

U.S. Senate Committee on the Judiciary
Subcommittee on the Constitution
“Sanctuary Jurisdiction Policies and Federalism”

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Thank you, Chairman Schmitt, 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, which is an important responsibility and obligation to American citizens and legal immigrants. Besides undermining the law, sanctuary policies bring significant costs to the community – both the needless human cost of new victimizations at the hands of criminal aliens who are 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, and 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 forbade 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.”

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 the prohibited practices.

Some have argued that sections 1373 and 1644 are unconstitutional because they violate 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 made it possible for 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 the arresting law enforcement agency 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 who were causing problems in their 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 at public universities, and more.

The Human Cost of Sanctuary Policies. Sanctuary policies that block state and local law enforcement agencies from cooperating with ICE unavoidably 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, there were more than 26,000 cases of declined detainers or insufficient notice to ICE.⁴ More than half of these were jails in California, and more than one thousand each were declined by jails in Illinois, Virginia, Massachusetts, and Connecticut.

In Virginia, for example, during this time period 1,698 detainers were declined or ignored, of which 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

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>.

homicide convictions. One had 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 with the opportunity to continue to commit crimes, sometimes with tragic consequences. In May 2025, ICE finally managed to re-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 originally 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 after local arrests. 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-Ortiz, 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-Ortiz, 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,

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>.

they learned his true name and that he was a citizen of El Salvador. The local officers then 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, professional 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. We believe that the high rates of welfare use primarily reflect the fact that illegal immigrants generally have lower education levels and lower incomes than legal immigrants and native-born.

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

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.

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/>.

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.

One of the most significant fiscal 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 are approximately four million children of illegal aliens or unaccompanied alien children in public schools.¹⁴

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. In addition, some of the more recent 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. In 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.¹⁵

Myths About Sanctuary Policies. Advocates for sanctuary policies typically make certain dubious claims to justify limiting or prohibiting cooperation with ICE in their jurisdictions.

“Local police have to focus on doing local police work, and involvement in immigration enforcement is a distraction.” In practice, ICE is not asking local law enforcement agencies to

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 Steven A. Camarota, “The Cost of Illegal Immigration to Taxpayers,” testimony before the House Judiciary Committee, January 11, 2024,

https://budget.house.gov/imo/media/doc/the_cost_of_illegal_immigration_to_taxpayers.pdf.

¹⁵ Neeraj Kaushal and Felix M. Muchomba, “Cost of Public Health Insurance for US-Born and Immigrant Adults,” JAMA Netw Open, September 15, 2023,

<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2809604>.

do anything more than they would typically do for other fellow law enforcement agencies. The individuals that ICE is issuing detainers for have already been arrested by local authorities for breaking local laws. In most of these cases, ICE has articulated probable cause (based on a biometric/fingerprint match) that the alien is removable or the alien has been ordered removed. Detainers are accompanied by a warrant of arrest or removal. They ask the local agency to either a) hold the individual for up to 48 hours if they are to be released from local custody to give ICE time to take custody or b) to notify ICE of the date and time of release so ICE can arrive in time to take the individual. In other cases, ICE is seeking access to inmates to confirm or determine identity and potential removability. Neither of these scenarios is very time-consuming for the cooperating local agency. In fact, cooperating with ICE actually saves resources for the local agency in the long run, because it means that offenders that ICE takes into custody are likely to be removed from the community, rather than stay and potentially re-offend. This is why most state and local law enforcement agencies routinely cooperate with ICE and do not consider this to be a disruption to their work, but rather a benefit to their public safety mission. I have never met a law enforcement official who did not welcome a reduction in the number of criminals in their jurisdiction, whether they are citizens or immigrants.

