/index.php?s=Sanctuary%20movement&item_type=topic.

¹⁴ The Original List of Sanctuary Cities, Ohio Jobs with Justice PAC, updated Jan. 18, 2017, available at: <http://www.ojjpac.org/sanctuary.asp>.

¹⁵ Amanda Peterson Beadle, Why 250 Counties Have Stopped Honoring ICE Detainers, September 22, 2014, available at <http://immigrationimpact.com/2014/09/22/why-250-counties-have-stopped-honoring-local-ice-detainers/>

President Trump, who is continuing Obama's rhetoric of deporting "criminals," will have an easy job as long as local governments continue to criminalize Black, Latino, and poor neighborhoods. Trump's executive orders on immigration and deportation are part of his broader "law and order" agenda and our cities' and our movements' defiance of it must be similarly broad.

Sanctuary as a concept must evolve and be expanded. It can be a call that unites broad swaths of institutions and civil society if it is based in the belief that collective protection should extend to all communities facing criminalization and persecution and defend against all the agencies that threaten us.

POLICY PRIORITIES

WHAT MAKES A CITY A SANCTUARY NOW?

Below are 8 policy changes that encompass both protections for immigrants from federal law enforcement and begins to envision city policies that include addressing policing and criminalization.

Any city claiming to be a “sanctuary” should seek to address these policy considerations as a minimum standard:

1. SEPARATION OF LOCAL LAW ENFORCEMENT AND IMMIGRATION ENFORCEMENT

Most cities and municipalities claiming to be “Sanctuaries” have policies limiting or prohibiting the use of immigration detainers and communication between local law enforcement and immigration enforcement regarding a person in custody. Unfortunately, not all of them go as far as they could, with some still providing certain openings for collaboration between local police and ICE; for example, in cases involving people with certain criminal convictions or those in the gang database;¹⁶ and others not including pro-active ways to defend their immigrant residents.

Sanctuary city legislation should include work to remove any exceptions to immigrant protections, and to include strong qualifiers for collaboration such as the need immigration enforcement officials to show a judicial warrant when requesting information about an individual. **Complete Sanctuary city policies should also**

include:

- Prohibiting threats by local police or city employees based on citizenship or immigration status;
- Mandating that city government will not enter into 287(g) agreements with the federal government (or other agreements that conscript local police into enforcing immigration law);

¹⁶ Tina Vasquez, The Who, What, Where, and Weaknesses of Sanctuary Cities, Nov. 23, 2016, available at: <https://rewire.news/article/2016/11/23/weaknesses-sanctuary-cities/>.

- Prohibiting ICE agents from accessing detained individuals or their contact information;
- Barring use of city facilities, equipment, personnel, and other resources, to assist in civil immigration enforcement, including for “check-points” or traffic perimeters;
- Protecting access to city benefits and services regardless of immigration status.
- Requiring all applications, questionnaires, and forms used in relation to the city that may include information regarding citizenship or immigration status be deleted.
- Prohibiting city agencies and employees from requesting information or investigating a person’s citizenship or immigration status; and that they should not disclose information regarding a person’s citizenship or immigration status;
- Ensuring that no city agency or employee will place conditions related to citizenship or immigration status for services, benefits or opportunities, unless required by law or court order;
- Recognizing that a photo identity document issued by a person’s nation of origin other than the United States, such as a driver’s license, passport or consular identification cards;
- If there are any records that include information of, or can be directly linked to an individual and identify, a person’s religion, race, gender, sexual orientation, immigration status (or lack of citizenship), national or ethnic origin, the city should take steps to bar DHS and sub-agencies access to city databases, and when possible, destroy (such has been suggested in New York City with regards to information from their municipal ID program).
- Barring access to city databases, facilities, equipment, personnel, and other resources for purposes of implementing registries based on race, gender, sexual orientation, religion, immigration status, or national or ethnic origin, or to conduct civil immigration enforcement.

2. POLICIES THAT DE-CRIMINALIZE AND REDUCE ARRESTS

Create or expand programs and diversion programs that provide an effective alternative to charges before arrest or before conviction for a variety of offenses. These programs, which could be diversionary, could start with de-criminalizing or creating alternative forms of accountability for:

- Driving under the influence (DUI);
- Crimes of survival, such as theft and sex work (or use of condoms);
- Drug-related offenses;
- Loitering and disturbing the peace charges;
- Offenses that take place in public schools or other public educational facilities;
- Homelessness or panhandling (through policies such as prohibiting sitting or lying on sidewalk, loitering and vagrancy laws);

Under a Trump regime where people with any criminal record or arrest are considered a priority for deportation, public safety approaches that do not result in arrest are going to be key to defending our communities. These are also the types of charges and crimes that funnel Black youth and youth of color, transgender people, and other vulnerable communities into incarceration. Decriminalizing drug possession and other crimes listed above and investing in community initiatives, harm reduction services, or treatment can also improve public safety and health and is good public policy.

