NISKANEN CENTER

CHANGING THE CONVERSATION ABOUT SANCTUARY CITIES

An Evidence-Based Approach

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Niskanen Center
February 2021

Key Takeaways

- The term "sanctuary city" is a misnomer for jurisdictions that prioritize enforcing local laws and the economic interest of their communities over enforcement of federal immigration laws.
- Enacting federal or state laws to limit cooperation between federal immigration agencies and local law enforcement would allow local jurisdictions to redirect policing resources to protecting their communities.
- In order to make our communities truly secure, we need to: reform the ICE detainer system, create standardized enforcement priorities, and establish secure locations.

The Niskanen Center is a 501(c)3 issue advocacy organization that works to change public policy through direct engagement in the policymaking process.
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What Is a Sanctuary City?

Cities, counties, and states are designated a "sanctuary jurisdiction" when they implement any one policy that in some way limits the use of local law enforcement resources–like personnel or facilities–to assist Immigration and Customs Enforcement (ICE) in carrying out federal immigration responsibilities. There are currently about 300 sanctuary jurisdictions in the U.S. that have implemented some kind of sanctuary policy.

Sanctuary policies fall on a spectrum—from total noncompliance to promising help only when resources are available. In some sanctuary jurisdictions, police officers are prohibited from inquiring about immigration status when taking someone into custody. In others, local law enforcement refuses to enforce ICE detainers unless the overlap with warrant requirements for liability reasons. Regardless of the specific policy, *any* sanctuary policy deems a jurisdiction a "sanctuary" for the undocumented population.

Most often, sanctuary policies relate to the treatment by the local law enforcement of undocumented persons who have not committed any serious crimes, who have posted bail, or who have completed their sentences. If an individual—undocumented or otherwise—is arrested for a serious crime, the police routinely charge them and hold them in custody, regardless of immigration status.

Using a detainer request, ICE often asks local law enforcement to hold that person beyond what is allowed by a judicial warrant in order to investigate a potential immigration violation. The issue that arises with the enforcement of ICE detainers is that local law enforcement may not—arguably—have the legal authority to continue to hold an individual suspected of an immigration violation. If successfully sued, local law enforcement is responsible for paying damages for the unlawful hold.

The primary goal of sanctuary policies is to utilize local law enforcement resources to prioritize upholding public safety and community policing goals, and not blur jurisdiction with federal law enforcement officials.

History of Sanctuary Cities in the U.S.

The U.S. has a long history of sanctuary cities protecting the most vulnerable populations. It can be argued that sanctuary cities in the U.S. date back to the 1850s, when northern states implemented personal liberty laws to combat the federally enacted Fugitive Slave Act, which prohibited local officials from assisting in the capture and return of slaves.

In the 1980s, the Reagan administration declared the one million Salvadorans and Guatemalans fleeing civil war in their countries were "economic migrants," thereby placing them at risk of deportation. In response, a network of religious institutions, college campuses, and sanctuary cities created the sanctuary movement to protect them.

San Francisco, for example, enacted a policy which prohibited the "use of City funds or resources to assist in the enforcement of federal immigration law or to gather information regarding the immigration status of individuals in the city and county of San Francisco, unless such assistance is required by federal or state statute, regulation, or court decision." In March 1985, Chicago Mayor Harold Washington signed an executive order restricting cooperation between city agencies and federal immigration authorities. These policies protected thousands of individuals from being returned to torture, prosecution, and death.

"Jurisdictions often implement sanctuary policies in an effort to save money and support public safety."

Are Sanctuary Policies Partisan?

Jurisdictions often implement sanctuary policies in an effort to save money and support public safety by ensuring that all members of a community feel safe interacting with local law enforcement officials.

Agreements between ICE and local law enforcement agencies to use personnel or to detain individuals for alleged immigration offenses are expensive for jurisdictions. Jurisdictions are responsible for the cost of housing immigrants for an extended period of time, hiring any additional staff for immigration enforcement, and for the cost of the necessary resources and equipment to meet the requirements of the agreement.

A study by the Brookings Institution on Prince William County, Virginia found that its immigration enforcement policy would cost $6.4 million in the first year of operation, and $26 million over five years. To fund the implementation of the program, the county transferred $793,425 from its contingency fund. Additionally, local jurisdictions are solely responsible for the legal risk these agreements impose. Multiple courts have ruled that holding an immigrant past the point of release so ICE can pick them up is unconstitutional; so when jurisdictions do enforce ICE detainers, it puts them at risk of being sued for unlawful holding.

These agreements also threaten community safety and can lead to widespread racial profiling by local law enforcement. A study by the University of North Carolina School of Law and the American Civil Liberties Union of North Carolina found that cooperation agreements between ICE and local law enforcement, "...encourages, or at the very least tolerates, racial profiling and baseless stereotyping, resulting in the harassment of citizens and isolation of the Hispanic community."

In Maricopa County, Arizona the local law enforcement agency was placed under court supervision due to the systematic racial profiling of Hispanics and immigrants under then-Sheriff Joe Arpaio. Prince William County, Virginia allocated $3.1 million [almost half of the $6.4 million budget] to install cameras and monitoring footage in the county's 250 police cars to defend the department against allegations of racial profiling.

It's worth noting that research does not support the claim that immigrants are more likely to engage in criminal behavior than native-born Americans. A 2018 review which synthesized immigration-crime data over a 20 year period, finds that immigrants are not more likely to commit crimes in the U.S. than natural-born citizens. Additionally, jurisdictions that do adopt agreements with ICE do not target serious offenders. Half of all detainers issued through the cooperation agreement programs were on people who had committed misdemeanors and traffic offenses.

The term "sanctuary city" is a misnomer for jurisdictions that prioritize enforcing local laws and the economic interest of their communities over enforcement of federal immigration laws.

The Imaginary Political Divide of Sanctuary Cities

As with all immigration debates, there is a sense that partisanship dictates whether a jurisdiction will have some kind of sanctuary policy in place. But that idea is misleading—there are, in fact, many jurisdictions aligned across the political spectrum that have sanctuary policies.

Across the country, there are eleven sanctuary states; meaning, that the state governs how individual cities and counties interact with federal immigration authorities. Of those states, all are typically considered Democratic, which makes for an easy–but incomplete–picture of the partisan divide among sanctuary jurisdictions.

Most sanctuary policies are decided on a local level, and usually depend on the resources available to local law enforcement. A helpful example is Pennsylvania. In 2016, then-candidate Donald Trump won 48.2 percent of the popular vote, and all 20 of the electoral votes. Of the 67 counties in Pennsylvania, nearly a quarter—15 counties and Philadelphia—have some kind of sanctuary policy.

In western Pennsylvania, Clarion country voted overwhelmingly for President Trump in 2016—71 percent to Hilary Clinton's 24 percent. And yet, for 23 years, Clarion County has had a sanctuary policy that prohibits local law enforcement from holding individuals solely based on an ICE detainer. Similarly, Westmoreland County—which also voted overwhelmingly Republican—decided in 2014 that the county will not honor an ICE detainer without an accompanying judicial warrant or court order.

