

THE RENEWED ASSAULT ON SANCTUARY CITIES

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I. INTRODUCTION

It took less than three hours after his inauguration for President Trump to renew his attack on sanctuary cities.¹ In an executive order

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1. *President Trump Issues Dozens of Executive Orders Impacting Immigrants' Access to Assistance, Federal Workforce and More*, NAT'L LOW INCOME HOUS. COAL. (Jan. 21, 2025),

titled *Protecting the American People Against Invasion*, the President called on his administration to ensure that sanctuary jurisdictions “do not receive access to Federal funds,” and to “undertake any other lawful actions, criminal or civil” against them.² A day later, then-Acting Deputy Attorney General Emil Bove issued a memo threatening action against any jurisdictions that “fail[] to comply with lawful immigration-related commands and requests.”³ Since then, billions of dollars of federal funding have been withheld, lawsuits against several states and cities were filed, federal agents swarmed into cities like Minneapolis and Chicago, and additional executive orders have been issued threatening criminal sanctions against local officials.⁴

A new federal assault on immigration sanctuaries is underway, and it is threatening to upend the traditional understanding of the federalism relationship between states, localities, and the federal government.⁵ Subverting once conservative principles, the Trump Administration is undermining “states’ rights” by seeking to “commandeer” local officials to enforce federal law.⁶ At the same time, local dependence on federal largess nurtured in part by decades of progressive policies has given the federal government fiscal leverage far more impactful than its legal authority.⁷ All the while, the politics of immigration is shifting, along with the perception of sanctuary.

On the one hand, it can be argued that the present assault is but a repeat of the first Trump Administration, during which states and

<https://nlihc.org/resource/president-trump-issues-dozens-executive-orders-impacting-immigrants-access-assistance> [<https://perma.cc/HA6Q-8LWC>].

2. Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8446 (Jan. 20, 2025).

3. Memorandum from Emil Bove, Acting Deputy Att’y Gen., U.S. Dep’t of Just., to all department employees, Interim Policy Changes Regarding Charging, Sentencing, and Immigration Enforcement (Jan. 21, 2025), <https://www.documentcloud.org/documents/25501154-doj-all-staff-memo-jan-21/> [<https://perma.cc/D82G-Z2LV>].

4. See, e.g., Exec. Order No. 14,287, 90 Fed. Reg. 18761, 18762–63. (Apr. 28, 2025); *City & County of San Francisco v. Trump*, 779 F. Supp. 3d 1077, 1080–83 (N.D. Cal. Apr. 24, 2025) (granting preliminary injunction preventing freeze of federal funds to sanctuary cities); Mitch Smith, *Federal Judge Dismisses Trump Administration’s Challenge of Illinois Sanctuary Measures*, N.Y. TIMES (July 25, 2025), <https://www.nytimes.com/2025/07/25/us/illinois-sanctuary-trump-immigration-lawsuit.html> [<https://perma.cc/T25Q-ZV4Q>]; Joshua Barajas, *Shooting Deaths Climb in Trump’s Mass Deportation Effort*, PBS NEWS (Jan. 29, 2026), <https://www.pbs.org/newshour/nation/a-look-at-shootings-by-federal-immigration-officers> [<https://perma.cc/CT3N-PRCG>].

5. See Ilaria Di Gioia, *From Liberal States’ Rights Litigation to Liberal States’ Rights Discourse: A Study of State Oppositional Strategies to the ACA and Federal Immigration Laws*, 96 U. DET. MERCY L. REV. 55 (2018).

6. See *id.* at 101–02.

7. See *id.* at 103–17.

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localities were largely successful in fending off federal commandeering efforts.⁸ After all, President Trump called for the defunding of sanctuary cities in 2017, sued both California and New York City, and threatened criminal action against the Mayor of Oakland when she warned her residents about a possible raid.⁹ If that were the case, then sanctuary jurisdictions are on firm footing. In both litigation by and against the Trump Administration, courts found in favor of sanctuary jurisdictions in the vast majority.¹⁰

On the other hand, there are signs that the ongoing assault is more forceful, expansive, and punitive than previous efforts, and faces a judiciary that may be more accommodating. Rather than a single grant program administered by the Department of Justice, defending efforts now span the federal government from FEMA to the Department of Transportation.¹¹ Both in public and in court, Trump Administration officials are openly declaring that states and cities have a legal obligation to abide by all federal requests for assistance, while more and more states are mandating the same for their own state and local officials.¹² Bolstered by unprecedented funding and military support, federal agents have unleashed increasingly indiscriminate force on city streets, ensnaring immigrants, protesters, and U.S. citizen bystanders alike.¹³ Moreover, given the number of Supreme Court precedents that have been overturned since the first Trump Administration, there is a strong

8. Rose Cuison-Villazor & Pratheepan Gulasekaram, *The New Sanctuary and Anti-Sanctuary Movements*, 52 U.C. DAVIS L. REV. 549, 555 (2018).

9. Exec. Order No. 13768, 3 C.F.R. 268 (2017); *see also* Cuison-Villazor & Gulasekaram, *supra* note 8, at 553–60.

10. *See* Garrett L. Hartley, *No Sanctuary: An Analysis of the Trump Administration's War on Sanctuary Jurisdictions*, 49 CUMB. L. REV. 355, 355–57 (2018).

11. *See, e.g.*, Exec. Order No. 14,218, 90 Fed. Reg. 10581, 10581 (Feb. 19, 2025); Thomas Frank, *Memos: FEMA Blocked \$10B in Disaster Aid*, E&E NEWS BY POLITICO (Mar. 28, 2025, at 13:54 ET), <https://www.eenews.net/articles/memos-fema-blocked-10b-in-disaster-aid/> [<https://perma.cc/N457-WTD6>]; Letter from Sean Duffy, Sec'y of Transp., Dep't of Transp., to All Recipients of U.S. Dep't of Transp. Funding (Apr. 24, 2025), <https://www.transportation.gov/sites/dot.gov/files/2025-05/Follow%20the%20Law%20Letter%20to%20Applicants%204.24.25.pdf> [<https://perma.cc/M3YS-X4C5>].

12. *See* State Map on Immigration Enforcement 2024, IMMIGR. LEGAL RES. CTR. (Nov. 8, 2024), <https://www.ilrc.org/state-map-immigration-enforcement-2024> [<https://perma.cc/XLD3-S8CQ>]; *Impacts of Immigration Executive Orders on Local Governments Webinar Resource: FAQ*, LOC. GOV'T LEGAL CTR., (Jan. 31, 2025), <https://www.nlc.org/wp-content/uploads/2025/02/Impacts-of-Immigration-Executive-Orders-on-Local-Governments-Webinar-Resource.pdf> [<https://perma.cc/FW8M-573D>].

13. *See* Barajas, *supra* note 4.

chance that the ultimate outcome of this round of assaults might be very different than the first.¹⁴

This Essay outlines the challenges that sanctuary jurisdictions are facing under the second Trump Administration. We argue that this fight not only implicates immigration policies in this country, especially with respect to interior enforcement, but it also threatens to upend the basic structure of our federal system. We begin in Part I with an overview of the legal tensions underlying this sanctuary fight—between federal supremacy on the one hand and anti-commandeering on the other. This sets the stage for Part II, where we examine the various legal mechanisms—defunding, civil litigation, and criminal prosecution—that the Trump Administration has used or threatened to use against sanctuary jurisdictions. Finally, Part III explores the opposite—the risks they face if they decide to participate. As is often the case for local governments in the United States, we show how today’s immigration debates place them between a rock and a hard place.

II. FEDERALISM AND THE SANCTUARY CITY

In its assault on sanctuary cities, the Trump Administration seeks to enlist all local officials as auxiliary agents of federal immigration enforcement. To accomplish this, however, requires a fundamental reconceptualization of our system of federalism. This Part outlines the unstated tension in the Trump Administration’s renewed assault on sanctuary cities. We show that the political battle over sanctuary cities is a manifestation of the long-standing balance between the supremacy of federal laws on the one hand and constitutional limits on federal commandeering on the other. With this as the battlefield, we argue that the Trump Administration is employing a two-pronged offensive: (1) a frontal attack on the applicability of the anti-commandeering doctrine in the immigration context and (2) a “Trojan Horse” strategy to co-opt local law enforcement officials to undermine sanctuary policies from within.¹⁵

14. See Table of Supreme Court Decisions Overruled by Subsequent Decisions, CONST. ANNOTATED, <https://constitution.congress.gov/resources/decisions-overruled/> [<https://perma.cc/9FB2-FPRU>] (last visited Feb. 12, 2026). Indeed, there are already signs that the longstanding “individualized suspicion” standard established by the Supreme Court in *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975) might be eroded in favor of more explicit racial profiling *Noem v. Vasquez Perdomo*, 146 S. Ct. 1 (2025) (staying an injunction against federal agents’ use of race, language, and location as primary factors for reasonable suspicion).

15. As we explain later, we use the Trojan Horse as a metaphor to describe the Trump Administration’s strategy of enlisting local law enforcement as a means of dismantling sanctuary policies from within. In the classical mythology, the Trojan Horse was a deceptive device used by the Greeks during their siege of the city of Troy. See VIRGIL, *THE ANEID*,

A. Federalism in the Balance

The dispute between the federal government and state/local government centers on the scope of authority in immigration enforcement. The federal government sets immigration policy, so the Trump Administration argues that states and localities must comply with federal requests and enforce federal law.¹⁶ Immigration enforcement is a federal responsibility, so states and localities argue that they are under no obligation to participate and may set their own policies regarding their involvement.¹⁷ Both sides claim the other is violating the law.¹⁸ Both sides assert that the other is acting outside of their governmental authority.¹⁹

The federal-state fight over sanctuary is often talked about through the lens of immigration policy.²⁰ But at the foundation is also a battle over the basic structure of our federal system and the relationship between the federal government and the states.

On the one hand, the Trump Administration is right to call attention to the federal government's authority over immigration. Under the Constitution, federal law trumps state law.²¹ This is especially true in the context of immigration, where it is often said that the federal government has "plenary power" over the field.²² From this perspective, state and local governments cannot regulate immigration in a manner that conflicts with federal law.²³ In fact, it is not clear that they have any authority to regulate immigration at all, much less to set their own immigration policy.²⁴

On the other hand, the federal government cannot "commandeer" state and local officials.²⁵ Our system of federalism defines the federal government and the states as dual and independent sovereigns.²⁶ States and their localities are not subsidiaries of the federal government, just

BOOK II (Charles W. Eliot II ed., John Dryden, trans., 1909) (circa 19 B.C.E.), <https://classics.mit.edu/Virgil/aeneid.html> [<https://perma.cc/QKG2-JG4Q>].

16. See Exec. Order No. 14,287, 90 Fed. Reg. 18761, 18761 (Apr. 28, 2025).

17. See *City of Chicago v. Sessions*, 888 F.3d 272, 281–92 (7th Cir. 2018) (holding the executive branch could not withhold federal funding from sanctuary cities based on their refusal to comply with immigration enforcement requests).

18. See *id.* at 276–80.

19. See *id.*

20. See, e.g., *id.* at 280–81.

21. See U.S. CONST. art. VI, cl. 2.

22. See U.S. CONST. art. I, § 8, cl. 4; *id.* art. II, §§ 2–3.

23. See *Arizona v. United States*, 567 U.S. 387, 399–400 (2012).

24. See *id.* at 399, 416 (holding that when Congress occupies an entire field, as it has in the field of alien registration, even complementary state regulation is impermissible).

25. *New York v. United States*, 505 U.S. 144, 161–63 (1992).