Importantly, by policy these programs should be accessible to all city residents, including those who are undocumented or non-citizens, and should not include an admission of guilt as part of a requirement. Admissions of guilt could still be used by immigration enforcement agents to target individuals for deportation regardless the final charges.¹⁷

3. ELIMINATE USE OF LOCAL AND STATE GANG DATABASES

Eliminate the use or city participation in any database tracking supposed gang affiliation, including by local police and any law enforcement or security guard in public institutions, such as public schools, clinics, and so forth.

Local gang databases not only drive disproportionate local policing but also feed into national databases that are routinely used by DHS and immigration enforcement to select their deportation targets.¹⁸ Gang affiliation is a complicated phenomena in US cities today and inclusion in such a database is not an actual indicator that an individual is a member in reality. But being listed in the gang database does not necessarily mean that the individual is part of a gang. In reality, the ways in which individuals are recorded into a gang database are vague, inconsistent, rely on the discretion of individual police officers, including in police districts under investigation for civil rights violations and the excessive use of force.

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42 people were entered into the gang database before their first birthday.

¹⁷ National Immigration Law Center, How ICE Uses Local Criminal Justice Systems to Funnel People Into the Detention and Deportation System, Mar. 2014, available at: <https://www.nilc.org/issues/immigration-enforcement/localjusticeandice/>.

¹⁸ Ali Winston, Obama's Use of Unreliable Gang Databases for Deportations Could Be a Model for Trump, Nov. 28, 2016, available at: <https://theintercept.com/2016/11/28/obamas-use-of-unreliable-gang-databases-for-deportations-could-be-a-model-for-trump/>.

They have been found to contain racially biased, outdated, and unreliable information. In California, for example, Black people and Latinos make up 45% of the population but 85% of the persons listed in the state's gang database, including 42 people whose names were entered before the age of one year old.¹⁹

In addition to the grave concerns about civil rights violations and due process, including that across databases, there is no way for an individual to find out whether they are in the database, and no mechanism to challenge the information.²⁰ In some jurisdictions, there is also evidence that there is racial bias that leads to overrepresentation of Black and Latinx youth in the gang data bases.²¹ It is worth noting that the city of Los Angeles is currently being sued²² precisely for its use of gang injunctions to criminalize Black and Latinx residents.

If cities are unwilling to completely eliminate the use of gang databases there are recommendations that could reduce the harm, such as reforming the database to one that includes a confidential process of notification for anyone put into the database and publicly available means to correct or challenge information; and a public auditing procedure to determine the saliency of the information or a periodic public review of the database.

4. CREATE PROGRAMS TO SUPPORT TRANSGENDER IMMIGRANTS IN FINDING MEANINGFUL EMPLOYMENT:

Helping transgender immigrants find meaningful employment by ensuring that transgender immigrant workers are able to access workforce development and investment programs and workplace trainings that will meet the unique needs of transgender people to help to create the job skills needed to sustain themselves and their family. When transgender people have access to meaningful employment, it reduces the chances that a transgender immigrant will find themselves in a situation vulnerable to police arrest or immigration detention.

¹⁹ Ali Winston, You May Be in California's Gang Database and Not Even Know It, Mar. 23, 2016, available at: <https://www.revealnews.org/article/you-may-be-in-californias-gang-database-and-not-even-know-it/>.

²⁰ Id.

²¹ Id.

²² Jennifer Medina, Gang Database Criticized for Denying Due Process May Be Used for Deportations, Jan. 10, 2017, available at: https://www.nytimes.com/2017/01/10/us/gang-database-criticized-for-denying-due-process-may-be-used-for-deportations.html?_r=0.

The program must be accessible to transgender and gender non-conforming immigrants.

Immigration detention and incarceration can be dangerous for transgender people. The Congressional Research Service has found that as many as 40% of sexual abuse complaints are not reported to ICE.²³ Of the complaints that were reported, 20% of the substantiated assaults involved transgender victims—a group comprising less than 1% of the population, including one case involving a guard who sexually assaulted a transgender woman.²⁴ Transgender prisoners also face an array of issues, including experiencing various degrees of neglect, mistreatment, abuse, denial of services including medical services and sexual abuse.²⁵

The lack of adequate protections and widespread sexual assault statistics issued by the Government Accountability Office in immigration detention and the mistreatment and denial of services in prison make it evident that transgender individuals are not safe under any conditions within public or private detention facilities or prisons. In addition to the work programs, cities should do everything within their power to improve conditions for transgender immigrants and reduce the chances of criminalization, incarceration and deportation for transgender people.

5. FUND ORGANIZING AS WELL AS LEGAL REPRESENTATION

Several states and cities have funded programs providing legal representation to immigrants in immigration courts. Unfortunately, such programs are extremely limited in scope, generally restricting representation to certain criteria. Sanctuary cities should prioritize funding of legal representation for immigrants using a universal representation model, where representation is not limited, and all immigrants receive due process through representation in immigration court.

In addition, Sanctuary cities should also prioritize the funding of grassroots

²³ Government Accountability Office, Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse, November 2013, available at: <http://www.gao.gov/assets/660/659145.pdf>

²⁴ Id.

