

U.S. Senate Committee on the Budget

“Sanctuary Cities: The Cost of Undermining Law and Order”

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Statement of Jessica M. Vaughan

Center for Immigration Studies

Thank you, Chairman Graham and Ranking Member Merkley, for the opportunity to testify. Today there are 13 states and about 100 localities that have adopted sanctuary policies. We estimate that more than half of the illegal immigrant population resides in sanctuary jurisdictions, with more than one-fifth in California.¹ These policies are a significant hindrance to immigration enforcement and a challenge to the supremacy clause of the Constitution. Equally important, they bring substantial costs to the community – the needless human cost of new victimizations at the hands of criminal aliens released instead of being turned over to Immigration and Customs Enforcement (ICE) for removal, and the considerable fiscal costs associated with providing services to illegal migrants who are attracted by the policies. Congress should act to preserve the prerogative of law enforcement agencies to cooperate with immigration enforcement, penalize and create liability for jurisdictions that enact laws or practices to obstruct enforcement.

What is a sanctuary policy? The term does not appear in immigration law, but is generally understood to mean a state or local policy that seeks to shield illegal immigrants from the reach of supposedly unfair or overzealous immigration enforcement. The first sanctuary policies appeared in the 1980s, when humanitarian groups in the southwest sought to protect Central Americans who had come into the United States illegally to escape conflict in their countries.

Over time, a few cities like San Francisco, Berkeley, and Santa Fe, led by politicians who opposed immigration enforcement and advocated for amnesty for illegal immigrants declared their jurisdictions to be sanctuaries. They enacted “don’t ask, don’t tell” ordinances to forbid local officials from denying public benefits and services to illegal aliens and prohibiting officials, including police, from alerting immigration authorities after encounters with them.

In response, in 1996 Congress amended the Immigration and Nationality Act to prohibit state and local governments from “in any way” restricting the ability of officials to communicate or share information with federal immigration authorities regarding citizenship or immigration status.²

¹ Jason Richwine, “How Many Illegal Aliens Reside in Sanctuaries?,” Center for Immigration Studies, December 17, 2024, <https://cis.org/Richwine/How-Many-Illegal-Aliens-Reside-Sanctuary-Jurisdictions>.

² See 8 USC 1373 and 1644: “Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service [now the Department of Homeland Security] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”

While this provision would seem to render the local “don’t ask, don’t tell” policies to be illegal, but the law provides no direct enforcement mechanism for the federal government to disrupt or punish these practices.

Some have argued that these provisions are unconstitutional, violating the 10th Amendment protections against the “commandeering” of state resources by the federal government. Nevertheless there are strong arguments to the contrary.³ Sections 1373/1644 have to do with preserving discretion for information sharing in the public interest, and do not require states or localities to pass laws or ordinances, enforce a federal mandate, or assist with immigration law enforcement (as pro-sanctuary officials frequently claim).

Then, in 2008 the federal government began implementing a nationwide fingerprint-sharing program known as Secure Communities, which allowed ICE to match the biometrics of all those arrested by local police with immigration databases, and upon detecting a match, potentially follow up with detainers, or requests to hold the alien for ICE to take custody for removal. This program helped boost interior criminal deportations under the first two years of the Obama administration, as ICE was no longer dependent on local police to identify and refer criminal aliens, and most local authorities were happy to help ICE remove some of the lawbreakers causing problems in the community.

Anti-enforcement groups soon moved to thwart this collaboration by convincing hundreds of state and local governments to adopt the most recent iteration of sanctuary policies - prohibiting local law enforcement agencies from honoring ICE detainers, notifying ICE of the pending release of a criminal alien, or taking any action whatsoever to aid immigration enforcement, even against criminal aliens.

Typically, jurisdictions that have adopted such non-cooperation policies also have policies that allow illegal aliens to receive public benefits, such as driver’s licenses, municipal identification cards, welfare benefits, health insurance, temporary shelter, housing assistance, in-state tuition and public universities, and more.