In recent weeks, Attorney General Barr has brought a number of lawsuits against sanctuary jurisdictions, claiming that a county in Washington state and New Jersey are flouting federal immigration law. Yet it's critical to note that local law enforcement is not required by law to help federal immigration authorities to do their jobs. Doing so is often not a high priority for jurisdictions that are already strapped for resources—both funding for personnel and operations.

These are not the first lawsuits brought by the Trump administration. Following tandem executive orders on immigration and enforcement issued by President Trump in January 2017, then-Attorney General Jeff Sessions' brought a lawsuit against California, alleging that the state cannot enforce laws that contradict federal immigration laws. In the face of countersuits and a refusal by a judge to issue an injunction against California, the suits lost steam.

"Local law enforcement officials have overwhelmingly expressed their concerns over both the policy of holding individuals in accordance with ICE detainers without additional legal authority, and the cost of doing so"

But the threat of the "crackdown" and the potential for reduced federal funding worried many local leaders. Mayors and police chiefs from across the country expressed their desire to continue to cooperate with federal authorities in "a variety of ways."

The Fraternal Order of the Police—a group of 330,000 members of law enforcement—signed a letter addressed to Republican Speaker Paul Ryan and House leadership. They indicated that they would oppose any legislation that penalizes local law enforcement agencies by withholding federal funding or resources meant to coerce complete cooperation with immigration authorities.

There is no distinction between jurisdictions that limit cooperation with federal immigration enforcement personnel and those that refuse to cooperate (all are sanctuary jurisdictions). But there are several reasons that so many jurisdictions choose to limit their degree of cooperation with immigration authorities that have nothing to do with politics.

Local law enforcement officials have overwhelmingly expressed their concerns over both the policy of holding individuals in accordance with ICE detainers without additional legal authority, and the cost of doing so. Even absent the threat of losing future funding, leaders from these jurisdictions conveyed concerns over the cost—settlements, personnel, training, etc.—of compliance and the loss of resources that would otherwise be dedicated to reducing crime in their communities.

Often, when local law enforcement tries to blur the lines between detainers and warrants, they pay for it. In recent years, a slew of cases before circuit courts in the U.S. have found that plaintiffs—both U.S. citizens and undocumented individuals—stated valid Fourth Amendment claim against ICE and local law enforcement officials held based on an ICE detainer beyond the 48 hours authorized by a warrant, or after posting bail. Lehigh County, PA, settled for $95,000 in damages and attorney's fees and agreed to adopt a policy of no longer honoring ICE detainers without a court order. One year later, the Fifth Circuit held it was clear that ICE detainers must comply with Fourth Amendment seizure requirements.

Outside the legal context, detainers require significant resource investment by local law enforcement. Taxpayers in Los Angeles County paid over $26 million in 2012 to hold individuals at the request of ICE officials. In part, those costs result from federal authorities failing to follow up on 62 percent of the detainers issued to local law enforcement.

Partisanship may rule the day when we discuss many issues–immigration in particular. But as our communities and coffers are stressed in unprecedented ways during the COVID-19 crisis, we must recognize the rationale behind allowing jurisdictions to implement policies that are best for their communities, not their politics.

Federal Immigration Policies That Spurred Sanctuary Cities

Many "sanctuary cities" formed in response to the Secure Communities program, a federal immigration policy, first implemented by the George W. Bush administration in 2008. The Secure Communities program allowed Immigration and Customs Enforcement (ICE) to issue detainers for anyone detained by local law enforcement, forcing local law enforcement to hold individuals suspected of an immigration violation for up to 48 hours. In 2014, President Barack Obama ended the Secure Communities program and replaced broad enforcement with prioritized enforcement redefined by the Priority Enforcement Program (PEP). Within the first few days of his presidency, Donald Trump ended PEP, and resumed expansive, untargeted enforcement and removal via a revived Secure Communities program.

For 12 years, local law enforcement agencies struggled to comply with both Secure Communities and PEP. Detainers and deportations increased under both programs, as have the costs of complying with their increasing demands. Local law enforcement officials have overwhelmingly expressed their concerns over both the policy of holding individuals per ICE detainers without additional legal authority, and the cost of doing so. Even absent the threat of losing future funding, leaders from these jurisdictions conveyed concerns over the cost—settlements, personnel, training, etc.—of compliance and the loss of resources that would otherwise go towards reducing crime in their communities.

Secure Communities (2008-2014; 2017-current)

The Secure Communities program is a national program that requires local law enforcement agencies to submit fingerprint records to ICE. ICE can then issue detainers that require local law enforcement to hold individuals suspected of immigration violations until they can be transferred into ICE custody. Most often, this results in individuals held by local police beyond what is allowed by a judicial warrant (48 hours).

Initially, ICE and the Department of Homeland Security (DHS) characterized the program as voluntary, allowing jurisdictions to opt-out of the program at any time. But the conditions for opting-out were arduous.

For a locality to opt-out of the program, it had to formally (in writing) notify its State Identification Bureau and ICE of its request to opt-out. Upon receipt of that request, ICE would call a meeting

with federal partners, the jurisdiction, and the state to discuss any issues or concerns with participating and—ideally—come to a resolution that allowed for participation.

In a press conference on October 6, 2010, Homeland Security Secretary Janet Napolitano stated that DHS "did not view this as an opt-in, opt-out program," putting to rest the notion that jurisdictions had agency in determining whether they would participate in the program or not. When localities in San Francisco and Santa Clara, California, Arlington, Virginia, and Washington D.C. tried to opt-out of the program, ICE entertained their requests for months before revealing that it never intended to give them the option to opt-out.

In response, multiple local jurisdictions, including Cook County, Illinois, and Washington, D.C., passed legislation to limit local compliance with immigration detainers, thus creating sanctuary cities. However, even if a local law enforcement agency had a policy of not cooperating with immigration officials, ICE could still use fingerprint records from Secure Communities. They would then advise agency officials about where they are likely to find and arrest individuals.

In 2013, under the Obama administration, Secure Communities resulted in record-high deportations, primarily because deportations were not targeted, but encompassed anyone encountered by immigration enforcement. After Secure Communities was implemented, more than half of deportations conducted by ICE were of immigrants who had never been convicted of a crime. Many immigrants, like "absconders" with minor convictions and recent border crossers, were counted as "criminal aliens." In 2015, the Migration Policy Institute estimated that between 2010 and 2011, under Secure Communities, 27 percent of the undocumented population fell under enforcement priorities for deportation. Under PEP, only about 13 percent of the undocumented population had previous criminal convictions that would make them enforcement priorities.

Because Secure Communities implemented a comprehensive enforcement strategy, fewer criminal aliens that posed real threats to public safety were prosecuted. A 2012 Office of the Inspector General (OIG) report concluded that, thanks to a lack of enforcement priorities, the Secure Communities worked well. It enhanced ICE's ability to enforce U.S. immigration laws by expanding its presence to new jurisdictions, despite evidence that it targeted more criminal actors.

In 2011, a DHS report broke down deportations based on the level of seriousness of a conviction. Only 26 percent of deportations were level 1 convictions (the most serious crimes included terrorism and violent felonies) Nineteen percent of deportees had level 2 convictions, including individuals with multiple misdemeanor convictions resulting in minimal sentences in jail. Finally, 29 percent were level 3 convictions–e.g., minor crimes like criminal traffic violations and absconding.