“Assisting ICE with immigration enforcement drains local resources.” Numerous law enforcement agency leaders maintain that cooperation with ICE for immigration enforcement is not at all costly, and even saves taxpayer funds over the long run. One sheriff recently told me that it costs his agency an average of approximately \$4.50 for each detainer honored in his county.¹⁶ Further, as discussed above, there is a savings to the local criminal justice system in terms of reducing arrests, prosecution, incarceration, supervision, and victimizations when offenders are removed from the community rather than remaining to re-offend. Moreover, robust immigration enforcement cooperation brings additional significant fiscal savings at all levels of government. The average cost of a deportation is much smaller than the net fiscal drain created by the average illegal immigrant. A variety of reports have estimated the average cost of a deportation to be \$17,000. This sum may sound large, but actually compares very favorably to the estimated average lifetime net fiscal drain (taxes paid minus services used) of \$65,292 for each illegal immigrant, excluding their descendants. This net figure is based on fiscal estimates of immigrants by education level from the National Academies of Sciences, Engineering, and Medicine (NAS). The total fiscal drain for the entire illegal population is estimated at \$746.3 billion.¹⁷

¹⁶ Loudoun County, Virginia Sheriff Mike Chapman to Jessica Vaughan, “Virginia Sheriff Warns: Sanctuary Policies ‘Endanger Our Citizens,’” Center for Immigration Studies, “Parsing Immigration Policy,” Episode 246, March 19, 2026, <https://cis.org/Parsing-Immigration-Policy/Virginia-Sheriff-Warns-Sanctuary-Policies-Endanger-Our-Citizens>.

¹⁷ See Steven A. Camarota, “Deportation vs. the Cost of Letting Illegal Immigrants Stay,” Center for Immigration Studies, August 3, 2017, <https://cis.org/Report/Deportation-vs-Cost-Letting-Illegal-Immigrants-Stay> and Department of Homeland Security, “DHS Announces Historic Travel Assistance and Stipend for Voluntary Self-Deportation,” May 5, 2025, <https://www.dhs.gov/news/2025/05/05/dhs-announces-historic-travel-assistance-and-stipend-voluntary-self-deportation>.

“Sanctuary policies are protected by the Constitution, which bars the federal government from compelling state and local governments to help enforce federal laws, including immigration laws.” This argument is based on an inaccurate narrative of federal immigration enforcement. The federal government has not sought to force states and localities to actually enforce immigration laws. Rather, the federal government has sought to prevent sanctuary jurisdictions from singling out immigration agencies for non-cooperation, and sought to incentivize state and local jurisdictions to cooperate, for example, by limiting access to certain federal awards programs to those that are not sanctuaries. Under the Trump administration, the federal government has also sought to enforce sections 1373 and 1644 of the INA, which say that state and local governments may not prohibit state and local officials from communicating with federal immigration authorities about an alien’s immigration status. It is reasonable for the federal government to enforce the law against sanctuaries, particularly when the consequences affect public safety.

“If local police are allowed to engage with ICE then immigrants in the community will not report crimes.” This frequently heard claim has never been substantiated, and actually 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), from 2020-23, only about 40 to 50 percent of violent victimizations and 50 to 60 percent of robbery victimizations were reported to police, 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 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

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>.

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).

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 study entitled "Insecure Communities", by a University of Illinois, Chicago researcher, should be considered with great caution, since they measure emotions and try to predict possible behavior, rather than record and analyze actual behavior of immigrants. Moreover, this study is particularly flawed because it did not compare crime reporting rates of Latinos with other ethnic groups.

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>.

Ironically, sanctuary policies lead to exactly the kind of enforcement that advocates say is frightening to immigrants. When ICE officers are 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 tried to flee, sometimes into schools and medical centers, sometimes leaving their children behind, causing havoc.

The reason that immigration enforcement has not become a spectacle in Texas, Florida, and other cooperative 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.

“Local police do not have the authority to honor ICE detainees.” Some jurisdictions have adopted sanctuary policies that prohibit or mostly prohibit local law enforcement agencies from honoring ICE detainees. Usually these policies are imposed by elected officials, recommended by county attorneys, or adopted by sheriffs who are concerned about liability for lawsuits, sometimes after receiving threatening letters from anti-enforcement immigrant advocacy groups such as the American Civil Liberties Union. 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 detainee in cases of aliens arrested for controlled substance offenses. Federal law explicitly permits local officers to notify federal immigration authorities to request a detainee, and directs federal immigration authorities to decide promptly if a detainee 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 detainees 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 detainees 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 detainee 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

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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

“Local authorities should not be expected to honor detainers unless ICE provides a judicial warrant.” 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 that includes a statement of probable cause that the alien is removable. Moreover, immigration detainers allow for law enforcement agencies to notify ICE of a release date, rather than hold the individual in custody – 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.