26. See THE FEDERALIST NO. 39, at 245 (James Madison) (Clinton Rossiter ed., 1961).

as the federal government is not beholden to the states.²⁷ Consequently, the federal government cannot order state and local governments to enforce federal laws or implement federal programs.²⁸ This principle was demonstrated when the Supreme Court blocked Congress from requiring local sheriffs to conduct background checks under federal gun laws.²⁹ Similarly, when the federal government used grant conditions to “encourage” states to expand Medicaid in return for continued federal funding, the Supreme Court deemed such conditions as “coercive” for failing to provide with a meaningful choice.³⁰

Given these opposing forces and rights, the front lines of the sanctuary debate reflect the fundamental balance of our federal system. Invoking its plenary power over immigration, the federal government argues sanctuary obstructs its efforts.³¹ Pushing back, states and localities argue that the anti-commandeering doctrine means that they can choose when and whether to participate.³²

The result is a federalism balance at odds with political rhetoric. Despite accusations of lawlessness,³³ there is no federal law that requires states or localities to take any affirmative action with respect to immigration.³⁴ Despite the centrality of immigration detainers to federal enforcement strategy, there is no federal law that mandates state or local compliance with these requests.³⁵ The only federal law that even touches upon sanctuary—8 U.S.C. § 1373—simply prohibits states and localities from limiting communications between their officials and federal authorities concerning immigration status, and does not affirmatively mandate any such communications.³⁶

27. *See id.*

28. *See id.*

29. *See* *Printz v. United States*, 521 U.S. 898, 925 (1997).

30. *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 580–81 (2012).

31. Exec. Order No. 14,287, 90 Fed. Reg. 18761, 18761-62 (Apr. 28, 2025).

32. *See, e.g., United States v. Illinois*, No. 25 CV 1285, 2025 WL 2098688, at *7, *27 (N.D. Ill. July 25, 2025) (discussing the defendant state's and localities' argument that their sanctuary policies, which the Court determined “reflect Defendants' decision to not participate in enforcing civil immigration law,” could not be preempted by the Immigration and Nationality Act without violating the anti-commandeering doctrine).

33. *See, e.g.,* Exec. Order No. 14,287, 90 Fed. Reg. at 18761 (“This is a lawless insurrection against the supremacy of Federal law and the Federal Government's obligation to defend the territorial sovereignty of the United States.”)

34. Pratheepan Gulasekaram et al., *Anti-Sanctuary and Immigration Localism*, 119 COLUM. L. REV. 837, 849 (2019).

35. *Id.*

36. 8 U.S.C. § 1373(a)–(c).

B. Mustn't, May, Must

From a federalism perspective, then, sanctuary policies are legal exercises of the discretion that state and local governments possess—discretion that is ensured by the constitutional prohibition on federal commandeering.³⁷ As a result, to overcome sanctuary policies, the Trump Administration must undermine the anti-commandeering doctrine.³⁸ The frontal assault on sanctuary cities, we argue, is primarily unfolding as an effort to push from “mustn’t” and “may” into “must.” In other words, while no one doubts that the federal government can designate actions that local officials “mustn’t” or “may” do with respect to immigration, the Trump Administration is seeking to argue that there are certain enforcement activities that states and localities “must” do.

Federal supremacy ordinarily means that the federal government is free to define what states and localities “mustn’t” do with respect to immigration.³⁹ In such circumstances, state and local policies are deemed preempted by federal law. Preemption may occur expressly, such as when Congress explicitly prohibits states from imposing civil or criminal penalties on employers who hire unauthorized immigrants.⁴⁰ The “mustn’t” can also arise from the occupation of a field,⁴¹ in which federal regulation is so comprehensive that it leaves states and localities no room for supplementary governance. For example, states are precluded from enacting registration requirements for immigrants and defining what constitutes unlawful entry.⁴² The Supreme Court has repeatedly rejected state and local efforts both to regulate immigration and to undertake

37. Davide Macelloni, *A Violation of the Anti-Commandeering Principle and Spending Powers Jurisprudence or a Valid Exercise of Federal Powers? Executive Order 13768 and Its Effects on Florida Localities*, 42 NOVA L. REV. 95, 119–26 (2017).

38. *Id.* See generally *New York v. United States*, 505 U.S. 144, 155–59 (1992) (summarizing the historical evolution of the anti-commandeering doctrine, focusing on the scope of the Federal Government’s authority over states in terms of the Tenth Amendment limitations).

39. See generally *Arizona v. United States*, 567 U.S. 387 (2012) (holding that federal law preempted state statutes that sought to create new state-level crimes for immigration violations, as the federal government has occupied the field of alien registration); *De Canas v. Bica*, 424 U.S. 351 (1976) (recognizing that while states possess some police power over local matters, they are prohibited from enacting regulations that constitute a “determination of who should or should not be admitted into the country”); *Chamber of Com. v. Whiting*, 563 U.S. 582 (2011) (evaluating the limits of state authority under federal preemption principles and noting that state regulations must operate within the specific “savings clauses” provided by Congress).

40. 8 U.S.C. § 1324a(h)(2) (expressing exemptions to state regulations through licensing and other similar laws). *But see* Exec. Order No. 14,287, 90 Fed. Reg. 18761, 18761 (Apr. 28, 2025); *Whiting*, 563 U.S. at 587.

41. *Arizona*, 567 U.S. at 400–02.

42. See *id.*

independent enforcement action.⁴³ After all, it is often assumed that the federal government's plenary power over immigration creates an exclusive sphere of federal control free from state and local interference.⁴⁴

But just because the federal government can preclude state and local actions on immigration doesn't mean that the federal government must work alone.⁴⁵ Rather, it is generally accepted now that as part of its plenary power over immigration, the federal government can create programs in which state and local officials "may" choose to participate.⁴⁶ Indeed, this approach has been a cornerstone of federal enforcement policy since the early 2000s.⁴⁷ Federal policies today both permit and encourage the assistance of local officials in the identification and detention of deportable immigrants.⁴⁸ Federal law also allows this relationship to be formalized by an explicit agreement deputizing local law enforcement officials as federal immigration agents pursuant to Section 287(g) of the Immigration and Nationality Act (INA).⁴⁹ To be sure, since the federalization of immigration law in the late nineteenth century, state and local officials have historically played little to no role in federal immigration enforcement efforts.⁵⁰ Yet it is clear that "may" dominates federal policy today—having moved from a system in which local officials were almost never involved to one that is increasingly dependent on their cooperation.⁵¹

This dependence is likely why the big legal battle today is not over "mustn't" or "may," but "must." There are increasing signs that the Trump Administration's position is that state and local jurisdictions

43. See *id.* at 416.

44. See U.S. CONST. art. I, § 8; *id.* art. II, § 2-3.

45. See Stella Burch Elias, *The New Immigration Federalism*, 74 OHIO ST. L.J. 703, 721-34 (2013).

46. See *Murphy v. Nat'l Coll. Athletic Ass'n*, 584 U.S. 453, 470-73 (2018) (holding that the federal government may not compel states to enforce or refrain from enforcing state law, reaffirming the anti-commandeering doctrine under the Tenth Amendment).

47. See *id.*; Elias, *supra* note 45, at 705-10.

48. See, e.g., 8 U.S.C. § 1357(g). See also 8 U.S.C. § 1373(a)-(c) (prohibiting restrictions on information sharing between local law enforcement and federal immigration authorities); 8 C.F.R. § 287.7(a)-(e) (2025) (allowing ICE to request that local law enforcement hold an individual for up to forty-eight hours after their scheduled release).

49. See 8 U.S.C. § 1357(g) (authorizing the Secretary of Homeland Security to delegate certain immigration enforcement powers to state and local law enforcement officers).

50. See generally KEVIN R. JOHNSON, *OPENING THE FLOODGATES? THE COSTS OF LOWERING LEGAL IMMIGRATION ENFORCEMENT* (2007) (discussing the historical development of the plenary power doctrine and advocating for a shift away from exclusive federal enforcement toward a system that respects international human rights norms); *De Canas v. Bica*, 424 U.S. 351, 354 (1976) (confirming the federal government's broad, exclusive power over immigration enforcement—"Power to regulate immigration is unquestionably exclusively a federal power.")

51. See JOHNSON, *supra* note 50.

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“must” participate in federal immigration enforcement, “must” comply with all federal requests for assistance,⁵² and thereby “must” hold all immigrants in local custody pursuant to a federal detainer.⁵³ These signs are amplified by fiscal, legal, and political threats against sanctuary jurisdictions that choose to limit their involvement in immigration enforcement efforts.⁵⁴ They also draw upon a straightforward claim: immigration policy is set by the federal government, and if that policy involves state and local participation, then states and localities cannot set policies otherwise.⁵⁵ Any local concerns—over resources, personnel, or community relations—should give way to federal policy objectives.⁵⁶

Yet it is also this push into “must” that threatens to upend the federalism balance that has emerged since the 1990s.⁵⁷ The reason is that “must” raises the specter of commandeering.⁵⁸ The federal government cannot force cities to enforce federal law.⁵⁹ But can it penalize local officials or defund local jurisdictions that limit their participation with sanctuary policies? The federal government cannot compel cities to

52. See Memorandum from the U.S. Att’y Gen. to All Department Employees, General Policy Regarding Charging, Plea Negotiations, and Sentencing, U.S. Dep’t of Just. (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388541/dl> [<https://perma.cc/M4SL-QSS6>] (“Federal law prohibits state and local actors from resisting, obstructing, and otherwise failing to comply with lawful immigration-related commands and requests.”); *Ensuring Reliance upon Sound Economic Analysis in Department of Transportation Policies, Programs and Activities*, U.S. DEP’T OF TRANSP. (Jan. 29, 2025), https://www.transportation.gov/sites/dot.gov/files/2025-02/DOT_2100.7-Ensuring_Reliance_Upon_Sound_Economic_Analysis_in_DOT_Policies.pdf [<https://perma.cc/ZM3A-YALH>]; Jacob Rosen & Robert Legare, *Attorney General Pam Bondi Announces Lawsuit Against New York Over Immigration Enforcement*, CBS NEWS (Feb. 12, 2025, at 22:27 ET), <https://www.cbsnews.com/news/attorney-general-pam-bondi-immigration-enforcement/> [<https://perma.cc/3X7A-EWVM>] (“‘State and local jurisdictions must comply with applicable immigration-related federal laws,’ one memo read. It also said that ‘state and local actors may not impede, obstruct, or otherwise fail to comply with lawful immigration-related directives.’”).

53. See Muzaffar Chishti & Kathleen Bush-Joseph, *Beyond ICE: State and Local Authorities Become Central to Trump Administration Deportations Strategy*, MIGRATION POL’Y INST. (July 30, 2025), <https://www.migrationpolicy.org/article/state-local-authorities-ice-immigration-enforcement> [<https://perma.cc/CXC6-9L4K>].

54. See ABIGAIL F. KOLKER ET AL., IF11438, “SANCTUARY” JURISDICTIONS: POLICY OVERVIEW, CONG. RSCH. SERV. (2025).

55. See, e.g., Exec. Order No. 14,287, 90 Fed. Reg. 18761 (Feb. 5, 2025); Letter from Sean Duffy, *supra* note 11.

56. See, e.g., Letter from Sean Duffy, *supra* note 11; Exec. Order No. 14,168, 90 Fed. Reg. 8615 (Jan. 20, 2025); Exec. Order No. 14,173, 90 Fed. Reg. 8633 (Jan. 21, 2025); Exec. Order No. 14,187, 90 Fed. Reg. 8771 (Jan. 28, 2025).

57. See JOHNSON, *supra* note 50; see also Elias, *supra* note 45, at 705–10.

58. See *New York v. United States*, 505 U.S. 144, 146 (1992).

59. *Id.*

implement a federal program.⁶⁰ But can it design immigration policies that depend on actions by local officials? And if the problem is coercion, what kind of legal and financial sanctions would qualify as coercive?