Similarly, a 2016 report released after the end of Secure Communities provided a similar breakdown of deportations by criminality level under the new enforcement priorities. Overall, 87 percent of deportations fell under level 1 criminal convictions, and only 15.4 percent fell under level 2 or level 1. In contrast to the OIG report, Secure Communities did not prioritize the removal of dangerous criminals, but deported as many individuals with minor convictions as serious ones.

Priority Enforcement Program (2014-2016)

In November 2014, DHS Secretary Jeh Johnson, under the direction of President Obama, sent a memorandum that discontinued Secure Communities and established the Priority Enforcement Program (PEP). The PEP applied guidance that redefined how DHS would address immigration enforcement, detention, and deportations. The policy narrowed enforcement priorities with a focus on targeting convicted criminals and those who threatened public safety, and limited ICE's ability to put detainer requests on those in custody who weren't charged with violent crimes.

Under PEP, if an individual did not fit the priority guidelines, ICE would have 48-hours before the individual was released from custody to determine if there is probable cause for removal.

PEP lessened the need for sanctuary policies because it allowed local law enforcement agencies to negotiate their detainer policies and adapt their enforcement policies based on need and resource availability.

According to the Migration Policy Institute:

> "DHS will work with individual communities to develop protocols that stipulate agreed-upon enforcement practices. For example, a jurisdiction may agree to honor PEP requests only in cases involving convicted felons or may require that ICE establish a community review board as a condition of its cooperation. The precise terms of the agreements are likely to be negotiated on a case-by-case basis, with DHS paying particular attention to jurisdictions such as New York City, Los Angeles, and Cook County, whose cooperation ICE depends on for effective interior immigration enforcement."

After the implementation of PEP, deportations fell by almost half in 2015, with 90 percent of all deportations occurring at the border. Over half of the deportees were immigrants who had been convicted of a crime.

Restoring Secure Communities

Within days of taking office, President Trump overturned PEP and reinstated the Secure Communities program, absent the pretense of voluntary cooperation. Since reinstating the program, the Trump administration has worked to stamp out all sanctuary policies through lawsuits and attempting to withhold funds from cities and states found violating federal enforcement policies, but to little avail. Nonetheless, the reinstated program has raised deportations and severely damaged the relationship between local law enforcement agencies and ICE.

Deportations should prioritize ensuring public safety, then address enforcing the law, while paying mind to the factors that warrant deportation and removal or humanitarian parole. Expelling law-abiding individuals who have been in the United States for decades, puts financial and operational pressure on local law enforcement, and pulls focus from its primary task: tackling threats to public safety and national security.

The Slippery Slope of ICE Detainers

Previously in Niskanen's ongoing sanctuary city series, we discussed why local law enforcement may be hesitant to comply with detainers issued by ICE (not least of which are the costly legal ramifications). In this piece, we take a step back and discuss what exactly ICE detainers are, and how they differ from judicial warrants.

A warrant is a written order signed by a court that validates any search, seizure, or arrest by local law enforcement. It must always be accompanied by a sworn statement made by an officer under oath, claiming that probable cause that a crime was committed exists.

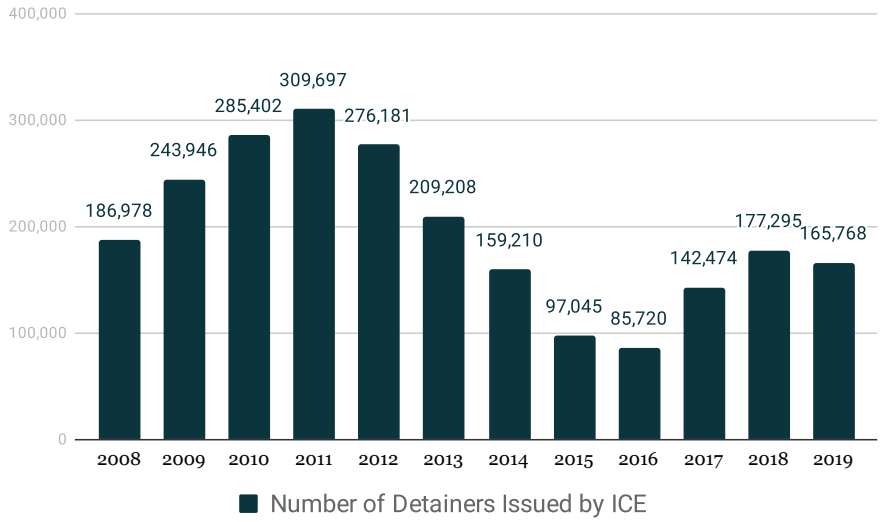
On the other hand, a detainer request is a mechanism where ICE requests that the local law enforcement agency hold — or detain — individuals *suspected* of an immigration violation for 48 hours after their otherwise lawful release from custody. ICE cannot step in while any criminal charges are pending. Rather, ICE must wait until the individual is no longer being held on local law enforcement authority. Detainers are used to facilitate a transfer from local law enforcement to ICE after the local agency's justification for holding an individual has expired.

"An ICE detainer can be issued by just about any immigration official when a person suspected of not having lawful immigration status is arrested by local law enforcement."

Whereas a warrant requires review and approval by a judge, an ICE detainer can be issued by just about any immigration official when a person suspected of not having lawful immigration status is arrested by local law enforcement. Federal information-sharing agreements have existed between immigration authorities and the FBI for decades. Per these agreements, fingerprints that the FBI collects from local law enforcement are automatically forwarded to the Department of Homeland Security (DHS). DHS then checks against immigration databases, revealing whether an individual is unlawfully present, and whether they present a risk to public safety.

Authorization for issuing immigration detainers lies in Title 8, Section 287.7 of the Code of Federal Regulations, and the Immigration and Nationality Act. Authority to issue a detainer is broad. The law allows border patrol agents, aircraft pilots, special agents, deportation officers, immigration inspectors, adjudications officers, immigration and supervisory enforcement agents, supervisory and managerial personnel of any of these people, and almost any immigration officer who "needs" it, the authority to issue a detainer. Though the regulation requires the receiving law enforcement agency to comply with the detainer "request," numerous courts have not enforced the requirement. Per the policies reinstated by the Trump administration in 2017, any individual suspected of lacking lawful status is a *priority* for removal, regardless of their threat — or lack thereof — to public safety. In recent years, the number of detainers has steadily gone up. Still, the number of detainers issued under the Trump administration is dwarfed by those issued during the Obama administration. It may surprise some that at their height, deportations under the Obama administration — just before their change in enforcement policies — nearly doubled the number of deportations in 2019.