²⁵ Transgender Law Center, Safety Inside: Problems Faced by Transgender Prisoners and Common Sense Solutions to Them, April 15, 2005, available at <https://transgenderlawcenter.org/resources/prisons/safety-inside>

organizing in immigrant communities. Grassroots organizing from immigrant communities has had a significant impact in bringing attention to cases where legal representation is not the answer - either because people do not qualify for immigration relief or because the case falls within the wide range of immigration enforcement priorities. Such organizing has in some instances been able to stop immigration enforcement from detaining or deporting an individual.

“Grassroots organizing from immigrant communities has had a significant impact in cases where legal representation is not the answer.”

Sanctuary cities seeking to support protections for immigrants need to invest in universal legal representation for immigrants and support community organizations with a history of building power against harmful immigration enforcement tactics. This can be proposed as community outreach and education programs that also provide information and opportunities for strengthening neighborhoods and increasing safety for vulnerable city residents.

6. END LOCAL CONTRACTS WITH IMMIGRATION ENFORCEMENT

There are cities and municipalities that have local contracts with Immigration and Customs Enforcement (ICE) to hold individuals in their jails for deportation. Although the contracts with ICE may vary across jurisdictions, most have clauses for either party to end the contract, meaning that city council could vote to end an ICE contract with a jail.

Cities with contracts with ICE may identify this as a form of revenue. In the city of Santa Ana, for example, the jail receives \$105 per day for each detainee they hold for ICE.²⁶ At the moment the detainees include around 30 transgender women, who have alleged various forms of neglect and discrimination.²⁷ After various campaigns and community pressure from immigrant and LGBT organizers, the City council is moving to end the contract with ICE.²⁸

²⁶ Jessica Kwong, After Trump's Election, Santa Ana Hopes to Quit ICE Jail Contract, Nov. 16, 2016, available at: <http://www.ocregister.com/articles/city-735739-ice-jail.html>.

²⁷ Id.

²⁸ Id.

7. DECREASE POLICE FUNDING AND REINVEST IN COMMUNITY INSTITUTIONS THAT PROVIDE LONG-TERM SAFETY

Defunding the police has been a demand championed by members of the Movement for Black Lives, particularly those involved with the Black Youth Project 100 (BYP100). Across the country, cities allocate an undue percentage of their budget and resources to police departments.²⁹ The demand from BYP100 is not only to defund the police, but also “invest those dollars and resources in Black futures.” Divesting from policing and refusing any increase allows cities to reallocate those resources to investing in health, housing, education, and other services for communities that establish stability and long-term safety.³⁰

8. ADOPT AND ENFORCE DIRECTIVES AGAINST PROFILING, DEMAND RESPECTFUL TREATMENT OF TRANSGENDER PEOPLE

Local law enforcement should adopt and implement policies and directives against profiling based on actual or perceived sexual orientation, gender, gender identity, disability, immigration status, housing, HIV status, or age.³¹ In addition, it should be prohibited to use race, religion, color, ethnicity, national origin, immigration status, gender, disability, sexual orientation, or gender identity as a factor in establishing reasonable suspicion or probable cause, exercising discretion to conduct a warrantless search or seek a search warrant.³²

²⁹ BYP100, Solutions, available at: <http://agendatobuildblackfutures.org/our-agenda/solutions/#3>.

³⁰ BYP100, Statement from BYP100 Regarding #STOPTHECOPS Action Happening NOW, available at: <http://byp100.org/stopthecops/>.

³¹ Catherine Hanssens et al., A Roadmap For Change, Federal Policy Recommendations for Addressing the Criminalization of LGBT People and People Living with HIV, May 2014, available at: https://web.law.columbia.edu/sites/default/files/microsites/gender-sexuality/files/roadmap_for_change_full_report.pdf.

³² Id.

OTHER RESOURCES

During the drafting of this document, several institutions have published helpful related resources on the theme of immigrant defense, sanctuary, and decriminalization.

One would benefit from also reviewing the Immigrant Legal Resource Center's "Local Options for Protecting Immigrants"³³ and Latino Justice's "Sanctuary, Safety and Community: Tools for Welcoming and Protecting Immigrants Through Local Democracy."³⁴

³³ Available at <https://www.ilrc.org/local-options>

³⁴ Available at <http://www.demos.org/publication/sanctuary-safety-and-community-tools-welcoming-and-protecting-immigrants-through-local-d>

CONCLUSION

WHAT MAKES A CITY A SANCTUARY NOW?

In cities across the country there is an urgency to transform local policy to limit the impact of the Trump regime's harm and to address the persisting issues of policing, state violence, and racial justice.

For sanctuary efforts to achieve their stated goal of establishing real protections for city residents they both must evolve to address the specifics of modern day enforcement and expand in scope, both in the constituencies they defend and the state activity they impact.

Reducing criminalization and mass incarceration is now an essential and irreplaceable component of sanctuary policy that seeks to have a meaningful impact in the current moment.

Alongside policy advocacy and appeals to legislators, larger strategies of community self-defense – including grassroots organizing, innovative direct action, legal defense will be required to maintain the integrity of our cities and our communities.

As has been said before, the only secure community is an organized one.