The Human Cost of Sanctuary Policies. Sanctuary policies that block state and local law enforcement agencies from cooperating with ICE end up shielding criminal aliens from immigration enforcement. According to ICE records that I obtained through the FOIA process], between October 2022 and February 2025, sanctuary policies resulted in the release of more than 26,000 criminal aliens ICE was seeking to take custody of.⁴ More than half were released in California, and more than one thousand released by jails in each of the states of Illinois, Virginia, Massachusetts, and Connecticut.

In Virginia, for example, during this time period 1,698 aliens who had been arrested and who were in the custody of local authorities were released despite ICE detainers. More than two-thirds (1,157) were in Fairfax County. In 2024, the Fairfax County Adult Detention Center released two offenders that ICE was seeking who had prior homicide convictions. One had

³ See George Fishman, “Is Federal Anti-Sanctuary Law Constitutional?,” Center for Immigration Studies, February 26, 2025, <https://cis.org/Report/Federal-AntiSanctuary-Law-Constitutional>.

⁴ Jessica Vaughan, “Which Sanctuaries Have Released the Most Criminals?,” Center for Immigration Studies, April 9, 2025, <https://cis.org/Vaughan/Which-Sanctuary-Jurisdictions-Have-Released-Most-Criminals>.

instant pending charges for aggravated assault on a police officer. Four others released by Fairfax County and one released by the jail in Manassas that year had pending homicide charges. Virginia jails released 75 aliens with convictions or pending charges for sexual assault, 46 with convictions or instant charges for weapons offenses, and 285 with convictions or instant charges related to dangerous drugs.

Releasing these individuals instead of allowing ICE to take custody enables them to remain in the community and continuing to commit crimes, sometimes with tragic consequences. In May 2025, ICE finally managed to arrest Mykol Santos-Santos, a gang member and citizen of Guatemala, who was caught crossing the border illegally in 2014, was released into the country, and settled in Virginia. He was arrested by ICE in a targeted operation in 2019, released on bond by an immigration judge, and ordered removed in 2023, but he remained at large, except when held in custody by Virginia law enforcement agencies. Between February of 2020 and May of 2025, he racked up 30 arrests for offenses including assault and battery, drug possession, drug possession with intent to distribute, burglary, theft, larceny, trespassing, property damage, obstruction of justice, attempting to flee police, failure to appear and violating court orders. During that time ICE filed detainers 16 times, all of which were ignored.⁵

Just four months after ICE re-arrested Santos-Santos, another criminal alien named Marvin Fernando Morales-Ortez, a citizen of El Salvador, was arrested for assault and brandishing a firearm. ICE filed a detainer immediately, which was ignored by Fairfax authorities, who released him. One day later, Morales-Ortez, who had prior violent offenses, shot and killed a man in his home in Reston.⁶

These are not isolated incidents. According to ICE officials, more than 10,000 criminal aliens were subsequently arrested for crimes after having been released under sanctuary policies.⁷ Some of these cases are documented by ICE in a 2015 report published by my organization.⁸

Another recent case illustrates the positive side of how the process should work, and why local law enforcement agencies should routinely practice cooperation with ICE and other DHS agencies. On February 19, 2026, in Lee County, NC, at the scene of a highway crash, sheriff's deputies and highway patrol officers encountered a man involved who gave them five different names, none of which could be authenticated or matched to a birth date. Upon fingerprinting, they learned his true name and that he was a citizen of El Salvador. The local officers then

⁵ "ICE Washington, D.C. arrests illegal Guatemalan gang member with extensive criminal history," May 19, 2025, <https://www.ice.gov/news/releases/ice-washington-dc-arrests-illegal-guatemalan-gang-member>.

⁶ DHS Calls on Fairfax County Politicians to Honor ICE Detainer for Criminal Illegal Alien Previously Released Because of Their Sanctuary Policies Who Went on to Commit Murder the Next Day," December 19, 2025, <https://www.dhs.gov/news/2025/12/19/dhs-calls-fairfax-county-politicians-honor-ice-detainer-criminal-illegal-alien>.