C. Subverting from Within

Alongside the frontal attack on the anti-commandeering doctrine,⁶¹ the Trump Administration's assault on sanctuary cities is also employing a Trojan Horse to undermine local discretion and control from within. More specifically, the strategy involves convincing law enforcement officials—including line-level officials like police officers and sheriff's deputies—to forsake state and local leadership in favor of federal directives.⁶² Although not entirely new, the administration's appeal to local law enforcement is more forceful, overt, and backed by explicit policies.⁶³ This strategy threatens to erode the federalism balance and may represent a deeper challenge than the direct assault on the anti-commandeering doctrine.⁶⁴

Federal efforts to increase local participation have long relied on the assumption that local law enforcement officials themselves are more open to enforcing federal immigration laws than the political leaders who oversee them.⁶⁵ This assumption is based on the perceived partisan leanings of local law enforcement officials, the usefulness of immigration laws as a tool for law enforcement generally, and the frustration of some over limits that political leaders impose on their actions and authority.⁶⁶ This approach is also not new—during the “wars” on crime and drugs, the federal government often worked directly with police and other local

60. See, e.g., *Printz v. United States*, 521 U.S. 898, 898 (1997).

61. See *supra* Section I.B.

62. See Exec. Order No. 14,287 90 Fed. Reg. 18761 (Feb. 5, 2025); Exec. Order No. 14,288, 90 Fed. Reg. 18765 (May 2, 2025); Luke Broadwater & Zolan Kanno-Youngs, *Trump Signs 3 Executive Orders, Addressing Immigration and Policing*, N.Y. TIMES (Apr. 28, 2025), <https://www.nytimes.com/2025/04/28/us/politics/trump-executive-orders-immigration.html> [<https://perma.cc/B2AM-WXR2>].

63. Broadwater & Kanno-Youngs, *supra* note 62.

64. See *id.*

65. See ANITA KHASHU, THE ROLE OF LOCAL POLICE: STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES 12–19 (2009); see also S. Karthick Ramakrishnan & Pratheepan Gulasekaram, *The Importance of the Political in Immigration Federalism*, 44 ARIZ. ST. L.J. 1431, 1437–50 (2012).

66. See Ramakrishnan & Gulasekaram, *supra* note 65, at 1437–50; Daniel M. Thompson, *How Partisan Is Local Law Enforcement? Evidence from Sheriff Cooperation with Immigration Authorities*, 114 AM. POL. SCI. REV. 222, 222 (2019).

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law enforcement agencies on the assumption that they would be more supportive than their states and localities.⁶⁷

Appealing directly to local law enforcement officials also enables a workaround for the anti-commandeering doctrine.⁶⁸ Rather than having to mandate specific federal action, the federal government could simply work to expand the discretion of law enforcement officials, on the assumption, of course, that those officials will be happy to do what the federal government would like to command. This appears to be the logic behind 8 U.S.C. § 1373, which prohibits local policies that limit communications with federal immigration authorities.⁶⁹ Aside from only selectively prohibiting limits on cooperation, 8 U.S.C. § 1373 also appears to assume that local law enforcement officials would be willing to participate if limitations are removed.

Even so, the Trump Administration appears to be making an even more forceful appeal. Trump has long argued that local law enforcement officials should support him over their state and local leaders.⁷⁰ Now, it appears that Trump is eager to strengthen this direct tie by taking specific policy steps to insulate and protect local law enforcement officials from the state and local leaders for whom they work.⁷¹ On the same day that President Trump signed an expanded order punishing sanctuary cities, he also released an order targeting “local leaders” who “demonize law enforcement and impose legal and political handcuffs that make aggressively enforcing the law impossible.”⁷² More than rhetoric, however, the executive orders deploy federal resources to liberate local law enforcement from their communities, including legal defense for local law enforcement officials, increased access to military and national security equipment, more legal protections against abuse claims, and

67. See Daniel Richman & Sarah A. Seo, *How Federalism Built the FBI, Sustained Local Police, and Left Out the States*, 17 STAN. J. C.R. & C.L. 421, 428–29 (2022); Bill Trine, *The Genesis of Increasing Incidents of Police Brutality: The War On Drugs*, PRISON LEGAL NEWS (June 3, 2015), <https://www.prisonlegalnews.org/news/2015/jun/3/genesis-increasing-incidents-police-brutality-war-drugs/> [<https://perma.cc/5ADZ-NWTV>].

68. See Gulasekaram et al., *supra* note 34, at 845–46; David A. Sklansky, *The Private Police*, 46 UCLA L. REV. 1165, 1229–64 (1999); Macelloni, *supra* note 37, at 111–28.

69. 8 U.S.C. § 1373; see 8 U.S.C. § 1357(g); *Sanctuary Policies: An Overview*, AM. IMMIGR. COUNCIL (Feb. 21, 2025), <https://www.americanimmigrationcouncil.org/research/sanctuary-policies-overview> [<https://perma.cc/B2JM-LRMN>].

70. Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017); Exec. Order No. 13,767, 82 Fed. Reg. 8793 (Jan. 25, 2017). See also Emily M. Farris & Mirya R. Holman, *All Politics Is Local? County Sheriffs and Localized Policies of Immigration Enforcement*, 70 POL. RSCH. Q. 142, 152 (2017).

71. See Exec. Order No. 14,287, 90 Fed. Reg. 18761 (Apr. 28, 2025); see also 8 U.S.C. § 1357(g) (2018).

72. Exec. Order No. 14,288, 90 Fed. Reg. 18765 (Apr. 28, 2025).

federal efforts to increase their pay and benefits.⁷³ In addition, the order specifically asks the DOJ to investigate local policies that limit local law enforcement officials or direct their activities.⁷⁴

Of course, in seeking to insulate local law enforcement agencies from state and local leaders, these federal efforts commandeer in another way—by redefining the institutional structure of state and local governments themselves.⁷⁵ This might be even more pernicious than overt commandeering in that it undermines state and local sovereignty from within. Moreover, this raises deeper federalism concerns in that it seeks to control not only what states do, but how states and their localities are constituted.⁷⁶ All of this echoes the kind of covert support for separatist movements that states sometimes pursue in lieu of, or in preparation for, a direct invasion.⁷⁷

III. THE RENEWED ASSAULT

Federalism is the legal ground upon which the renewed assault on sanctuary cities is being waged.⁷⁸ The legal tools that are being deployed, however, span the full arsenal of federal power. Here, we summarize three of these tools: (1) defunding and grant conditions, (2) affirmative litigation, and (3) criminal sanctions.

A. *Defunding and Grant Conditions*

The second Trump Administration has doubled down on a strategy that it tested in its first go-round: defunding sanctuary cities to control them.⁷⁹ It appears one of the primary lessons Trump officials learned from the first term is that financial leverage can be more effective than direct regulation: while threats to retract grants lack the certainty and

73. *Id.*

74. *Id.*

75. Roderick M. Hills, Jr., *Dissecting the State: The Use of Federal Law to Free State and Local Officials from State Legislatures' Control*, 97 MICH. L. REV. 1201, 1211–16 (1999). See generally Daniel C. Richman, *The Changing Boundaries Between Federal and Local Law Enforcement*, 2 CRIM. JUST. 81 (2000) (arguing expansion of federal criminal statutory law absent concomitant expansion in federal enforcement capacity requires negotiation between federal and state institutions).

76. See Hills, *supra* note 75, at 1214–19.

77. See James Bickerton, *Secession Movements Now in 12 US States, Campaigner Says*, NEWSWEEK (Aug. 14, 2024, at 10:30 ET), <https://www.newsweek.com/secession-movements-now-12-us-states-campaigner-grant-dahl-1939044> [<https://perma.cc/5W87-JQGL>].

78. See, e.g., *Arizona v. United States*, 567 U.S. 387, 398–400 (2012).

79. See Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 30, 2017); Memorandum from Emil Bove, *supra* note 3.

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symbolic force of unequivocal dictates to states and cities, they may be more effective.⁸⁰ In his second term, Trump has attempted to wield the “power of the purse” against a wide range of institutions he deems critical of his policies.⁸¹ Often lost in the media headlines about such high profile institutional defunding efforts is the reinvigoration of policies to defund states and localities that refuse to cooperate with federal immigration efforts.⁸²

Despite the brash and punitive rhetoric of the Trump Administration’s defunding pronouncements to sanctuary cities, their legality remains in significant doubt.⁸³ Nevertheless, the vigor and breadth of these recent threats demonstrates the centrality of these efforts to the Administration’s immigration policy agenda, and its willingness to invest political and legal capital in this campaign. Below, we summarize the first Trump Administration’s failure to instantiate defunding conditions in its first term. We then turn to the reinvigoration of those policies in his second term, identifying the salient similarities and differences of this second attempt. Finally, we highlight the directions the sanctuary defunding campaign might take in the coming months.

Before identifying the current state of defunding campaigns, it is worth revisiting the defeat of similar policies adopted during the first Trump Administration. Trump 1.0’s sanctuary defunding campaign was a near total failure. During the first administration, both attempted funding-related assaults on sanctuary met their demise in federal court. First, through executive order, Trump announced a general decision to withdraw funding from “sanctuary” jurisdictions, defining such jurisdictions as those which (1) refused to comply with 8 U.S.C. § 1373,

80. *Cf.* *South Dakota v. Dole*, 483 U.S. 203, 205 (1987) (highlighting that in the wake of the funding leverage, all fifty states changed or maintained drinking age to twenty-one).

81. Across a variety of regulatory realms, the second Trump Administration has continuously threatened access to federal dollars to eliminate, cripple, or discipline a variety of federal governmental agencies, private and public institutions, and media sources Trump considers critical of his policies. *See, e.g.*, Exec. Order No. 14,169, 90 Fed. Reg. 8619 (Jan. 20, 2025) (Executive Order titled *Reevaluating and Realigning United States Foreign Aid*); Andy Rose & Michelle Krupa, *Trump Administration Cuts Another \$450 Million in Grants to Harvard, on Top of \$2.2 Billion Already Frozen*, CNN (May 13, 2025, at 13:27 ET) <http://cnn.com/2025/05/13/us/harvard-funding-cuts-government-trump> [<https://perma.cc/S4LQ-2T3M>]; Exec. Order No. 14,290, 90 Fed. Reg. 19415 (May 1, 2025) (Executive Order titled *Ending Taxpayer Subsidization of Biased Media*); Benjamin Mullin, *NPR Sues Trump over Order to Cut Funding*, N.Y. TIMES (May 27, 2025), <https://www.nytimes.com/2025/05/27/business/media/npr-trump-lawsuit-executive-order-funding.html> [<https://perma.cc/VG27-N75W>].

82. *See, e.g.*, Rose & Krupa, *supra* note 81.

83. *See* Grace Benton, *The Legality of Sanctuary Cities*, 33 GEO. IMMIGR. L.J. 139, 140 (2019).

and (2) refused to honor immigration detainer requests from federal immigration authorities.⁸⁴ Eventually, the Ninth Circuit Court of Appeals enjoined the executive order, relying on the basic separation of powers principle that the Constitution exclusively authorizes Congress—and not the executive—to control the purse strings.⁸⁵

Second, in 2017, the Department of Justice (DOJ) launched a more targeted attack, leveraging specific DOJ grants to local law enforcement agencies on the condition that those jurisdictions (1) certify compliance with 8 U.S.C. § 1373, (2) allow Immigration and Customs Enforcement (ICE) agents access to jails and other facilities where noncitizens might be held, and (3) provide ICE with 48-hour notice before that jurisdiction released a noncitizen detainee.⁸⁶ Several jurisdictions across the country challenged these more particularized set of grant conditions, claiming they ran roughshod over constitutional separation of powers principles, failed to comply with the court's conditional spending doctrine, and violated the Administrative Procedures Act.⁸⁷ In total, of the seventeen federal district and appellate courts that took up the issue, sixteen ruled against the Trump Administration.⁸⁸ One federal court questioned the

84. Exec. Order No. 13,768, 82 Fed. Reg. 8799, 8801 (Jan 30, 2017).

85. *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1235 (9th Cir. 2018). Notably, the 2-1 panel of the Ninth Circuit reversed and modified the district court's injunction with regards to its scope, ruling that that injunction should not have nationwide effect. *Id.* at 1231. The issue of nationwide or universal injunctions has returned to the Supreme Court recently in litigation over Executive Order the Meaning and Value of American Citizenship, which purports to modify the rule of birthright citizenship under the Constitution. *See Trump v. CASA, Inc.*, 145 S. Ct. 1917 (2025) (concerning Exec. Order No. 14,160, 90 Fed. Reg. 8449 (Jan. 20, 2025)).