FIGURE 1:
ICE Detainers (2008-2019)



NISKANEN CENTER | Source: Data available on TRAC Immigration, last accessed June 10, 2019

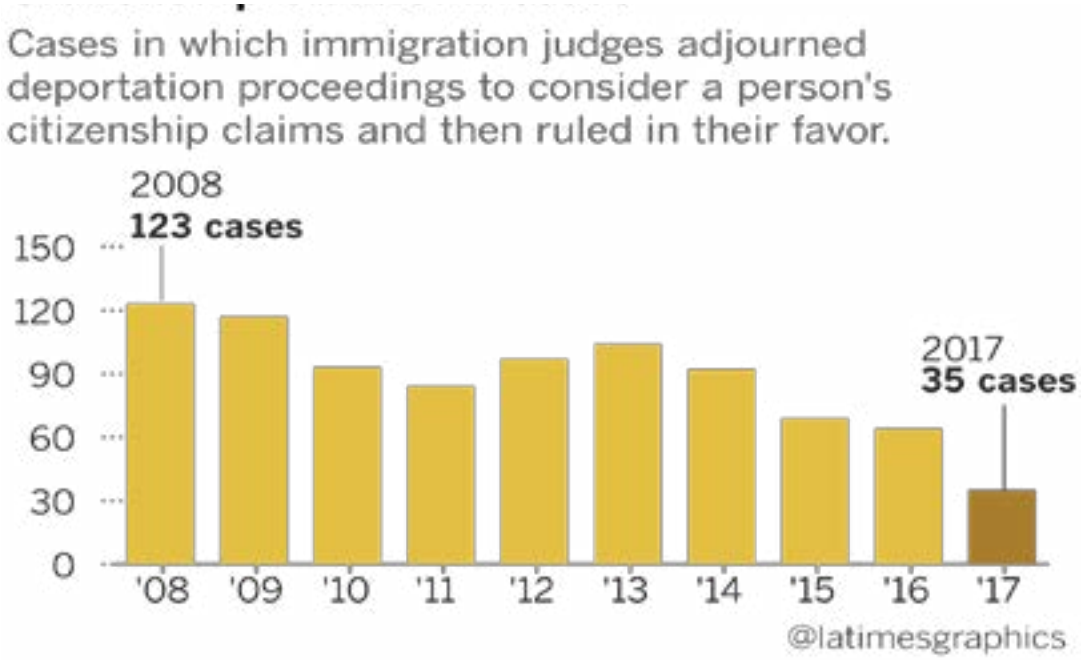
The detainer process extends significant deference to immigration officials, as opposed to a warrant, which extends deference to the *individual* via protections enshrined in the Fourth Amendment. Prior to 2014, ICE officials could issue a detainer if they had "reason to believe" an individual was removable. After several successful lawsuits, the Obama administration rolled back its use of detainers, asking instead to be notified when a local agency was preparing to release an alien. If agents could not take custody of that person before the scheduled release, they could request extended detention — but still had to confirm there was a final order of removal, or other "probable cause" that justified removal.

Making the process more intentional (rather than automatic) likely spurred the falling numbers of detainer requests between 2014-16, in addition to the new probable cause requirements. The subsequent rise in detainers during the Trump administration is likely due to the sheer number of individuals detained after the administration's 2016 removal of prioritization categories.

Importantly, the confirmation that there is a civil order of removal or other probable cause still does not alleviate concerns by local law enforcement about detaining individuals at the request of ICE without a warrant. These overt safeguards are intended to protect individual rights from potential abuse by law enforcement officers. Still, no appeals court has authoritatively ruled on whether it provides local law enforcement the legal cover necessary to hold individuals beyond their scheduled release in compliance with an ICE detainer.

It doesn't help matters that ICE has made numerous documented mistakes when it comes to arrests and detentions. According to the Los Angeles Times, since 2012, ICE has detained more than 1,480 people to investigate their citizenship claims — only to later release them from its custody. Here are the agency figures provided by the U.S. Department of Justice and reproduced in the L.A. Times graphic:

FIGURE 2:
Citizenship Claims in Court



NISKANEN CENTER | Source: U.S. Department of Justice (L.A. Times Graphics)

In one case, an American citizen was held for over *three years* — 1,273 days — in detention because ICE did not believe him to be a legal citizen. He was awarded a $20,000 settlement.

Investigating citizenship claims can be arduous, particularly for those who do not have paper records of their citizenship readily available. Sometimes though, ICE could correct these mistakes by conducting more than a cursory review of records before issuing a detainer. These mistakes leave significant questions as to the efficacy of the detainer system.

It follows that local law enforcement may be more willing to cooperate with federal immigration officials if they had more confidence in the process. Significantly raising the requirements to issue detainers — both who can authorize their issuance and what the standard of review is to do so — or doing away with them entirely and replacing them with warrants — would ensure more human rights protections, fewer lawsuits, and a tailored focus on priority detainees.

Local Law Enforcement Actions Authorized by ICE

Sanctuary jurisdictions are defined as cities, counties, and states that limit the use of law enforcement resources to assist Immigration and Customs Enforcement in carrying out federal immigration responsibilities. These policies are a favorite target of the Trump administration. Still, few people focus on what collaboration between state and local law enforcement agencies (LEAs) and ICE looks like, and the spectrum of cooperation.

Agreements between federal immigration agencies and LEAs authorized in 1996 under Section 287(g) of the Immigration and Nationality Act (INA). Like sanctuary policies, these agreements are broad and can be adapted to each jurisdiction's needs.

The oldest and most expansive form of these agreements is the Criminal Alien Program (CAP), which requires LEAs to provide ICE with biometric and biographic data to screen for removable individuals. The 287(g) program designates LEA officers to perform limited immigration law enforcement functions. Conversely, the goal of these partnerships (as stated by ICE) is to enhance safety and security in communities "by allowing local officials to act as a force multiplier in the identification, arrest, and service of warrants and detainers of incarcerated foreign-born individuals with criminal charges or convictions."

Concerns over these collaboration agreements emerged soon after they were enacted. The primary criticism was that these programs delegated authority to state and local law enforcement agents over what many considered a federal responsibility solely, and allowed agents to use what is often perceived as undue discretion to shape immigration enforcement decisions. These agreements have resulted in deterioration of trust between community members and their police forces and a substantial legal liability for LEAs.

The Trump administration's broad enforcement priorities and repeated attacks on immigrants and sanctuary cities have contributed to these agreements' expanded use. As of January 2016, ICE had 287(g) agreements with 32 law enforcement agencies in 16 states. As of September 2020, ICE has 150 287(g) agreements in 32 states. The CAP program screens inmates in more than 4,300 federal, state, and local jails daily. With the end of the Obama-era Priority Enforcement Program and reinstatement of the more sweeping Secure Communities program, ICE more heavily depends on LEAs' collaboration to carry out its deportation priorities.

These agreements leverage state and local LEAs to identify and detain deportable individuals, enhancing ICE's enforcement capacity, but they also raise concerns about police-community relations and civil rights. The increased focus on deporting individuals based on arrest instead of convictions erodes the trust necessary for community members to report crimes or participate in policing activities. The ACLU found that when members of a community fear deportation, it impacts police officers' ability to protect crime survivors and harms officer safety.

Deputizing LEA agents to carry out immigration enforcement also increases the risk of officers racially profiling community members. By ensuring that all arrestees are screened for immigration violations, regardless of a conviction, these agreements may incentivize officers to arrest individuals based on racial or ethnic characteristics. In 2010, fourteen years after the 287(g) program's

implementation, this occurred in many jurisdictions, which led to ICE increasing training requirements and supervision to reduce the risk of racial profiling and misuse of enforcement programs.