⁷ Tom Homan, quoted in Douglas Hanks, "In Miami, Jeff Sessions praises an end to sanctuary for 'criminal aliens,'" *Miami Herald*, August 17, 2017, <https://www.miamiherald.com/news/local/community/miami-dade/article167606497.html#storylink=cpy>.

⁸ Jessica Vaughan, "Rejecting Detainers, Endangering Communities," Center for Immigration Studies, July 13, 2015, <https://cis.org/Report/Rejecting-Detainers-Endangering-Communities>.

reached out to ICE, and subsequently discovered that the man was a MS-13 gang member wanted in El Salvador for kidnapping, drug trafficking and homicide, and he was taken into federal custody.⁹

The Fiscal Cost of Sanctuary Policies. Besides the public safety problems, sanctuary policies bring substantial costs to taxpayers. Recent settlement patterns and the accounts of migrants themselves confirm that sanctuary policies do attract illegal immigration, as illegal migrants seek out communities that put out a welcome mat. The unavoidable costs to state and local government include emergency health care and schools. In addition, many sanctuary jurisdictions also choose to allow illegal immigrants to access other public benefits, including Medicaid or other subsidized health insurance, food assistance, shelters or other publicly-funded housing, driver’s licenses, educational vouchers, and in-state tuition.

My organization has found that approximately 61 percent of households headed by illegal immigrants are using at least one major welfare program, and often more than one.¹⁰ This rate compares to 51 percent of legal immigrant-headed households using welfare, and 37 percent of U.S.-born citizen-headed households using welfare. Illegal immigrants can receive welfare on behalf of their U.S.-born children, and illegal-immigrant children can receive free/reduced price school lunch/breakfast and WIC directly. A number of states provide Medicaid to some illegal-alien adults and children, and a few provide SNAP. We have no evidence that the higher use rates of illegal aliens reflects widespread cheating or fraud; we believe that the high rates of welfare use primarily reflect the fact that illegal immigrants generally lower education levels and their resulting low incomes than legal immigrants or native-born, in addition to the presence of U.S.-born children who are eligible for all welfare programs from birth.

Such a high rate of welfare use by illegal immigrant-headed households may seem implausible. However, more than half of all illegal-immigrant households have one or more U.S.-born children. These children have the same welfare eligibility as any other U.S. citizen, including even public housing.¹¹ Second, many states offer Medicaid directly to illegal immigrants. For example, 14 states (California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Minnesota, New Jersey, New York, Oregon, Rhode Island, Utah, Vermont and Washington) plus the District of Columbia currently offer Medicaid to all low-income children, regardless of immigration status. Even more states (29) provide it to all low-income pregnant

⁹ “Crash investigation in Lee County leads to arrest of MS-13 member wanted for serious crimes,” WTVD Raleigh Durham, February 21, 2026, <https://abc11.com/post/crash-investigation-lee-county-leads-arrest-jonathon-josue-ayala-melendez-ms-13-member-wanted-serious-crimes/18629715/>.

¹⁰ Steven Camarota and Karen Zeigler, “Welfare Use by Immigrants and the U.S.-Born, 2024,” Center for Immigration Studies, February 4, 2026, <https://cis.org/Report/Welfare-Use-Immigrants-and-USBorn-2024>.

¹¹ The eligibility of the U.S.-born children of illegal immigrants extends even to housing. HUD regulations (the *Housing Handbook*) state that if at least one member of a family is eligible (e.g., a U.S.-born child), then the family can live in federally subsidized housing, though they may receive prorated assistance. New York City has a similar rule for its own housing programs.

women, again, without regard to legal status. A few states go beyond this and offer Medicaid to other adult illegal immigrants.¹²

Third, illegal-immigrant children and pregnant women have the same eligibility for the federal WIC program as U.S. citizens do under federal law;¹³ and all children are eligible for free subsidized school meal programs as well. In addition, there are six states (California, Connecticut, Illinois, Maine, Minnesota, and Washington) that offer SNAP-like benefits to illegal immigrants under limited circumstances.