86. Memorandum from the U.S. Att'y Gen. to All Dep't Grant-Making Components, Implementation of Executive Order 13768, "Enhancing Public Safety in the Interior of the United States" (May 22, 2017), <https://www.justice.gov/archives/opa/press-release/file/968146/dl?inline> [<https://perma.cc/BLQ6-T852>]; Press Release, U.S. Dep't of Just., Attorney General Jeff Sessions Issues Memorandum on Implementation of Executive Order 13768, "Enhancing Public Safety in the Interior of the United States" (May 22, 2017), <https://www.justice.gov/archives/opa/pr/attorney-general-jeff-sessions-issues-memorandum-implementation-executive-order-13768> [<https://perma.cc/LHP3-SG8C>].

87. *See infra* note 88.

88. The twelve district courts that heard the cases (sometimes multiple times within the same district) uniformly found the DOJ grant conditions illegal. *See City of Providence v. Barr*, 385 F. Supp. 3d 160, 164 (D.R.I. 2019); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 271, 281 (E.D. Pa. 2018); *Oregon v. Trump*, 406 F. Supp. 3d 940, 963 (D. Or. 2019); *City & County of San Francisco v. Sessions*, 372 F. Supp. 3d 928, 941 (N.D. Cal. 2019); *New York v. U.S. Dep't of Just.*, 343 F. Supp. 3d 213, 245 (S.D.N.Y. 2018); *City and County of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 945–48 (N.D. Cal. 2018); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 874 (N.D. Ill. 2018); *City of Philadelphia v. Sessions*, 280 F. Supp. 3d 579, 617 (E.D. Pa. 2017); *Colorado v. U.S. Dep't of Just.*, 455 F. Supp. 3d 1034, 1047 (D. Colo. 2020); *City of Evanston v. Barr*, 412 F. Supp. 3d 873, 889 (N.D. Ill. 2019); *City of Chicago v. Barr*, 405 F. Supp. 3d 748, 763 (N.D. Ill. 2019); *City of Los Angeles v.*

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constitutionality of 8 U.S.C. § 1373 itself,⁸⁹ a provision critical to the Trump Administration's very definition of "sanctuary" in its first term, and still central to its definition in its return. Given its abysmal litigation record, by the end of the first Trump term, the DOJ eliminated the conditions on its grantmaking.⁹⁰ Nevertheless, it continued to request information from localities as to whether and how their communication policies conformed to 8 U.S.C. § 1373.⁹¹

Having its punitive measures rejected, the first Trump Administration eventually tried carrot-like approaches. For example, for DOJ's COPS Hiring Program grant (CHP), the Administration began prioritizing grants to jurisdictions that cooperated with federal immigration enforcement efforts.⁹² Ultimately, all those efforts,

Sessions, No. CV 18-7347-R, 2019 WL 1957966, at *4 (C.D. Cal. Feb. 15, 2019); *City of Philadelphia v. Att'y Gen. of the U.S.*, 916 F.3d 276, 291 (3d Cir. 2019); *City of Providence v. Barr*, 954 F.3d 23, 27 (1st Cir. 2020); *City of Chicago v. Sessions*, 888 F.3d 272, 287 (7th Cir. 2018); *City & County of San Francisco v. Barr*, 965 F.3d 753, 766 (9th Cir. 2020); *New York v. Dep't of Just.*, 951 F.3d 84, 123–24 (2d Cir. 2020). In addition, five circuit courts heard appeals from these trial courts, with four out of five ruling against the Trump Administration. See *City of Philadelphia v. Att'y Gen. of the U.S.*, 916 F.3d 276, 291 (3d Cir. 2019); *City of Providence v. Barr*, 954 F.3d 23, 27 (1st Cir. 2020); *City of Chicago v. Sessions*, 888 F.3d 272, 287 (7th Cir. 2018); *City & County of San Francisco v. Barr*, 965 F.3d 743, 766 (9th Cir. 2020). The Second Circuit Court of Appeals was the only circuit court to find in favor of the first Trump Administration. See *State v. U.S. Dep't of Just.*, 951 F.3d 84, 104 (2d Cir. 2020).

89. While not relying on the plaintiff's Tenth Amendment claim in deciding the case, in *City of Philadelphia v. Sessions*, Judge Michael Baylson of the Eastern District of Philadelphia explained that the plaintiffs would likely succeed on the merits of a Tenth Amendment anti-commandeering challenge to certain grant conditions. See *City of Philadelphia v. Sessions*, 280 F. Supp. 3d at 647.

90. Forest Lieberman & Lena Garber, *DOJ Loses Court Battles over Grants Conditioned on Immigration Enforcement*, IMMIGRANT LEGAL RES. CTR. (Aug. 2020), https://www.ilrc.org/sites/default/files/resources/doj_grants_and_sanctuary_cities_08.2020.pdf [<https://perma.cc/PV4X-UUCG>] (explaining that in the 2020 DOJ grant cycle, "no explicit immigration assistance conditions or certifications were included").

91. *Id.*

92. In 2017, the DOJ placed certain conditions on the COPS program to effectively withhold grants from jurisdictions that were not cooperating with federal immigration enforcement efforts. See *DOJ Grants and Sanctuary City*, IMMIGRANT LEGAL RES. CTR. (Aug. 2018), https://www.ilrc.org/sites/default/files/resources/doj_grants_sanct_cities-20180808.pdf [<https://perma.cc/4GLN-WSP9>]. At the time of writing in May 2025, the COPS hiring program application specifically highlights 8 U.S.C. § 1373. *COPS Hiring Program*, CMTY. ORIENTED POLICING SERVS.- U.S. DEP'T OF JUST., <https://cops.usdoj.gov/chp> [<https://perma.cc/TQ4S-2V97>] (last visited Feb. 15, 2026). The 2025 Application Resource Guide reiterates the DOJ's "[a]uthority to obligate or expend contingent on compliance with this condition." CMTY. ORIENTED POLICING SERVS.- U.S. DEP'T OF JUST., FY25 COPS HIRING PROGRAM (CHP) APPLICATION RESOURCE GUIDE 33 (2025), https://cops.usdoj.gov/pdf/2025ProgramDocs/GAD_resource_guide.pdf [<https://perma.cc/986W-BS57>].

including the Administration's legal leeway to continue leveraging DOJ grants in the one Circuit in which it prevailed, came to a halt when Biden took office in 2021 and repealed the first Trump-era anti-sanctuary policies.⁹³

On his first day back in office for his second term, Trump returned to his fiscal punishment strategy with vigor. As noted, his executive order, "*Protecting American People Against Invasion*," directed both the DOJ and Department of Homeland Security (DHS) to take any action to ensure that sanctuary jurisdictions do not receive federal funds.⁹⁴ Similar to the executive orders of his first term, this executive order broadly threatens access to all federal funds.⁹⁵ Different, however, is its far broader definition of "sanctuary"—clearly intended to place dozens of more jurisdictions in jeopardy.⁹⁶ While Trump 1.0's 2017 executive order defined "sanctuary jurisdictions" as those violating 8 U.S.C. § 1373 and declining to honor detainer requests.⁹⁷ In comparison, Trump 2.0's 2025 iteration broadly defines sanctuaries as jurisdictions that "interfere with the lawful exercise of Federal law enforcement operations" without providing further specification of what that might entail.⁹⁸

A follow-along memorandum from Acting Deputy Attorney General Emil Bove (now-a judge on the U.S. Court of Appeals for the Third Circuit)⁹⁹ confirmed the Administration's intent at a broad, inclusive, and

93. Katy Murdza, *Biden Moves to End Trump's War on 'Sanctuary Cities'*, AM. IMMIGR. COUNCIL (May 4, 2021), <https://immigrationimpact.com/2021/05/04/biden-sanctuary-city-policy/> [<https://perma.cc/9DTN-C6XU>].

94. Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8446 (Jan. 20, 2025).

95. *Id.*

96. *Id.*

97. See Exec. Order No. 13,768, 82 Fed. Reg. 8799, 8801 (Jan 30, 2017). With much fanfare, DHS Secretary Kristi Noem published a list of hundreds of jurisdictions (including 400 counties) Noem claimed were non-compliant "sanctuary" jurisdictions. Press Release, U.S. Dep't of Homeland Sec., *DHS Exposes Sanctuary Jurisdictions Defying Federal Immigration Law* (May 29, 2025), <https://www.dhs.gov/news/2025/05/29/dhs-exposes-sanctuary-jurisdictions-defying-federal-immigration-law> [<https://perma.cc/9ZYA-TPEG>]; Juila Cortina & Kevin Moore., *DHS Releases List Identifying Sanctuary Jurisdictions; Includes Nearly 400 Counties*, NAT. ASSOC. OF CNTYS. (June 27, 2025), <https://www.naco.org/news/dhs-releases-list-identifying-sanctuary-jurisdictions-includes-nearly-400-counties> [<https://perma.cc/ED6C-GN5M>]. Within three days, however, DHS removed the list from government websites after backlash from sheriffs whose jurisdictions were included in the list as "noncompliant." Ted Hesson, *DHS Removes List of 'Sanctuary' Cities After Sheriffs Push Back on Non-compliant Label*, REUTERS (June 1, 2025, at 21:00 ET), <https://www.reuters.com/world/us/dhs-removes-list-sanctuary-cities-after-sheriffs-push-back-non-compliant-label-2025-06-01/> [<https://perma.cc/3AW5-GWWD>].

98. See Exec. Order No. 14,159, 90 Fed. Reg. 8443, 8445–46 (Jan. 20, 2025).

99. Judge Bove was confirmed on July 29, 2025, by a vote of fifty to forty-nine. See *Roll Call Vote 119th Congress – 1st Session*, U.S. SENATE,

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highly discretionary definition of “sanctuary.”¹⁰⁰ Bove asserted that it was the executive’s prerogative to define non-compliance and that the DOJ would constitute a group to investigate such non-compliance.¹⁰¹ In short order, Attorney General Pamela Bondi issued a directive confirming that the DOJ would halt all department grants to those jurisdictions and further announced that the DOJ would seek to terminate existing grants and claw back funds already dispensed.¹⁰² Lest the prior orders left any doubt about the Administration’s expansive definition of “sanctuary,” the Bondi Directive again emphasized that conforming states and localities were those that complied with all federal “immigration-related directives.”¹⁰³ In essence, according to the second Trump Administration, a sanctuary is any locality that doesn’t affirmatively fall in line with and actively aid Trump’s preferred enforcement regime.¹⁰⁴ In other words, sanctuary, according to Trump 2.0, is not just affirmative policies that may limit the conditions of state and local cooperation with ICE; rather, it is anything short of state and local fidelity and obedience to, and facilitation of, federal efforts.