In addition to the harm these agreements do to communities, they also create massive legal liability for LEAs. Multiple courts have found that LEAs that detain individuals beyond their release dates violate the Fourth Amendment of the U.S. Constitution because a detainer request does not provide probable cause for arrest. Some jurisdictions justify complying with detainer requests while operating under 287(g) programs because their officers have been deputized to act as federal immigration officials and have independent authority to comply with detainers. However, courts ruled that officers' operating under 287(g) agreements is not an adequate defense to alleged constitutional violations.

Local jurisdictions which operate under these agreements assume all legal risk. There is no stipulation in Section 287(g) of the INA or in Memorandum of Agreements (MOAs) that protects local jails or officers from litigation or legal liability for complying with detainers or possible constitutional violations. ICE has refused to identify local officials deputized under these agreements, leaving them liable and vulnerable to litigation.

ICE heavily relies on LEAs to locate deportable individuals in communities across the U.S. However, this places an unfair burden on local communities to use their resources and risk their public safety to fulfill ICE's duties. Agreements between federal immigration authorities and local police forces create a climate of fear within communities and effectively turn local law enforcement agents into federal immigration agents.

287(g) Agreements: A Costly Choice for Localities

The 150 localities currently cooperating with Immigration and Customs Enforcement (ICE) incur high costs due to formally entering into 287(g) agreements. While many jurisdictions prefer to avoid these costs, there has been considerable federal pressure on local and state law enforcement to cooperate with ICE and sign these agreements. 287(g) agreements expand local and state law enforcement's responsibilities to include enforcement of immigration laws. Jurisdictions must also fund associated training costs and detention, and contend with the potential for legal liability associated with 287(g) agreements. Here, we will further examine the cost of 287(g) agreements and their effects on local jurisdictions.

Training, detention, legal liability, and local economic impact: Costs associated with 287(g) agreements

Training

While ICE covers the cost of training of deputized officers, state and local governments shoulder the majority of costs associated with a 287(g) agreement. Local authorities are responsible for travel, housing, and per diems for officers during their ICE training, associated salaries, and overtime for work performed in furtherance of 287(g) responsibilities.

For example, in 2008, Arizona's Maricopa County sheriff's office had a $1.3 million budget deficit solely due to overtime associated with its 287(g) agreement. The 287(g) agreement in Gwinnett County, Georgia, cost taxpayers as much as $3.7 million per year over eight years, which would have amounted to 5 percent of the total sheriff's budget in 2012. Denver's 287(g) program cost taxpayers up to $1.5 million annually, roughly the amount spent on its entire Family Violence Unit.

Detention

ICE states that a benefit of 287(g) agreements is to limit the amount of time individuals spend in the agency's custody. However, in practice, these agreements do not seem to decrease time in ICE custody and shift the cost burden from the federal to local government. Detention is costly; a 2012 report by Justice Strategies found that the average length of stay for people released from the Los Angeles County Jail to ICE custody was 32.3 days. The average length of stay for all other individuals released was just 11.7 days. At a cost per prisoner of $113 per day, this amounts to an average additional $2,328 per detainee for ICE at the expense of local taxpayers.

Legal Liability

In addition to detention costs, localities also bear a legal responsibility for individuals held in their local jails. ICE detainers are requests to hold individuals beyond their otherwise lawful incarceration time in a local jail or prison. Due to variation in state-to-state rulings on detention length, localities with 287(g) agreements risk breaking the law when complying with an ICE detainer. Local law enforcement could be held liable if the arrestee is held beyond 48 hours – regardless of whether the jurisdiction is complying with an ICE detainer – or if the detainer is mistakenly placed on a citizen.

The litigation costs can be enormous. Maricopa County, Arizona, was ordered to pay $43 million in litigation fees due to lawsuits directly related to its 287(g) program, largely attributed to racial profiling and discrimination against immigrant communities. Other localities have also seen significant legal costs. In 2017, Los Angeles County paid $255,000 to settle one named plaintiff's detainer claim. The same year, San Francisco paid a $190,000 settlement to an individual unlawfully turned over to ICE, and Spokane settled a detainer lawsuit for $49,000. In 2018, San Juan County paid $300,000 to settle a detainer class-action lawsuit, and paid named plaintiffs additional sums to settle their claims. We have a more extensive discussion on the legal liability of 287(g) agreements here, and will focus on mistaken detainment, racial profiling, and discrimination associated with 287(g) agreements in our next piece in this series.

Local Economic Impact

287(g) jurisdictions experience not only the direct costs of their 287(g) programs, but indirect costs to their local economies. A recent Center for American Progress report analyzed 40 localities with current 287(g) agreements and found that immigrant households in those communities generated almost $66 billion in spending power and contributed $24 billion in tax revenue. Yet, localities with 287(g) agreements may experience a decline in their immigrant population: a report by the University of North Carolina at Chapel Hill attributes both Mecklenburg and Alamance counties sales tax and local business revenue reductions to a decrease in their immigrant population. Discouraging the growth of immigrant communities may harm local economies.

Why 287(g) jurisdictions terminate their agreements with ICE: Virginia and Oklahoma

To illustrate the significant costs jurisdictions encounter, consider the cases of Prince William County, Virginia, and Tulsa County, Oklahoma:

Prince William County, Virginia

In June 2020, Prince William County ended a decade-long 287(g) agreement with ICE, primarily due to the effect on their local budget, daily operating costs, and maintenance fees.

In 2010, Prince William County paid $25.9 million over five years to implement its 287(g) agreement with ICE, in the form of staffing and detention costs. While these costs eventually decreased to $160,000 annually in 2019, they had continued impact on the Prince William County budget. A study by the Brookings Institute found that the county appropriated an extra $1.4 million of local tax revenue to fund start-up costs and take money from its "rainy day" fund to pay for the 287(g) program. Costs associated with the 287(g) program were paid for with cuts to local police and fire departments.

The program's debatable effectiveness was also cited as a reason for ending the agreement. Despite the ongoing rhetoric which claims that sanctuary cities actively shelter "violent criminals", most individuals deported under policies such as Secure Communities are low-level offenders. Prince William County Police Chief Barry Barnard criticized the 287(g) agreement, stating, "I have not seen any hard data where the 287 program is a direct cause of any measurable crime reduction in Prince William County." He also felt that it damaged the department's ability to develop relationships with county residents. Virginia House of Delegates member Elizabeth Guzman affirmed the ending of Prince William County's agreement with ICE, "We need to use our local dollars to fix our own problems."

Tulsa County, Oklahoma

The Tulsa County Sheriff's Office (TCSO) renewed its 287(g) agreement with ICE in May 2020, only to quickly terminate the agreement the next month. Citing financial concerns, TCSO Spokeswoman Casey Roebuck affirmed the 287(g) agreement's termination, "Financially, it just made sense to go ahead, end the contract, put those employees back into other positions..."

As with other 287(g) agreements, TCSO was responsible for the salaries, benefits, and overtime of all deputized officers trained by ICE. In addition to these financial concerns, detaining individuals on behalf of ICE led to more extended stays in TCSO jails, and increased the risk of potential health hazards during the COVID-19 pandemic.