Finally, it's important to note that because the overwhelming majority of illegal immigrants have no education beyond high school, as a result, a very large share of illegal immigrants have incomes low enough to qualify for welfare.

The cost of these programs has exploded in the wake of the unprecedented surge in illegal immigration under the Biden administration from 2021 to 2024. For example, Massachusetts experienced an influx of 50,000 illegal immigrants during that time period, sending the cost of its emergency shelter program, including food and transportation services, skyrocketing to over \$1 billion per year.¹⁴

In 2023, the Massachusetts legislature quietly passed a measure in a supplemental spending bill allocated \$6 million to provide SNAP benefits for seven months to certain classes of inadmissible aliens, including lawfully and unlawfully present aliens (but not recent legal immigrants) who met the income requirements. It was intended to cover most new arrivals who were not already eligible for benefits, and to be a bridge to more permanent funding that would be appropriated in the next fiscal year's budget. However, the funds were drained in just over two months and the program was shut down. According to the Massachusetts Law Reform Institute, 4,000 families received SNAP benefits during this time.¹⁵

Other costs – shelter NY: And in NY a similar story: <https://nypost.com/2024/08/13/us-news/nyc-migrant-crisis-costs-will-crack-eye-popping-5-billion-on-shelters-security-and-food/>

¹² Akash Pillai, Drishi Pillai, and Samantha Artiga, "State Health Coverage for Immigrants and Implications for Health Coverage and Care," KFF, May 29, 2025, <https://www.kff.org/racial-equity-and-health-policy/state-health-coverage-for-immigrants-and-implications-for-health-coverage-and-care/>.

¹³ See the WIC eligibility guidelines here:

<https://www.fns.usda.gov/wic/eligibility#:~:text=To%20be%20eligible%20for%20WIC%2C%20applicants%20must,whether%20the%20individual%20is%20at%20nutrition%20risk.>

¹⁴ Michael Dorgan, "Migrant influx pushing Mass. shelter costs past \$1B in FY25: report," Fox News, June 18, 2025, <https://www.foxnews.com/politics/migrant-influx-pushing-mass-shelter-costs-past-1b-fy25-report?msockid=15e06b74fddd66652fb57eacfc4367f0>.

¹⁵ Jessica Vaughan, "Massachusetts: A Case Study in Mass Immigration and the Welfare State," Center for Immigration Studies, July 25, 2024, <https://cis.org/Report/Massachusetts-Case-Study-Mass-Immigration-and-Welfare-State>.

Costs for Education. One of the most significant burdens that illegal immigration imposes on state and local governments is the responsibility of educating children brought by their parents who crossed illegally, children who arrived unaccompanied (to work or to join parents already living here illegally), or children born here to parents who are illegal aliens. The Center estimates that there currently are [approximately four million children of illegal aliens or unaccompanied minors in U.S. schools](#).

As an example, Massachusetts has an estimated 25,000 children in the state's schools who are illegal aliens, and at least that number who are the U.S.-born children of illegal aliens living there. Of these, at least 10,000 arrived during the Biden administration, including 8,500 unaccompanied minors.

Taxpayers spend an average of nearly \$23,000 per student per year, setting the base cost of illegal alien children at \$575 million per year — with 40 percent of the current cost attributable to the arrival of children under Biden policies. Moreover, according to the studies reviewed by the CBO, the cost of educating students who do not speak English fluently is 20 to 40 percent higher than the cost of educating a U.S.-born student.

In addition to schooling, the state provides other services to illegal alien children who arrived as unaccompanied minors. According to the most recent [annual report](#) of the Massachusetts Office for Refugees and Immigrants (ORI), services to unaccompanied minors represent a whopping 61 percent of the office's \$19.4 million total budget. This dwarfs the amount of funding that is devoted to legal immigrants and refugees for programs such as naturalization, assimilation, and employment assistance. The vast majority (85 percent) of ORI's budget comes from federal funding.