In line with this novel definition that treats states and localities as agencies of the federal government, one month after the Administration’s initial executive order, Trump issued a second funding-related executive order.¹⁰⁵ The “*Ending Tax Payer Subsidization of Open Borders*” executive order unequivocally signals the Administration’s intent to provide all agencies with the authority to financially punish any jurisdiction refusing to engage in enforcement to the satisfaction of agency officials.¹⁰⁶ The executive order purports to prevent tax dollars from being used as a “magnet” that “fuel[s] illegal immigration”—authorizing federal agencies to deny federal funds that, when used by recipients, by “design or effect, facilitate the subsidization or promotion of illegal immigration, or abet so-called ‘sanctuary’ policies that seek to shield illegal aliens from deportation.”¹⁰⁷ Acting on the authority of the executive order, the federal Housing and Urban Development agency (HUD) informed the city of San Francisco along with several other

https://www.senate.gov/legislative/LIS/roll_call_votes/vote1191/vote_119_1_00448.htm
[<https://perma.cc/D7CV-N25V>].

100. See Memorandum from Emil Bove, *supra* note 3.

101. See *id.*

102. See Memorandum from Pam Bondi, U.S. Att’y Gen. to All Dep’t Emps., Sanctuary Jurisdiction Directives (Feb. 5, 2025), <https://www.justice.gov/ag/media/1388531/dl?inline>
[<https://perma.cc/KW73-BQ2H>].

103. *Id.*

104. See *id.*

105. See Exec. Order No. 14,218, 90 Fed. Reg. 10581 (Feb. 19, 2025).

106. See *id.*

107. *Id.*

jurisdictions that multiple grants and annually-renewed federal funds were under review for community public benefit programs and not just for law enforcement purposes.¹⁰⁸

Of course, like the first time around, targeted states and localities—all “blue” jurisdictions—are fighting back against this assault in court.¹⁰⁹ San Francisco—on behalf of several other jurisdictions from across California and the country¹¹⁰—sued to enjoin the current defunding efforts, raising similar claims and defenses to those successful against the first Trump Administration.¹¹¹ The current lawsuit alleges that the Administration’s actions violate separation of powers principles, the conditional spending doctrine, the due process clause, and the Administrative Procedure Act (APA).¹¹² The Due Process claim challenges the vagueness of the executive order and directives’ definitions of “sanctuary” jurisdictions, which fail to provide notice of which jurisdictions might be covered and allow for discriminatory and retaliatory enforcement.¹¹³ In addition, this constitutional claim incorporates the procedural concerns related to the claw back or freezing of already-committed grant funds without a hearing or review.¹¹⁴ The APA claims assert that the Bondi directive and subsequent administrative actions are not statutorily authorized and violate the APA’s prohibition on “arbitrary and capricious” agency actions.¹¹⁵

The primary constitutional claims, like those adjudicated in the several federal courts during Trump’s first term, are based on separation of powers limitations and constraints on conditional spending by the federal government. Primarily, the localities argue that the executive may not unilaterally impose conditions on grant funding without

108. See Letter from Scott Turner, Sec’y of U.S. Dep’t of Hous. & Urb. Dev., to HUD Grantees and Stakeholders (Apr. 4, 2025), <https://www.hud.gov/sites/dfiles/PA/documents/2025-04-04-HUD-Grantee-and-Stakeholder-Letter.pdf> [https://perma.cc/9S6N-QVUH]; Sylvie Sturm, *They’ll All Be Homeless*, S.F. PUB. PRESS (Apr. 9, 2025), <https://www.sfpublicpress.org/theyll-all-be-homeless/> [https://perma.cc/2JFP-RFQF] (discussing the implications of the HUD policy on homelessness).

109. See, e.g., *City & County of San Francisco v. Trump*, 783 F. Supp. 3d 1148, 1159 (N.D. Cal. 2025).

110. The city and county of San Francisco was joined as plaintiffs by the cities and counties of Santa Clara, Oakland, Emeryville, San Jose, San Diego, Sacramento, Santa Cruz, and Monterrey within the state, as well as by Portland, Oregon, King County, Washington (which includes Seattle), New Haven, Connecticut, Minneapolis and St. Paul, Minnesota, and Santa Fe, New Mexico. *Id.* at 1160 n.1.

111. See *id.* at 1160, 1190.

112. *Id.* at 1190.

113. *Id.* at 1196.

114. *Id.* at 1196–97.

115. *Id.* at 1198.

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congressional approval, and that as a separation of powers matter, all funding freezes must be statutorily authorized.¹¹⁶ Second, they argue that the current executive orders and directives violate the Court's conditional spending doctrine, clarified in cases like *NFIB v. Sebelius* and *South Dakota v. Dole*.¹¹⁷ Under that line of cases, these jurisdictions argue that the Trump definition of sanctuary policies are ambiguous and vague, therefore fail to provide clarity and notice as to which jurisdictions are at risk.¹¹⁸ Relatedly, they suggest that the breadth and purposes of federal funds at risk based on immigration enforcement compliance violates the "germaneness" or nexus requirement under that line of cases.¹¹⁹ Additionally, the plaintiffs' filing notes that the primary federal statute relied upon by the Administration—8 U.S.C. § 1373—might itself be unconstitutional as a violation of the Court's anti-commandeering doctrine.¹²⁰ Finally, the jurisdictions claim that the amount and breadth of funding at stake, as well as the attempt to freeze and claw back current funding are unconstitutionally coercive, just as the Medicaid funding-expansion was in *NFIB*.¹²¹

The legal defense against Trump 2.0's more robust defunding assault is still ongoing.¹²² Regardless of that litigation's resolution, much of the Trump Administration's defense strategy may already be in focus. First, it is abundantly clear that the second Trump Administration understands that controlling federal funding is their most promising lever against non-compliant jurisdictions. Second, in this second go-round, both the rhetoric and policies are like all things Trump: "Yuge."¹²³ Unlike the far more targeted use of specific DOJ grants during Trump 1.0,¹²⁴ the current administration has proven enthusiastic to go after any

116. *Id.* at 1191.

117. *Id.* at 1190.

118. *See, e.g., id.* at 1200.

119. *Id.* at 1193–94.

120. *Id.* at 1194 n.8.

121. *Id.* at 1194; *see generally* Nat'l Fed'n of Indep. Bus. v. Sebelius, 567 U.S. 519 (2012) (holding that the individual mandate was a valid exercise of Congress's taxing power, but that the Medicaid expansion provision unconstitutionally coerced states by threatening the loss of all Medicaid funding).

122. *See City & County of San Francisco*, 783 F. Supp. 3d at 1159–60. Most recently, on May 9, 2025, Judge William Orrick issued an Order Clarifying an Order for Preliminary Injunction made on April 24, 2025. *City & County of San Francisco v. Trump*, 782 F. Supp. 3d 830, 836 (N.D. Cal. 2025). The Preliminary Injunction enjoined the Trump Administration from acting on the claims made in Executive Order No. 14,159. *Id.*

123. Anusha Mathur, *Trump's 'Beautiful' World*, POLITICO (Sep. 1, 2024, at 12:00 ET), <https://www.politico.com/news/magazine/2024/09/01/mag-trump-beautiful-test-00174449> [<https://perma.cc/QBV4-PTFJ>] (discussing Trump's most-used vocabulary and rhetoric, including his repeated use and pronunciation of the word "Huge" as "Yuge").

124. *See supra* note 86 and accompanying text.

and all federal payments, implicating a wide spectrum of federal spending programs in the name of immigration enforcement. From assistance to community programs addressing homelessness to Department of Transportation grants to FEMA funding to local organizations, the Administration advances the theory if any unspecified portion of those dollars—no matter how miniscule—might be used by noncitizens, the jurisdiction or organization has violated federal law.¹²⁵ So too, the Administration's high-profile threats against both public and private universities to cut off their ability to enroll foreign students, long a source of both revenue and pride for American institutions,¹²⁶ are part and parcel of its immigration enforcement agenda.¹²⁷

Finally, the Administration's doubling-down—indeed, its expansion—of a strategy that faced near universal judicial defeat in its first term¹²⁸ suggests the importance and centrality of this strategy to the President. In short, the Administration is daring courts to continue their rejection and providing them multiple opportunities to reverse course. If not to rewrite the constitutional and legal boundaries of federal defunding programs across the board, this renewed assault seeks to redefine the leeway for presidential funding leverage in the immigration field.

125. See Memorandum from Pam Bondi, *supra* note 102 (“[T]he Department of Justice will ensure that . . . ‘sanctuary jurisdictions’ do not receive access to Federal funds from the Department.”); *Ensuring Reliance upon Sound Economic Analysis in Department of Transportation Policies, Programs and Activities*, *supra* note 52 (“[A]ll DOT grants, loans, contracts, and DOT-supported or -assisted State contracts shall prioritize projects and goals that: . . . require local compliance or cooperation with Federal immigration enforcement”); Memorandum from Cameron Hamilton, Senior Off. Performing the Duties of the Adm’r Fed. Emergency Mgmt. Agency, to Kristi Noem, Sec’y of the Dep’t of Homeland Sec., U.S. Dep’t of Homeland Sec. (Mar. 20, 2025), https://www.oregon.gov/oem/Memos%20and%20Executive%20Orders/250320_Memo%20Approval%20of%20FEMA-Administered%20Grant%20Disbursements.pdf [<https://perma.cc/9RYH-ZCZK>]; Frank, *supra* note 11.

126. See Hamed Aleaziz et al., *Trump Threatens to Block Harvard from Enrolling International Students*, N.Y. TIMES (Apr. 17, 2025), <https://www.nytimes.com/2025/04/17/us/politics/trump-harvard-international-students.html> [<https://perma.cc/8PTP-TR75>].

127. See Stephanie Saul, *Harvard and Trump Lawyers to Face Off in Court in Foreign Student Case*, N.Y. TIMES (May 29, 2025), <https://www.nytimes.com/2025/05/29/us/harvard-trump-lawyers-hearing-foreign-students.html> [<https://perma.cc/C38P-PHYH>].

128. See *supra* notes 87–91 and accompanying text.

B. Affirmative Litigation

For the federal government, defunding is quick and efficient—the burden is on cities to file suit to restore funding.¹²⁹ But the Trump Administration is not relying on defunding alone in its attack on sanctuary jurisdictions. It is also pursuing affirmative litigation of its own.¹³⁰ Two days after Attorney General Bondi was confirmed, the Department of Justice filed suit against the City of Chicago, Cook County, and the State of Illinois.¹³¹ Six days later, the Department of Justice sued New York State, stating, “We sued Illinois, and New York didn’t listen, so now, you’re next.”¹³² Perhaps even more noteworthy is the most recent lawsuit against the City of Rochester—a city far less prominent than the other defendants, but an interesting case precisely because of the circumstances that prompted it.¹³³

In many ways, the current round of lawsuits mirrors those filed during the first Trump Administration.¹³⁴ To be sure, the parties were different: California was sued in 2018, while New Jersey and King County, Washington were sued in 2020.¹³⁵ The legal claims, however, are

129. See *City & County of San Francisco v. Trump*, 897 F.3d 1225, 1236 (9th Cir. 2018); *County of Santa Clara v. Trump*, 250 F. Supp. 3d 497, 530 (N.D. Cal. 2017); *City of Chicago v. Sessions*, 888 F.3d 272, 281–92 (7th Cir. 2018); *City & County of San Francisco v. Sessions*, 372 F. Supp. 3d 928, 940 (N.D. Cal. 2019); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 271, 273–74 (E.D. Pa. 2018).

130. See Zach Schonfeld, *DOJ Sues Illinois, Chicago over ‘Sanctuary City’ Laws*, THE HILL (Feb. 6, 2025, at 11:43 ET), <https://thehill.com/regulation/court-battles/5130411-doj-illinois-sanctuary-city/> [<https://perma.cc/DZU6-KGQT>].

131. *Id.*; see *DOJ Files Lawsuit Against Sanctuary Policies in Illinois, Cook County, and the City of Chicago*, ECON. POL’Y INST. (Feb. 7, 2025), <https://www.epi.org/policywatch/doj-files-lawsuit-against-sanctuary-policies-in-illinois-cook-county-and-the-city-of-chicago/> [<https://perma.cc/C7NA-B498>].