Moving forward: Don't pressure localities to sign 287(g) agreements

Local jurisdictions are responding. In February 2017, Sheriff Ed Gonzalez announced that Harris County, Texas, would terminate its 287(g) agreement and instead direct the $675,000 cost towards improving clearance rates for major crimes. Additionally, a group of 63 police chiefs and sheriffs from the Law Enforcement Immigration Task Force sent a letter to Congress to formally state their opposition to the pressure on localities to sign 287(g) agreements.

Despite the skepticism about the effectiveness of the 287(g) program, the Trump administration expressed 287(g) locality compliance as a priority by threatening to withhold funds from sanctuary cities, reflecting the politicization of these issues. State and local jurisdictions that choose not to sign 287(g) agreements with ICE often do so because these programs require high costs of training deputized officers, high detention costs, and increased legal risk.

State and local jurisdictions should be empowered to consider alternatives to 287(g) agreements that would prevent and fight crime without alienating immigrant communities and jeopardizing public safety. Localities that choose alternatives to 287(g) agreements should not be penalized or pressured to comply with the current administration's wishes on what has become a partisan issue.

Mistaken Detainment, Racial Profiling, and Discrimination: How ICE Fails to Protect Communities

We discussed the costs jurisdictions shoulder when entering into 287(g) agreements that draft local police into the work of Immigrations and Customs Enforcement in our previous piece. This piece focuses on how agreements with ICE — 287(g) and others — set up localities and states for policies that increase the risk of mistaken detainment and deportation and that racially profile and discriminate against immigrant communities.

Mistaken detainment: Falling through the cracks with no due process

Since 2002, ICE has mistakenly identified at least 2,840 U.S. citizens for deportation and held at least 214 of these individuals in its custody. Many independent figures suggest this is a low estimate; higher estimates indicate that between 2003 and 2010, over 20,000 U.S. citizens were mistakenly detained or deported. These experiences can be devastating for individuals wrongly subjected to them.

"Since 2002, ICE has mistakenly identified at least 2,840 U.S. citizens for deportation and held at least 214 of these individuals in its custody."

In one case, Davino Watson, a U.S. citizen, was detained for over three years as a deportable alien as he tried to prove his citizenship status. During his detainment, he did not have legal representation, so it was not until after his release that he filed a complaint. By then, the statute of limitations had expired.

An appeals court found that Watson was not entitled to any financial compensation for the three years he unjustly spent behind bars. "ICE did not follow their own procedures of what to do when the detained immigrant makes a claim of U.S. citizenship," stated Mark Flessner, the lawyer who worked on Watson's case. "It was crystal clear from the beginning, had (the Department of Homeland Security) done its homework properly, that he has been a U.S. citizen since 2002."

In another case, Peter Sean Brown, a Florida resident, was mistaken for a Jamaican individual and detained in Florida for three weeks. During his detainment, he repeatedly stated that he was a U.S. citizen, but was mocked by correctional officers. An employee of the sheriff's office in Florida's Monroe County, where he was detained, reportedly told him, "It

is not up to us to determine the validity of an ICE hold. That is between you, your attorney, and ICE." During his detainment, Brown did not receive an appointed attorney and could not afford one. Eventually, Brown's roommate sent ICE a copy of Brown's birth certificate, and ICE released Brown with no means to get home. By the time he made it back, he had lost his job.

These two cases illustrate an issue repeatedly faced by individuals facing mistaken detention and removal proceedings — the lack of representation. While all individuals in removal proceedings have the right to *hire* a lawyer, the state does not provide representation.

Access to counsel in immigration court matters. According to a study by the American Immigration Council (AIC), only 14 percent of immigrants in detention pending removal have legal counsel, compared with two-thirds of immigrants who are in removal proceedings but not detained. AIC notes there are many reasons why immigrants in custody cannot access representation — limited phone use, regional variability in legal services, visitation rules, lack of access to evidence — but the ability to pay for a lawyer is the most obvious.

Only a tiny proportion of cases in need of financial assistance ever receive pro bono representation; meanwhile, the government always has lawyers arguing in favor of deportation. The combined complexity and speed of removal proceedings compounds errors of mistaken identity.

Due process in criminal courts includes the right to legal representation, to be advised of rights when arrested, and to have a case heard promptly. Immigration courts do not guarantee these rights to immigrants and asylum seekers. While the Supreme Court has ruled in certain circumstances that non-U.S. citizens are entitled to due process, immigrants' removal proceedings do not reflect the universal right to legal access and due process. Instead, mistakenly detained U.S. citizens and immigrants alike must navigate a bewildering, costly, uphill climb to make their case to avoid removal.

High litigation costs to localities

We've previously discussed the litigation costs associated with ICE detainers and mistaken detainment. While the implications for individuals mistakenly detained or deported by ICE can be enormous, localities often absorb the legal risk of holding individuals on behalf of ICE.

ICE detainers are requests to hold individuals beyond their otherwise lawful incarceration in a local jail or prison. The legality of holding individuals in custody after they are eligible for release under the Fourth Amendment is still being litigated. Due to variation in state-to-state rulings on detention length, localities with 287(g) agreements risk breaking the law when complying with an ICE detainer. Local law enforcement may be liable if the arrestee is held beyond 48 hours — regardless of whether the jurisdiction is complying with an ICE detainer. We have a more extensive discussion on the legal liability of 287(g) agreements here.

Localities open themselves up to lawsuits when detaining individuals on behalf of ICE. In a review of 155 immigration detainers placed on U.S. citizens, the Cato Institute found that nearly 75 percent of individuals were detained, 15 percent of which resulted from mistaken identity. In at least 15 of these cases, where U.S. citizens were mistakenly detained, the individuals won a financial

settlement either from ICE or the local government that held them.

For example, after detaining a U.S. citizen for three days based on a detainer request that ICE mistakenly issued, the city of Allentown and Lehigh County in Pennsylvania were forced to pay a $145,000 settlement. Lehigh County subsequently declared that it would no longer honor ICE detainers without a court order. In another part of the state, Allegheny County paid a $25,000 settlement to Angelica Davila and agreed to stop honoring ICE detainers after she was detained because her detainer misspelled her name.

In Michigan, the Grand Rapids City Commission paid a $190,000 settlement after the Kent County Sheriff's Department detained Jilmar Ramos-Gomez, despite having his military ID, Marine Corps tags, U.S. passport, and Real ID driver's license.

While mistaken detainment and deportation can have dire and distressing effects on U.S. citizens, localities who follow through on ICE detainer requests often end up paying costly settlements at the expense of local taxpayers.

Racial profiling and discrimination

Discrimination based on race is not a new concern in U.S. immigration policy. The connection between race and immigration status in the U.S. began long ago via laws limiting or restricting immigration for persons of color or specified national origin. To name a few historical examples, the Chinese Exclusion Act of 1882, the national-origins quota system established in 1924, and the 2017 Muslim ban all prohibited or limited immigration for individuals based on their national origin.

Since the mid-1990s, Congress increased its focus on the U.S.-Mexico border and allocated considerable funds for infrastructure, technology, and people dedicated to limiting unauthorized immigration. Enforcement campaigns at the U.S.-Mexico border — Operation Blockade, Operation Hold the Line, and Operation Gatekeeper — focused on areas with high illegal border crossing levels, even though most unauthorized immigration occurs with overstay of properly issued visas.