Healthcare Costs. Many sanctuary states allow all illegal immigrants to have access to government-subsidized or government-paid healthcare – in addition to the “emergency” health care that under federal law must be provided to anyone who needs it, regardless of immigration status. Many of the new arrivals, including Haitians and Ukrainians, have been granted entry under programs that gave them immediate access to federal means-tested benefits, including Medicaid.

Some sanctuary states, provide healthcare coverage to all children who lack private health insurance. Again, using Massachusetts as an example, all children under the age of 19 who lack private healthcare coverage, regardless of immigration status, are covered for primary, preventative, and dental care under the state's Children's Medical Security Plan. The remainder of the illegal population that is without private insurance and not covered by Medicaid has access to limited publicly funded health insurance. These services [include](#) pre-natal and maternity services, dialysis, and certain other conditions. In addition, under the Massachusetts Health Safety Net program, low income, uninsured inadmissible immigrants may have certain hospital facility services, such as hospital rooms, nursing, and technicians, covered by the state-funded program. One state study [academic study](#) estimated in 2023 that the direct cost of health insurance for each additional nonelderly adult immigrant (legal or illegal) to be about \$3,800 per person per year.

Other states that declared themselves to be sanctuaries experienced similar upsurges in the cost of welfare programs. Several states, including California¹⁶ and Illinois¹⁷, have since had to scale back these programs because they became unaffordable.

Justifications Given for Sanctuary Policies Have Been Disproven. Proponents of sanctuary policies commonly invoke two main reasons for imposing restrictions on local law enforcement agencies. First, they maintain that cooperation with federal immigration authorities will erode immigrants' trust in local law enforcement and cause immigrants to refrain from reporting crimes. Second, they frequently claim that state and local law enforcement agencies lack the authority to honor immigration detainers without a “judicial” warrant. Both of these defenses are false.

1. "The Chilling Effect" Myth. Sanctuary proponents often assert that non-cooperation policies are needed to enable immigrants to feel comfortable reporting crimes. This frequently heard claim has never been substantiated and, in fact, has been refuted by a number of reputable studies and testimonies.¹⁸ No evidence of a "chilling effect" resulting from local police cooperation with ICE has emerged from federal or local government data or independent academic research.

It is important to remember that crime reporting can be a problem in any place, and is not confined to any one segment of the population. In fact, most crimes are not reported, regardless of the victim's immigration status or ethnicity. According to the Bureau of Justice Statistics (BJS), in from 2020-23, only about 40 to 50 percent of violent victimizations and 50 to 60 percent of robbery victimizations were reported to police from 2020-23, with significantly lower numbers of violent victimizations being reported in urban areas.¹⁹

Further, data from the Bureau of Justice Statistics have shown no meaningful differences among ethnic groups in crime reporting. The combined results of three years of data (2017-19) from the National Crime Victimization Survey (NCVS), which is the most authoritative study of crime reporting in the United States, show that immigrant victimizations are just as likely, and in some cases more likely, to be reported to police than crimes against the native-born. This was true even though the data was collected in the first three years of the Trump administration, during which time the media and advocacy groups routinely asserted that immigration

¹⁶ Paul Kiernan, “California Cuts Back on Costly Immigrant Healthcare,” *Wall St. Journal*, December 20, 2025, https://www.wsj.com/politics/policy/california-cuts-back-on-costly-immigrant-healthcare-70f2794d?mod=hp_lead_pos11.

¹⁷ Peter Hancock, “State on track to end health coverage program for immigrant adults,” *Capitol News Illinois*, May 14, 2025, <https://www.nprillinois.org/government-politics/2025-05-14/state-on-track-to-end-health-coverage-program-for-immigrant-adults>.

¹⁸ See, as just one example, the June, 2017 testimony of Kenneth Blanco, Acting Assistant Attorney General of the DOJ Criminal Division before the Senate Judiciary Committee, reported here: <https://cis.org/Vaughan/Top-Justice-Official-Scoffs-Immigrant-Crime-Reporting-Chilling-Effect>.