132. Rosen & Legare, *supra* note 52. See also Alanna Durkin Richer & Anthony Izaguirre, *Attorney General Pam Bondi Rails Against New York Leaders as She Announces Immigration Lawsuit*, ASSOCIATED PRESS (Feb. 12, 2025, at 22:22 ET) <https://apnews.com/article/justice-department-immigration-pam-bondi-trump-4829db2b93afcfa35194014f160d7edb> [<https://perma.cc/7DMW-4CS6>].

133. Daniel Finkelstein, *Trump Administration Sues Rochester over Sanctuary City Policy*, 13WHAM (Apr. 28, 2025, at 17:07 ET), <https://13wham.com/news/local/justice-department-sues-rochester-over-citys-sanctuary-policy-trump-administration-doj-immigration-authorities-border-patrol-whitney-street-traffic-stop-rochester-police-rpd> [<https://perma.cc/5GN2-UV2L>]; see also NYCLU *Slams DOJ Lawsuit Against City of Rochester over Immigration Enforcement*, NYCLU (Apr. 25, 2025), <https://www.nyclu.org/press-release/nyclu-slams-doj-lawsuit-against-city-of-rochester-over-immigration-enforcement> [<https://perma.cc/NQJ2-CTJB>].

134. See *County of Santa Clara*, 250 F. Supp. 3d at 507–09; *City of Chicago*, 888 F.3d, at 281–92; *City & County of San Francisco*, 897 F.3d at 1231.

135. See *United States v. California*, 314 F. Supp. 3d 1077, 1085 (E.D. Cal. 2018), *aff’d in part, vacated in part*, 921 F.3d 865 (9th Cir. 2019); *United States v. New Jersey*, Civil

nearly identical. Like before, the present litigation alleges the “sanctuary” policies in these jurisdictions are (1) expressly preempted by 8 U.S.C. § 1373, (2) conflict preempted by the overall scheme of immigration enforcement set forth by statute and federal policies, and (3) unconstitutionally discriminate against the federal government.¹³⁶ Given that the sanctuary jurisdictions prevailed against nearly all of these claims in the past, one might presume that the targets today will likely prevail as well.¹³⁷ Yet it appears the Trump Administration is ultimately aiming for Supreme Court review on the applicability of the anti-commandeering doctrine in the context of immigration, and there is at least one lower court decision that might provide the template for Justices looking to thread the needle between federal power and federalism, preemption, and anti-commandeering.¹³⁸

Of course, none of these tensions are apparent on the face of the lawsuits themselves. The complaints take great care to avoid mentioning the anti-commandeering doctrine, and generally shy away from the claim that state and local governments must enforce federal immigration law or must adopt specific policies with regard to their cooperation with federal authorities.¹³⁹ Yet the nature and the context of the lawsuits reveal the Trump Administration’s efforts to compel local participation in federal enforcement activities.¹⁴⁰ There also appears to be an effort to subvert the institutional integrity of state and local governments by peeling away local law enforcement officials from the very communities that they serve.¹⁴¹

Action No. 20-1364, 2021 WL 252270, at *5 (D.N.J. Jan. 26, 2021); Simone Alicea, *Trump Administration Sues King County over ICE Flights from Boeing Field*, KNKX NPR (Feb. 11, 2020, at 11:31 ET), <https://www.knkx.org/news/2020-02-11/trump-administration-sues-king-county-over-ice-flights-from-boeing-field> [<https://perma.cc/99ZX-9PH2>].

136. See Finkelstein, *supra* note 133; see also Rosen & Legare, *supra* note 52; see also Schonfeld, *supra* note 130.

137. See *County of Santa Clara*, 250 F. Supp. 3d at 508–09; *City of Chicago*, 888 F.3d at 281–92; *City of San Francisco*, 897 F.3d at 1231.

138. See generally Charlotte S. Butash, *The Anti-Commandeering Doctrine in Civil Rights Litigation*, 55 HARV. C.R.-C.L. L. REV. 681 (2020) (discussing how civil rights litigants may deploy anti-commandeering doctrine).

139. See, e.g., Complaint at ¶¶ 1–10, *City of San Francisco v. Sessions*, 349 F. Supp. 3d 924 (N.D. Cal. 2018) (No. 4:17-cv-00485-DMR); see also Mary Ann McNulty, *A Doctrine Without Exception: Critiquing an Immigration Exception to the Anticommandeering Rule*, 169 U. PA. L. REV. 241, 257–72 (2020).

140. See Muzaffar Chishti & Colleen Putzel-Kavanaugh, *Trump Administration Bends U.S. Government in Extraordinary Ways Towards Aim of Mass Deportations*, MIGRATION POLY INST. (Feb. 27, 2025), <https://www.migrationpolicy.org/article/trump-mass-deportation-priority> [<https://perma.cc/XE7A-2KSA>]; see also 8 U.S.C. § 1357(g); Exec. Order No. 14,288, 90 Fed. Reg. 18765 (May 2, 2025).

141. See sources cited *supra* note 68; see also Exec. Order No. 14,287, 90 Fed. Reg. 18761 (Feb. 5, 2025).

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Take, for example, the Trump Administration's lawsuit against the City of Rochester.¹⁴² A mid-size city in upstate New York, Rochester is neither a prominent sanctuary city like Chicago nor an attractive political target like New York State.¹⁴³ Rather, the lawsuit appears to be precipitated by a long-standing condition and a specific spark.¹⁴⁴ First, the city leadership in Rochester has long had a particularly contentious relationship with its police department, including a couple of lawsuits by the police union against the city over the establishment of a civilian review board.¹⁴⁵ Second, the lawsuit was filed immediately after the city ordered several police officers to take retraining classes for assisting federal authorities in making immigration arrests at a traffic stop in violation of city policy.¹⁴⁶ In other words, Rochester was being sued not only because it had a sanctuary policy limiting local participation in

142. See Carolyn Thompson, *Trump Administration Sues Upstate New York City over "Sanctuary" Policies*, ASSOCIATED PRESS (Apr. 25, 2025, at 17:03 ET), <https://apnews.com/article/sanctuary-city-rochester-trump-immigration-enforcement-f8fe4f7c106e5c5c60fb752a614264e0> [https://perma.cc/QKW2-K5G7].

143. See *DOJ Sues New York for Blocking Immigration Arrests Near Court*, THE GUARDIAN (June 12, 2025, at 14:08 ET), <https://www.theguardian.com/us-news/2025/jun/12/doj-new-york-immigration-lawsuit> [https://perma.cc/KRN5-PF4V]; David Robinson, *What Is a Sanctuary City? Is Rochester One? See How NY Became Key to Immigration Debate*, DEMOCRAT & CHRON. (Apr. 29, 2025, at 11:56 ET) <https://www.democratandchronicle.com/story/news/2025/04/29/what-is-a-sanctuary-city-rochester-ny-key-to-immigration-debate/83341450007/> [https://perma.cc/JKJ2-DQSD]; Wendy Wright, *'Sanctuary City' Has a Different Meaning to Different People*, SPECTRUM NEWS 1, (May 9, 2025, at 17:49 ET), <https://spectrumlocalnews.com/nys/central-ny/news/2025/05/09/sanctuary-city-has-a-different-meaning-to-different-people> [https://perma.cc/45HR-UWMA].

144. See sources cited *supra* note 133.

145. See, e.g., *Rochester Police Locust Club, Inc. v. City of Rochester*, 41 N.Y.3d 156, 160–61 (2023); *Locust Club of Rochester v. City of Rochester*, 22 N.Y.2d 802, 802 (1968). See also Mary Anna Towler, *Rochester's Big Decision on Police Oversight*, CITYMAG (Apr. 10, 2019), <https://www.roccitymag.com/news-opinion/rochesters-big-decision-on-police-oversight-10064810> [https://perma.cc/HM3V-T7BA]; Gino Fanelli, *From Social Club to Obstacle to Police Reform: How the Locust Club Came to Be*, CITY MAG. (Mar. 1, 2021), <https://www.roccitymag.com/news-opinion/from-social-club-to-obstacle-to-police-reform-how-the-locust-club-came-to-be-12890026> [https://perma.cc/6ZQ5-82YA].

146. The incident occurred on March 24, 2025. See Gino Fanelli & Brian Sharp, *Rochester Police Likely Broke Sanctuary Policy Assisting Immigration Agents*, WXXI NEWS (Mar. 26, 2025, at 17:46 ET), <https://www.wxxi.com/news/local-news/2025-03-26/rochester-police-likely-broke-policy-assisting-immigration-agents-with-traffic-stop> [https://perma.cc/AQ4L-7CGQ]; Kayl Canne, *Rochester Police Handcuff Two People During ICE Immigration Raid, Violating City Rules*, DEMOCRAT & CHRON. (Mar. 27, 2025, at 14:54 ET), <https://www.democratandchronicle.com/story/news/2025/03/27/rochester-ny-police-help-ice-during-immigration-raid-violating-city-rules/82687485007/> [https://perma.cc/F8Z6-GTH2]. The federal government filed suit a month later. See *Complaint, United States v. City of Rochester*, Case No. 25-CV-6226 (W.D.N.Y. Apr. 24, 2025).

immigration enforcement; it was also being sued, because it had sought to sanction police officers who were eager to assist the Trump Administration in violation of those policies.

To be sure, the complaint against Rochester never explicitly says that the city must participate in federal immigration enforcement or comply with federal requests for cooperation.¹⁴⁷ Yet it seems to make the claim that the city *must* participate and comply by asserting that any refusal, or even procedures that might lead to a refusal, are preempted by federal law.¹⁴⁸ Rochester prohibits police activities conducted “solely for the purpose of enforcing federal immigration laws”¹⁴⁹ but permits such activities in connection with the investigation of criminal activity or a judicial warrant.¹⁵⁰ Line-level officers can also comply with a federal request for immigration assistance in the case of an emergency¹⁵¹ or with the approval by a “Captain or above during business hours, or the Staff Duty Officer (SDO) during non-business hours.”¹⁵² Localities may participate in federal immigration enforcement, and these policies set out the circumstances in which Rochester wishes to exercise that discretion.¹⁵³ But the complaint alleges that these choices are preempted, because they “create obstacles to the enforcement of federal immigration law.”¹⁵⁴ Indeed, even the authorization requirement involving a captain or a staff duty officer—a basic chain-of-command procedure—was alleged to be preempted for “restricting, and potentially prohibiting, government officials from sending information” to federal authorities.¹⁵⁵

The strongest argument in support of the government is that even if all the choices made by the city council and police chief are preempted, line-level officials are still permitted to determine whether and how they want to participate in immigration enforcement.¹⁵⁶ This, after all, was

147. Complaint, *supra* note 146, at 9–10.

148. *Id.* at 2–3.

149. ROCHESTER POLICE DEP'T, ROCHESTER POLICE DEPARTMENT GENERAL ORDER 502, AT 4 (2017), <https://data-rpdny.opendata.arcgis.com/documents/4e6c12a2590f42d6beea9164f9326964/explore> [https://perma.cc/9EUY-2JT4].

150. *Id.* at 6.

151. *Id.* at 4–5 (“[T]hese procedures do not apply to . . . situations involving an imminent threat to life or safety (e.g., a call for back-up assistance, ‘officer in trouble,’ response to a crime in progress, etc.).”).

152. *Id.* at 5.

153. *See id.*; *Sanctuary Policies: An Overview*, *supra* note 69.

154. Complaint, *supra* note 146, at 14.

155. *Id.* at 10.