Nonetheless, rigorous attention remains fixed on the southern border, focusing on preventing authorized immigration from Mexico and the Northern Triangle. Over time, Department of Justice investigations into localities that participated in 287(g), Secure Communities, and the Criminal Alien Program — all of which shifted the responsibility of enforcement from federal to local officials — found they resulted in unlawful racial profiling against Latino-identifying individuals. These campaigns, programs, and agreements made investigation of U.S. residents' legal status everyday routine, and ubiquitous.

The damage this has caused in the immigrant community cannot be overstated. Law enforcement's repeated focus on Latino individuals has created racist narratives about Latino immigrants and non-immigrants alike, often using humiliating, intrusive, and dangerous enforcement methods. These methods cost targeted Latino individuals their personal time, dignity, high legal fees, as well as lost job opportunities and time spent in detainment for individuals mistakenly detained.

It has also caused chaos and heartbreak for the 16.7 million individuals in mixed-status families with at least one unauthorized family member living with them. These families face uncertainty about whether their families can stay together or whether parents and children will be suddenly separated. Children in these families often suffer psychological trauma, especially if they witness a parents' arrest or if their parents are separated, which can have direct detrimental effects on early development.

The threat of deportation alone puts pressure and stress on immigrant communities. Fear of being targeted becomes an everyday occurence. For example, individuals may choose to take the bus in states where they cannot access a legal driver's license. Workers may experience employment abuse, with limited legal recourse, and are more likely to be part of an informal economy with no access to medical insurance for themselves and their families. Researchers refer to these stressors as "extrafamilial acculturative stress," and find it is associated with poor physical and emotional health in both parents and children.

Targeting Latino individuals with negative narratives and disproportionate immigration-related contact is part of a racist history, a narrow definition of who gets to claim 'American' identity. The reality of the United States, however, belies a narrow concept of a white America. Nearly 70 percent of U.S. cities have become more racially diverse over the past 10 years, and experts expect this trend to continue. An increasing proportion of Americans view increasing racial diversity positively, rather than negatively. It is past time for immigration law enforcement practices and behaviors to reflect these values rather than continue terrorizing immigrant communities.

Erosion of immigrant rights under the Fourth Amendment

One place to start is to reexamine the historical erosion of immigrant rights under the Fourth Amendment and ensure that legal protections are extended to all U.S. residents. Criminologists studying injustice in the legal system examine changes to the Fourth Amendment and their effects on immigration policy.

While the Fourth Amendment protects individuals from unreasonable searches and seizures, courts debate the definition of "reasonableness" when drivers and their passengers are ostensibly pulled over for traffic offenses. Law enforcement officers are allowed to conduct investigatory stops if the officer has reasonable suspicion that a crime has occurred, and immigration law enforcement must have reasonable suspicion that the occupants of a vehicle are undocumented. In any situation, "reasonable suspicion" must be based on something other than the occupants' racial appearance.

While law enforcement is not allowed to stop vehicles without "reasonable suspicion" and cannot rely on racial appearance alone, in practice, these restrictions are often ignored or misunderstood by immigration law enforcement. Near the U.S.-Mexico border, these issues are exacerbated: U.S. Customs and Border Patrol (CBP) has broad authority to stop and search individuals at checkpoints within 100 miles of the U.S. border. This creates significantly more opportunity for racial profiling in what is sometimes referred to as a "constitution-free zone."

In 1975, in a seminal case on the issue, *United States v. Brignoni-Ponce*, Felix Humberto Brignoni-

Ponce's car was stopped near the U.S.-Mexico border by Border Patrol agents because he and his passengers appeared to be of Mexican descent. After it was found that two of the car's passengers were undocumented, they were arrested. Brignoni-Ponce was convicted on two counts of knowingly transporting undocumented individuals.

While the Fourth Amendment requires law enforcement officers to have reasonable suspicion while stopping a vehicle to question individuals about their immigration status, the Supreme Court held that near the border, "the likelihood that any given person of Mexican ancestry is an alien is high enough to make Mexican appearance a relevant factor," though not one that agents can rely on in isolation. Since this case, CBP officers have consistently ignored remaining Fourth Amendment protections, operating outside the 100-mile zone and operating "roving patrol" stops without reasonable suspicion that violations have occurred. Compounding the issue is the consistent lack of agent accountability to CBP, inadequate agent training, and a lack of DHS oversight, which results in abuse and constitutional violations against immigrants and U.S. citizens alike.

"Even the potential for racial profiling causes harm in communities; local and state officials frequently cited a degradation of trust between the community and law enforcement."

The erosion of rights under the Fourth Amendment is not limited to CBP's authority at the border. Arizona's infamous Senate Bill 1070 — signed into law as the Support Our Law Enforcement and Safe Neighborhoods Act — encouraged police to target people of color and immigrant communities by requiring officers to inquire about legal status if they have suspicion the individual might be undocumented.

Arizona S.B. 1070 barred state or local officials or agencies from restricting federal immigration law enforcement, explicitly referencing *United States v. Brignoni-Ponce* to open up the door to use "Mexican appearance" as "a legitimate consideration" when stopping an individual. While it was partially struck down in 2012 by the Supreme Court, the cascading effect of S.B. 1070 has had long-lasting impacts — sudden deportation of immediate family members, the rapid emigration of undocumented individuals from Arizona, and decreased trust in local law enforcement, to name a few. S.B. 1070 went far beyond federal policies by requiring and legitimizing racially-motivated stops and searches.

State and local profiling — 287(g) agreements

Since the implementation of 287(g) agreements, racial profiling in immigration enforcement is no longer limited to federal agencies. State and local cooperation with ICE can lead to violations of an individual's constitutional and civil rights. 287(g) agreements, which expand local law enforcement's responsibilities to include enforcement of immigration laws, have been the subject of many racial profiling allegations. On the surface, 287(g) agreements are intended to be neutral policies. Still, as illustrated in the following examples, the agreements often target marginalized communities and weaken relationships between local law enforcement and immigrant communities. In fact, some law enforcement agencies have used 287(g) agreements as a cover for racial profiling, using a supposedly neutral policy tool to push racist, personal beliefs.

Joe Arpaio, former sheriff of Arizona's Maricopa County, remains the most infamous example.

In 2005, Arpaio conducted broad sweeps of Latino neighborhoods and arrested high numbers of undocumented individuals who had committed no criminal offenses; the DOJ conducted an investigation which led to ICE failing to renew its 287(g) agreement with Arpaio's agency. However, the sheriff's 287(g) jail enforcement program remained active until 2017, when due to litigation, Arpaio's successor ended Maricopa County's practice of honoring ICE hold detainers.

In North Carolina in 2012, Alamance County Sheriff Terry Johnson was sued by the U.S. Department of Justice for systematically and unlawfully targeting Latino residents for investigation, traffic stops, arrests, seizures, and other enforcement actions. Sheriff Johnson was repeatedly quoted as encouraging his officers to target the Mexican community there. ICE terminated the Alamance County 287(g) agreement that same year, but partnered with the county again in 2019 to approve Sheriff Johnson's $2.8 million budget increase for staffing needs and facility upgrades at the county detention facility to detain immigrants for ICE. While requesting this money, Johnson used racially charged, inaccurate statements about the local immigrant community.