¹⁹ Bureau of Justice Statistics, “Reporting to Police by Type of Crime and Location of Residence, 2020-2023,” July 2025, <https://bjs.ojp.gov/library/publications/reporting-police-type-crime-and-location-residence-2020-2023/web-report>.

enforcement had been dramatically expanded. The data also provides insight on why some immigrants and non-citizens might not report crimes, showing that only a tiny number — about 1 percent — said that the reason for not reporting was because of fear of the authorities. There is no evidence in the NCVS data that crimes against immigrants are reported to police at lower rates than crimes against the native-born, indicating that the routine, even active, cooperation between local law enforcement and federal immigration authorities that takes place in most jurisdictions does not suppress crime reporting by immigrants.²⁰

We found that this was consistently true for various types of crimes, and it is true for female victims, for Hispanic non-citizens (a group that includes many illegal aliens), for younger and presumably more recently arrived immigrants, across most geographic regions, and in both small and large communities. This is the case even though law enforcement in most jurisdictions routinely cooperates with federal immigration enforcement authorities. We found no indication that parts of the country with sanctuary jurisdictions had higher crime reporting rates by immigrants. On the contrary, the South had the highest crime reporting rates by immigrants, and it the region of the country with the fewest sanctuary policies.

A multitude of other studies refute the notion that local-federal cooperation in immigration enforcement causes immigrants to refrain from reporting crimes:

- A major study completed in 2009 by researchers from the University of Virginia and the Police Executive Research Forum (PERF) found no decline in crime reporting by Hispanics after the implementation of a local police program to screen offenders for immigration status and to refer illegals to ICE for removal. This examination of Prince William County, Virginia's, 287(g) program is the most comprehensive study to refute the "chilling effect" theory. The study also found that the county's tough immigration policies likely resulted in a decline in certain violent crimes.¹⁹
- The most reputable academic survey of immigrants on crime reporting found that by far the most commonly mentioned reason for not reporting a crime was a language barrier (47 percent), followed by cultural differences (22 percent), and a lack of understanding of the U.S. criminal justice system (15 percent) — not fear of being turned over to immigration authorities. (Davis, Erez, and Avitable, 2001).
- The academic literature reveals varying attitudes and degrees of trust toward police within and among immigrant communities. Some studies have found that Central Americans may be less trusting than other groups, while others maintain that the most important factor is socio-economic status and feelings of empowerment within a community, rather than the presence or level of immigration enforcement. (See Davis and Henderson's 2003 study of New York and Menjivar and Bejarano's 2004 study of Phoenix).

Recent studies based on polling of immigrants about whether they might or might not report crimes in the future based on hypothetical local policies for police interaction with ICE, such as one recent study entitled "Insecure Communities", by Nik Theodore of the University of

²⁰ Jessica M. Vaughan, Steven A. Camarota, and Karen Zeigler, "Are Immigrants Less Willing to Report Crime? Data from the National Crime Victimization Survey says "No." October 14, 2021, Center for Immigration Studies, <https://cis.org/Report/Are-Immigrants-Less-Willing-Report-Crime>.

Illinois, Chicago, should be considered with great caution, since they measure emotions and predict possible behavior, rather than record and analyze actual behavior of immigrants. Moreover, the Theodore study is particularly flawed because it did not compare crime reporting rates of Latinos with other ethnic groups.

Ironically, sanctuary policies lead to exactly the kind of enforcement that advocates say is frightening to immigrants. When ICE is not able to arrest criminal alien targets in jails, they have to apprehend them in public – at their dwelling, at work, in a courthouse, or on the street. Besides the fact that such at-large arrests require more officers and more time to surveil and plan the arrest, these operations also put officers and the public at risk. The targets have attacked ICE officers, or try to flee, sometimes into schools and medical centers, causing havoc. They will even leave their children behind, as occurred recently in Minneapolis

The reason that immigration enforcement has not become a spectacle in Texas, Florida, and other states that also have experienced a significant uptick in enforcement is because ICE is working with, not against, local authorities, and is able to take care of business in the secure environment of jails rather than in neighborhoods, where anything can happen.