156. *See id.* at 12; *Sanctuary Policies: An Overview*, *supra* note 69 (“The Supreme Court has clarified that immigration enforcement is the sole duty of the federal government, and state and local police may only carry out immigration enforcement if specifically authorized to do so by the federal government.”).

the same argument that saved 8 U.S.C. § 1373.¹⁵⁷ But even if the federal government can argue that they are not imposing a direct mandate with their preemption action, it is not clear why anti-commandeering concerns are satisfied simply because line-level officials are left with the ultimate choice. The anti-commandeering doctrine is about the sovereignty of the states under our federal system and guaranteed by the Tenth Amendment.¹⁵⁸ The authority and meaningful choices that the Supreme Court upholds with the doctrine are those of states and their subdivisions, i.e., local governments.¹⁵⁹ Line-level officials work for state and local governments.¹⁶⁰ Yet it is not their sovereignty that the Constitution is concerned about.¹⁶¹ It is the authority of the state and local governments themselves that is the concern.¹⁶²

Even 8 U.S.C. § 1373, which is the sole and longest-standing anti-sanctuary policy, was widely questioned in the litigation that took place during the first Trump Administration, particularly in the wake of the Supreme Court's expansion of the anti—commandeering doctrine in *Murphy v. NCAA*.¹⁶³ The unsettled status of may also explain why the most straightforward preemption claim sounds so puzzling. As noted earlier, 8 U.S.C. § 1373 prohibits policies that restrict federal-local communication with respect to immigration status and citizenship.¹⁶⁴ Notably, however, the statute does not affirmatively mandate such communication. The sanctuary policies at issue in Rochester and Chicago each include a clause intending to ensure that local officials comply with federal law,¹⁶⁵ that immigration enforcement activities are prohibited “except to the extent specifically required by law.”¹⁶⁶ The Trump Administration nevertheless argues that this “savings clause” saves nothing.¹⁶⁷ According to the federal government, rather than demonstrating an intent to comply with federal law, the clause itself seems to be the reason the government argues the entire policy violates 8 U.S.C. § 1373.¹⁶⁸ This is because neither 8 U.S.C. § 1373 nor any other

157. *City of New York v. United States*, 179 F.3d 29, 34 (2d Cir. 1999).

158. *New York v. United States*, 505 U.S. 144, 155–59 (1992); *Printz v. United States*, 521 U.S. 898, 918–19 (1997).

159. *New York*, 505 U.S. at 155–59.

160. *See* ROCHESTER POLICE DEP'T, *supra* note 149 (exemplifying how local governments impose policies on their line-level officials).

161. *See id.*

162. *Id.*

163. *Murphy v. Nat'l. Collegiate Athletic Ass'n*, 584 U.S. 453, 474–75 (2018).

164. 8 U.S.C. § 1373(a).

165. ROCHESTER, N.Y., Resol. 2017-5 (2017); CHI. ILL., MUN. CODE ch. 2-173 (2012).

166. ROCHESTER, N.Y., Resol. 2017-5 (2017).

167. Complaint, *supra* note 146, at 13.

168. *Id.*

federal statute expressly *requires* the city to do anything.¹⁶⁹ Therefore: (1) nothing is “specifically required by law”; (2) which means the exception excepts nothing; (3) which means the city’s restriction on enforcement applies without exceptions; (4) which then means the local policy violates—well—federal law.

So what is it? The government admits that there is no federal law requiring cities to do anything.¹⁷⁰ Yet the government argues that federal law prohibits localities from doing nothing or only doing something in certain circumstances.¹⁷¹ So what are the things cities must, may, or mustn’t do? And why should anti-commandeering concerns matter less if line-level officials are given choices denied to city leaders? These and other puzzles are perhaps why the Supreme Court recently held in *Murphy* that the anti-commandeering doctrine applies equally to federal laws that prohibit certain policies as they do to those that mandate certain policies; both are “direct orders to the governments of the States,” and thus both are constitutionally prohibited.¹⁷² The *Murphy* decision in 2018 was also why courts in the Third, Seventh, and Ninth Circuits questioned or found 8 U.S.C. § 1373 unconstitutional for ordering states not to adopt certain policies.¹⁷³

Given precedent, the Trump Administration is likely not seeking to win in the circuit courts. In addition to the political pressure and public shaming, the goal is also probably to get a favorable ruling from the Supreme Court. With a conservative majority, there is likely broad support for President Trump’s immigration policies and little sympathy for sanctuary cities.¹⁷⁴ At the same time, the anti-commandeering doctrine is a core conservative doctrine, and it seems unlikely the Court would throw it out for immigration policy alone. This is why we believe the reasoning in the Second Circuit opinion in *New York v. U.S. Department of Justice*,¹⁷⁵ the only decision to argue that 8 U.S.C. § 1373 survives *Murphy*, is worth watching. This decision provides the Supreme Court with an argument that preserves the anti-commandeering doctrine

169. *Id.*; McNulty, *supra* note 139, at 257–72.

170. *See* Complaint, *supra* note 146, at 12–14.

171. *See id.*

172. *Murphy v. Nat’l. Collegiate Athletic Ass’n*, 584 U.S. 453, 471 (2018).

173. *See, e.g., City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289, 327 (E.D. Pa. 2018); *City and County of San Francisco v. Sessions*, 349 F. Supp. 3d 924, 934 (N.D. Cal. 2018); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855, 872 (N.D. Ill. 2018).

174. *See* Devin Dwyer & Laura Romero, *Supreme Court Allows Trump to Resume Speedier 3rd-Country Removals but Boston Judge Says Detainees in Djibouti Still Protected*, ABC NEWS (June 23, 2025, at 23:51 ET), <https://abcnews.go.com/Politics/supreme-court-allows-trump-resume-3rd-country-removals/story?id=123133930> [https://perma.cc/A4MZ-MRE9].

175. *New York v. U.S. Dep’t of Just.*, 951 F.3d 84, 90 (2d Cir. 2020).

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but exempts it from the immigration context.¹⁷⁶ It does so by arguing that the anti-commandeering doctrine does not apply in the immigration context, because there is no reserve power for states to regulate immigration and thus no state authority being commandeered by federal mandates.¹⁷⁷ This reasoning might prove attractive for Justices who might want to have it both ways.¹⁷⁸

To be clear, we believe *New York v. U.S. Department of Justice* is poorly reasoned. The sovereignty that the anti-commandeering doctrine protects is the sovereignty of the states to be free from federal commands, not the state's authority to regulate in a specific area.¹⁷⁹ We do not see any reason why that sovereignty interest changes from the areas of firearm control or healthcare coverage to immigration enforcement. In fact, the Second Circuit's reasoning suggests the curious result that the federal government would have *more* power to commandeer states and localities into federal initiatives where states and localities lack any authority, role, or responsibility—foreign affairs, international wars, interstate trade.¹⁸⁰

C. *Criminal Penalties*

Defunding cities and pursuing affirmative litigation against them are not the only tactics under the renewed assault on sanctuary cities. A third one has recently emerged: the threat of criminal prosecution against state and local officials who decline to enforce immigration law.

1. Threat of Prosecution under 8 U.S.C. § 1324(a)(1)(A)(iii)

The deployment of the threat of criminal prosecution against state and local officials was evidenced in yet another executive order issued on April 28, 2025, "*Protecting American Communities from Criminal Aliens*."¹⁸¹ The order asserts that the federal government must take "measures to fulfill its obligation" to protect the United States from what it describes as the "invasion at the southern border."¹⁸² Describing the actions of state and local officials who refuse to enforce immigration law as "lawless insurrection against the supremacy of Federal law," the

176. *Id.* at 90–92.

177. *Id.* at 112–14.

178. *Id.*

179. *See New York v. United States*, 505 U.S. 144, 155–59 (1992); *Printz v. United States*, 521 U.S. 898, 918–19 (1997).

180. *See New York*, 505 U.S. at 155–59; *Printz*, 521 U.S. at 918–19.

181. Exec. Order No. 14,287, 90 Fed. Reg. 18761, 18761 (Apr. 28, 2025).

182. *Id.*

executive order contends that such noncompliance may constitute violations of several criminal statutes, including 8 U.S.C. § 1324, which prohibits the “unlawful[] harboring or hiring” of undocumented immigrants.¹⁸³ Although the Executive Order does not specify the relevant provision of 8 U.S.C. § 1324, it is likely referring to Section 1324(a)(1)(A)(iii), which penalizes any person who, “knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection[] . . . such alien in any place, including any building or any means of transportation.”¹⁸⁴

Unlike the earlier strategies of defunding and affirmative litigation, the threat of criminal prosecution included in an executive order targeting public officials who implement sanctuary policies represents a new approach. During the first Trump Administration, 8 U.S.C. § 1324 was indeed deployed to pressure jurisdictions to adopt federal immigration enforcement initiatives.¹⁸⁵ However, this was done by conditioning receipt of federal funds—not by threatening individual prosecutions. For example, in August 2018, the administration added special conditions to grants awarded through the Edward Byrne Memorial Justice Assistance Grant program, requiring compliance with 8 U.S.C. § 1324 to maintain eligibility for funding.¹⁸⁶ The City of Albuquerque, a grant recipient, challenged the constitutionality of these conditions and prevailed in court, obtaining an injunction to block their enforcement and enabled the city to retain the grant.¹⁸⁷ In that instance, 8 U.S.C. § 1324 served solely as a funding condition—not as a prosecutorial tool against city officials.¹⁸⁸

To be sure, during the first Trump Administration, federal officials made pointed threats about criminally prosecuting state and local leaders of “sanctuary jurisdictions.” After California Governor Jerry Brown signed SB54 in October 2017,¹⁸⁹ then acting ICE Director Tom Homan commented in a Fox News interview, “For these sanctuary cities that knowingly shield and harbor an illegal alien in their jail and don’t

183. *Id.*

184. 8 U.S.C. § 1324(a)(1)(A)(iii).

185. *See, e.g.*, Memorandum from Jeff Sessions, U.S. Att’y Gen., U.S. Dep’t of Just., to All Federal Prosecutors on Renewed Commitment to Criminal Immigration Enforcement (Apr. 11, 2017), <https://www.justice.gov/archives/opa/press-release/file/956841/dl?inline> [<https://perma.cc/45LK-7JP3>].

186. *City of Albuquerque v. Barr*, 515 F. Supp. 3d 1163, 1167–69 (D.N.M. 2021).

187. *Id.*

188. *Id.*

189. David Siders, *Brown Signs ‘Sanctuary State’ Bill in California*, POLITICO (Oct. 5, 2017, at 14:47 ET), <https://www.politico.com/story/2017/10/05/california-sanctuary-city-jerry-brown-signs-243503/> [<https://perma.cc/HE6M-3A4U>].

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allow us access, that is, in my opinion, a violation of [8 U.S.C. § 1324,] . . . an alien-smuggling statute.”¹⁹⁰ He continued, “We got to take these sanctuary cities on. We got to [take] them to court. And we got to start charging some of these politicians with crimes.”¹⁹¹ Similarly, during a Senate Judiciary Hearing held on January 16, 2018, then-Secretary of Homeland Security Kirstjen Nielsen testified that the Department of Justice was “reviewing what avenues may be available” to pursue charges against elected officials of sanctuary jurisdictions.¹⁹² Despite such rhetoric, no such prosecutions ever materialized.

Several years later, in November 2024, following his successful presidential election, President Trump appointed Tom Homan as the Border Czar.¹⁹³ With this appointment, a renewed emphasis on enforcing immigration laws emerged, including specific discussions of legal consequences for elected officials who support or implement sanctuary policies. For example, Homan publicly criticized the Mayor of Denver, Colorado, for maintaining its city’s sanctuary policy.¹⁹⁴ He stated that, “I’m willing to put him in jail because there’s a statute. It’s Title 8 United States Code 1324(iii). And what it says is it’s a felony if you knowingly harbor and conceal an illegal alien from immigration authorities.”¹⁹⁵ Concretizing the federal government’s intent to prosecute elected leaders of sanctuary jurisdictions, an executive order referencing Section 1324(a)(1)(A)(iii) was issued four months into President Trump’s term, targeting officials in sanctuary jurisdictions.¹⁹⁶

190. *Acting ICE Director: California Made a Foolish Decision*, FOX NEWS (Jan. 2, 2018), <https://www.foxnews.com/transcript/acting-ice-director-california-made-a-foolish-decision> [<https://perma.cc/6EG3-HA4J>].