Similar programs to 287(g) agreements also increased the number of Latino arrests for minor infractions compared to the number of arrests of members of other ethnic groups. The Criminal Alien Program (CAP) in Irving, Texas — similar to a 287(g) agreement — disproportionately targeted Latino individuals for arrest.

Even the potential for racial profiling causes harm in communities; local and state officials frequently cited a degradation of trust between the community and law enforcement. Local and state law enforcement have terminated or not renewed their agreements with ICE because of such problems. In a few cases, such as in Maricopa and Alamance counties, ICE ended contracts in cases where the DOJ concluded that local officials used their delegated authorities to engage in unlawful, discriminatory policing practices.

Many police chiefs argue for ending 287(g) and similar agreements, finding that they reduce trust between the police and the local immigrant community. The Law Enforcement Immigration Task Force, an organization of over 100 sheriffs and police chiefs across the U.S., recommends explicitly communicating to the public that local law enforcement "does not ask about immigration status when community members contact the police about a crime or other matters."

A study by the University of Illinois at Chicago found that 70 percent of unauthorized immigrants and 40 percent of Latino-identifying individuals are less likely to deal with police if they will be questioned about their or someone else's immigration status.

Chuck Wexler, executive director of the Police Executive Research Forum, stated, "Had these undocumented people, and countless others in cities across America, not stepped forward to report crime and cooperate with the police, we would have more dangerous offenders committing more crime — and more serious crime — against innocent victims."

Localities that want to prevent racial profiling and discrimination struggle to find policies that mitigate these effects. In Virginia, after the initial adoption of Prince William County (PWC)'s 287(g) agreement, the Jail Board passed an amended resolution to limit the scope of inquiry into an indi-

vidual's immigration status. The resolution mandated that police only inquire into the immigration status of people physically arrested by the police, rather than all detained persons for whom there was probable cause to ask. The Jail Board also expressly prohibited racial profiling for the PWC police. These changes were a pivotal moment in the policy's history because it considerably lessened the risk that racial profiling might occur or appear to occur in implementing the policy.

Nonetheless, PWC still saw a degradation of the relationship between local enforcement and the immigrant community. Tracy Lennox, a jail board member and president of the Prince William County Bar Association, supported pulling out the 287(g) agreement, "287(g) is just broken. The community has lost faith in it. This is an opportunity for you guys to send a message to your minority population — the black and brown people in your community — 287(g) has got to go."

PWC Police Chief Barry Barnard, who retired this past summer, also supported pulling out of the agreement, "We need to build trust with everyone in Prince William County, and we have a large immigration population. People tend to avoid the police because they don't want to get caught up in a case and risk being deported. Some don't want to be witnesses... they may be in the country legally, but they may have family who may not be."

PWC ended its 287(g) agreement with ICE in 2020, changing the relationship between local law enforcement and the local immigrant community. This aligns with the idea that 287(g) agreements are incompatible with localities interested in shifting to community policing practices. For localities like Prince William County, ending 287(g) agreements aligns with building a better relationship with their communities and reducing crime.

Conclusion

The erosion of rights under the Fourth Amendment, combined with the racial profiling present in 287(g) agreements, denies all U.S. residents equal protection under the law. Law enforcement has an opportunity to help reduce crime by keeping the immigration status of crime victims off the table and communicating this policy clearly to the immigrant community.

Additionally, ICE errors in mistaken detainment push legal responsibility and cost onto localities that agree to detain those individuals. Localities shouldn't participate in agreements that hold them legally and financially liable for ICE's errors.

What Is Next for Sanctuary Cities?

Sanctuary policies have a long history in the U.S. As laws attacking immigrant communities evolve, so do the efforts to protect vulnerable members of the population from detention and deportation. Many states and cities are now considering becoming permanent sanctuary jurisdictions, in addition to the 300 other jurisdictions across the U.S. with some form of temporary sanctuary policy limiting cooperation. Some examples include California, which officially became a sanctuary state in 2017, and San Francisco, Chicago, and other large cities across the U.S that have enacted similar legislation. As we have stated throughout this series, the term "sanctuary city" is a misnomer for jurisdictions that prioritize enforcing locally salient laws and their communities' economic interests over enforcement of federal immigration laws.

This is not a partisan issue but a matter of protecting both immigrant communities and law enforcement resources. While 11 states are considered sanctuary states, sanctuary policies are typically decided on a local level and usually depend on the resources available to local law enforcement. While in theory it makes sense to leave it to local jurisdictions to decide what resources are available to put towards immigration enforcement, they are vulnerable to federal pressure via coercive tactics like we saw under the Trump administration. Enacting federal or state laws to limit cooperation between federal immigration agencies and local law enforcement would limit pressure from Washington and allow local jurisdictions to redirect policing resources to protecting their communities.

Even absent the threat of losing future funding from the Trump administration, local leaders have conveyed concerns over the cost of compliance with immigration detainers and the loss of resources that would otherwise be dedicated to reducing crime in their communities. As previously noted throughout this series, the 287(g) agreements that deputize local police as immigration agents do not target serious offenders. These agreements waste valuable public resources on misdemeanors and traffic offenses and place local law enforcement agencies at risk of lawsuits. They have also proven to increase the likelihood of local law enforcement agents racially profiling and discriminating against community members. These agreements have high risks for local communities, both financially and in public trust.

To create laws that effectively protect immigrants and protect communities from being forced into agreements with federal immigration agencies, state and federal governments should:

1). Reform the detainer system

As previously discussed, Immigration and Customs Enforcement (ICE) detainers do not have the legal backing that a warrant signed by a judge does. The detainer process extends significant deference to immigration officials and is often interpreted as violating an individual's Fourth Amendment protections. The current detainer system places local law enforcement agencies at risk of lawsuits and requires them to pay for the cost of housing individuals as ICE conducts background investigations. While it would be most beneficial to eliminate the detainer system altogether and require warrants to hold an individual, a simple step would be to raise the requirements for authorizing detainers and the standard of review for when they can be issued. This would ensure more human rights protections, fewer lawsuits, and a tailored focus on priority detainees.

2). Create standardized enforcement priorities

Immigration enforcement priorities changed under the Obama and Trump administrations. So-called "voluntary" programs like Secure Communities and the Priority Enforcement Program give the federal government the authority to dictate how many resources a community should put towards immigration enforcement every few years. If the federal government imposes immigration priorities on local law enforcement agencies, it should be through legislation, not executive order.

3). Establish secure locations

Communities have a vested interest in protecting certain locations from enforcement. Private

institutions such as religious institutions and college campuses have historically provided sanctuary to immigrants and have justified their role with constitutional protections and the lack of available resources to engage in federal enforcement. To promote public safety, community members should know they are safe accessing certain resources such as schools, religious institutions, and courthouses. These locations should be secure from immigration enforcement in every city and state, without repercussions for the institution.

Conclusion

The term "sanctuary city" demonizes a locality's decision to prioritize their communities' economic interests over enforcement of federal immigration laws. In reality, the policies adopted by jurisdictions that are classified as "sanctuary" policies should be standard practice in every city and state. These three policy recommendations would create room for local jurisdictions to make decisions that best protect their communities.