For these reasons, law enforcement agencies across the country have found that the most effective ways to encourage crime reporting by immigrants and all residents are to engage in community outreach, hire personnel who speak the languages of the community, establish anonymous tip lines, and set up community sub-stations with non-uniform personnel to take inquiries and reports — not by suspending cooperation with federal immigration enforcement efforts.

2. Legal Issues on Detainers. Some jurisdictions have adopted sanctuary policies that prohibit agencies from honoring ICE detainers. Sometimes these policies are imposed by elected officials and sometimes they are recommended by county attorneys or adopted by sheriffs who are concerned about liability for lawsuits. While there remains some outstanding legal controversy over certain issues, including liability, there should be no controversy whatsoever regarding a local agency's ability to honor a detainer in cases of aliens arrested for controlled substance offenses. Federal law explicitly permits local officers to notify federal immigration authorities to request a detainer, and directs federal immigration authorities to decide promptly if a detainer can be issued, and to act to take the alien in custody if appropriate (8 USC 1357(d)). There is no valid reason or excuse for local law enforcement agencies not to be contacting ICE and requesting detainers for alien drug offenders — especially for those who traffic in heroin, fentanyl, or other opioids.

Ironically, this provision was enacted by Congress because of widespread frustration among local law enforcement agencies and their congressional representatives that the federal immigration agency (INS) was not responding to their requests to remove drug offenders from their community. This was a time when there were significantly fewer than 1,000 investigative agents available to conduct their work for the entire United States. While detainers routinely were filed by INS agents for serious offenders, among those who fell through the cracks were second-tier drug offenders. This so angered police chiefs and sheriffs that they lobbied Congress to require INS agents to respond by filing a detainer if the arresting police agency requested it.

Fast forward a few decades, and we now have substantially more agents and officers in ICE, the successor agency to the INS, but now we have police, sheriff's departments, and even some correctional agencies, that decline to honor immigration detainers, meaning many non-citizen drug offenders are able to remain here with impunity, thanks to the sanctuary policies.²¹

For many years, numerous sanctuary jurisdictions have conditioned their cooperation on a requirement that ICE provide a “judicial” warrant to enable them to hold a criminal alien inmate for ICE. This is an unreasonable requirement that is designed as a pretext to refuse cooperation. Under our immigration laws, passed by Congress, which has plenary authority to decide how immigration laws can be enforced, there is no requirement for immigration officers to obtain an arrest warrant issued by a judge. These warrants do not exist Congress recognized that such a requirement would be impractical and onerous in the context of routine immigration enforcement (which is primarily civil in nature), and would be an undue burden on the judiciary as well. The implication that the lack of a “judicial” warrant necessarily amounts to a civil rights violation or an abuse of authority is misleading. Further, in practice and by policy, ICE does go above and beyond the requirements of the law by issuing a warrant of arrest or warrant of removal with every immigration detainer, which also includes a statement of probable cause that the alien is removable. Moreover, immigration detainers allow for law enforcement agencies to notify ICE, rather than hold the individual in custody, to give the agency a reasonable amount of time to take custody of an inmate before release – yet many sanctuary jurisdictions prohibit this communication, even in the case of violent and/or serious offenders.

Recommendations for Congress.

1. Stipulate that certain types of federal funding (such as grants to law enforcement agencies and reimbursement for the cost of incarcerating illegal aliens) shall be withheld from jurisdictions that adopt certain sanctuary policies and/or violate federal law;
2. Clarify that state and local law enforcement agencies have legal authority and discretion to cooperate with ICE, along with reasonable immunity while acting under this authority;
3. Allow ICE to decline to transfer custody of aliens under a detainer to sanctuary jurisdictions;
4. Provide a private right of action for victims who suffer serious harm by deportable aliens released by egregious sanctuaries;
5. Withhold tax-exempt status for municipal bonds issued by sanctuary jurisdictions.

²¹ Dan Cadman, "[An Anti-Sanctuary Bill Doesn't Quite Get to the Goal Line](#)", Center for Immigration Studies, February 11, 2018.