191. *Id.*

192. *City of Chicago v. Barr*, 405 F. Supp. 3d 748, 757 (N.D. Ill. 2019), *aff’d and remanded*, 957 F.3d 772 (7th Cir. 2020), *opinion amended and superseded*, 961 F.3d 882 (7th Cir. 2020), *aff’d and remanded*, 961 F.3d 882 (7th Cir. 2020), *opinion withdrawn in part*, 513 F. Supp. 3d 828 (N.D. Ill. 2021). Indeed, the court noted that “The City emphasizes that in the approximately [seventy] years of the law’s existence, the federal government has never attempted to prosecute an elected official acting in his or her official capacity for a violation of Section 1324.” *Id.*

193. *See Trump to Appoint Former ICE Director Tom Homan as US ‘Border Czar’*, REUTERS (Nov. 11, 2024, at 02:36 ET), <https://www.reuters.com/world/us/trump-appoint-former-ice-director-tom-homan-countrys-border-czar-2024-11-11/> [<https://perma.cc/K24X-BG4X>].

194. Armando Garcia, *Trump Border Czar Tom Homan Says He’s Willing to Jail Denver Mayor over Mass Deportation Protest*, ABC NEWS (Nov. 26, 2024, at 10:32 ET), <https://abcnews.go.com/US/trump-border-czar-tom-homan-jail-denver-mayor/story?id=116235385> [<https://perma.cc/5TFQ-ZR6G>].

195. *Id.*

196. Exec. Order No. 14,287, 90 Fed. Reg. 18761, 18761 (Apr. 28, 2025), <https://www.whitehouse.gov/presidential-actions/2025/04/protecting-american-communities-from-criminal-aliens/>.

The executive order does not specify which actions could subject state and city public officials to prosecution under Section 1324(a)(1)(A)(iii).¹⁹⁷ Based on prior statements by Homan, this might include a city or county's refusal to honor federal government's detainer requests.¹⁹⁸ It might also include the provision of housing to an undocumented immigrant. However, it is unlikely that either would meet the legal definition of harboring.¹⁹⁹ As discussed below, federal courts have developed two primary interpretations of what constitutes "harboring" under 8 U.S.C. § 1324, and under either interpretation, neither the refusal to honor a detainer request nor the provision of housing to an undocumented immigrant would constitute harboring.²⁰⁰

2. Legal Interpretation of 8 U.S.C. § 1324(a)(1)(A)(iii)

As noted earlier, Section 1324(a)(1)(A)(iii) penalizes any person who, "knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection . . . such alien in any place, including any building or any means of transportation."²⁰¹ Federal courts have developed two primary interpretations of what constitutes "harboring" under 8 U.S.C. § 1324, each emphasizing different elements: "(1) substantially [facilitating] an illegal alien's remaining in the United States, and (2) [preventing] the alien's detection by immigration authorities."²⁰²

The first interpretation focuses on "*conduct* that tends to substantially facilitate noncitizens remaining in the country illegally and prevents authorities from detecting the noncitizens' presence."²⁰³ The Third, Fifth, and Eighth Circuits follow this approach, with the Sixth Circuit joining in 2023.²⁰⁴ In the Third Circuit, courts have emphasized that conduct must meaningfully reduce the likelihood of detection to

197. *Id.* at 18761–63.

198. See, e.g., *Wis. Gov. Evers Says "I'm Not Afraid" as Trump Border Czar Tom Homan Suggests Possible Arrest*, CBS NEWS (May 2, 2025, 15:33 CT), <https://www.cbsnews.com/minnesota/news/tony-evers-donald-trump-border-immigration-threats/> [<https://perma.cc/D5HY-SUY4>].

199. See *infra* Section II.C.A.2.

200. See *infra* Section II.C.A.2.

201. 8 U.S.C. § 1324(a)(1)(A)(iii).

202. *United States v. George*, 779 F.3d 113, 118 (2d Cir. 2015).

203. *United States v. Zheng*, 87 F.4th 336, 343 (6th Cir. 2023) (emphasis added).

204. *Id.*

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constitute “substantial facilitation.”²⁰⁵ Under this view, simply renting an apartment to undocumented immigrants does not qualify.²⁰⁶

The Fifth Circuit similarly requires conduct demonstrably facilitating unlawful presence and obstructing detection. Examples include knowingly hiring undocumented immigrants, instructing them to avoid detection, securing housing or employment, interfering with law enforcement, and aiding in escape.²⁰⁷ In reviewing a Texas harboring statute modeled after Section 1324(a)(1)(A)(iii), the Fifth Circuit pointed out that “[a]lthough the definition of ‘harbor’ may be ambiguous in isolation, when paired with ‘from detection’ it requires some level of covertness well beyond merely renting or providing a place to live.”²⁰⁸ According to the Fifth Circuit, “housing someone always conceals [the undocumented immigrant] from detection in the broadest sense of ‘detection,’ insofar as outsiders cannot perceive who is inside a given building.”²⁰⁹ Likewise, the Eighth Circuit held that the defendants harbored undocumented immigrants “by granting them employment, by providing [them] a place to live, daily transportation, and money to purchase necessities, and by maintaining counterfeit immigration papers for each alien.”²¹⁰ Such conduct, the court ruled, went to the defendant “substantially facilitat[ing] an alien’s remaining in the United States illegally.”²¹¹

The Sixth Circuit went further to opine that “[8 U.S.C. § 1324]’s history indicates that Congress does not require the government to prove that a defendant acted intentionally.”²¹² In *United States v. Zheng*, the court analyzed the definition of “harboring” using different canons of statutory interpretation—reenactment, “prior-construction, acquiescence, old-soil, and presumption-against-implied-repeal”—and concluded that none of them required a specific intent element in the definition of “harboring.”²¹³ In “join[ing] with the approach used by the Third, Fifth, and Eighth Circuits,” the Sixth Circuit embraced perhaps

205. *DelRio-Mocci v. Connolly Props. Inc.*, 672 F.3d 241, 247 (3d Cir. 2012).

206. *Id.* at 246 (holding property managers renting apartments to immigrants knowing their undocumented status do not constitute harboring under federal law); *Lozano v. City of Hazleton*, 620 F.3d 170, 223 (3d Cir. 2010) (holding simple landlord-tenant relationships of providing shelter in the normal course of business do not constitute harboring under federal law), *vacated on other grounds*, *City of Hazleton v. Lozano*, 563 U.S. 1030 (2011).

207. *United States v. Varkonyi*, 645 F.2d 453, 459 (5th Cir. 1981).

208. *Cruz v. Abbott*, 849 F.3d 594, 599 (5th Cir. 2017).

209. *Id.* at 600.

210. *United States v. Tipton*, 518 F.3d 591, 595 (8th Cir. 2008).

211. *Id.* (citation omitted).

212. *United States v. Zheng*, 87 F.4th 336, 342 (6th Cir. 2023).

213. *Id.* at 342, 344.

more radical definition of “harboring,” explicitly rejecting the intent requirement and focusing on the “substantial facilitation” element.²¹⁴

The second interpretation places an emphasis on the requirement of *intent* to prevent detection of the undocumented immigrants by authorities. Among the federal circuit courts, the Second, Seventh, and Ninth Circuits upheld such interpretation.²¹⁵ In the Second Circuit, “[t]he mere act of providing shelter to an alien, when done *without intention* to help prevent the alien’s detection by immigration authorities or police, is . . . *not an offense* under [Section] 1324(a)(1)(A)(iii).”²¹⁶ This was reaffirmed two years later in a case where the defendant was charged with harboring an undocumented immigrant who worked for the defendant as a domestic worker.²¹⁷ In this case, the court found sufficient intent where the defendant: (1) knew it was illegal for undocumented immigrants to work, and that the immigrant lacked authorization; (2) failed to file required Internal Revenue Service employment forms; and (3) told the immigrant to lie about her status and pose as a visiting family friend.²¹⁸ These actions, the court reasoned, spoke to “[the] circumstance[s] from which a reasonable jury could infer that [the defendant] intended to prevent authorities from discovering the alien’s illegal presence.”²¹⁹

The emphasis on intent is equally prominent in the Seventh Circuit, where the court has repeatedly ruled that “harboring ‘connot[es] . . . *deliberately* safeguarding members of a specified group from the authorities, whether through concealment, movement to a safe location, or physical protection.”²²⁰

In 2020, the Seventh Circuit ruled that “[o]ne can infer [the] intent” to safeguard the alien from the authorities “through evidence of underpayment or free housing, . . . but that is not the only evidence the government can use to prove” “harboring.”²²¹ Rather, the existence of such conduct “strengthens the inference of an intent to safeguard aliens, because they are unauthorized.”²²² The Ninth Circuit affirmed its holding

214. *Id.* at 343, 347.

215. *Id.* at 343.

216. *United States v. Vargas-Cordon*, 733 F.3d 366, 382 (2d Cir. 2013) (emphasis added).

217. *See United States v. George*, 779 F.3d 113, 115–16 (2d Cir. 2015).

218. *Id.* at 120–21.

219. *Id.* at 121.

220. *United States v. McClellan*, 794 F.3d 743, 751 (7th Cir. 2015) (emphasis added) (quoting *United States v. Costello*, 666 F.3d 1040, 1044 (7th Cir. 2012)).

221. *United States v. Grayson Enters., Inc.*, 950 F.3d 386, 407 (7th Cir. 2020) (“[T]hough we noted the offer of free housing in the *Costello* hypothetical and in *McClellan*, that does not make the lack of rent an element of the offense.”).

222. *Id.* *Grayson Enterprises* notably distinguished its facts from various hypotheticals that would constitute “harboring” only under an overly broad interpretation—one that, as

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in *United States v. You*²²³ that the jury instructions on the definition of “harboring” “must require a finding that Defendants intended to violate the law.”²²⁴ In upholding *You*, the Ninth Circuit determined that the court “considered the question at some length, relying on two analogous decisions in which [it] held that a district court should have instructed the jury that it must find that the defendants intended to violate the law.”²²⁵ Notably, the Ninth Circuit highlighted that a proof that “the defendant sought to prevent immigration authorities from detecting an illegal alien’s presence” was not the only way to demonstrate intent, and provided as an example that “a defendant who chooses to publicize her harboring of an illegal alien in order to call attention to what she considers an unjust immigration law intends to violate the law, even though she does not intend to prevent detection.”²²⁶ This interpretation by the Ninth Circuit is certainly broader than the requirement of intent to prevent detection of the undocumented immigrants by authorities, followed by the Second and Seventh Circuits.²²⁷

Under either interpretation, it is unlikely that the state and local governments will be prosecuted for refusing to comply with a detainer request or from providing housing to undocumented immigrants. As noted earlier, the first category—embraced by the Third, Fifth, Sixth, and Eighth Circuits—interprets harboring to include conduct that substantially facilitates a noncitizen’s ability to remain in the United States unlawfully and simultaneously prevents detection by immigration authorities.²²⁸ Importantly, under this approach, courts have repeatedly rejected claims that simply providing housing or services—even with knowledge of an individual’s undocumented status—constitutes harboring.²²⁹

The second interpretation—adopted by the Second, Seventh, and Ninth Circuits—places greater emphasis on the intent to prevent detection by immigration authorities.²³⁰ In *George*, for example, the

Costello warned, could sweep in benign scenarios like doctors aiding patients, children hosting sleepovers, or families simply living together. *Id.*

223. See *United States v. You*, 382 F.3d 958, 966 (9th Cir. 2004).

224. *United States v. Tydingco*, 909 F.3d 297, 302–03 (9th Cir. 2018).

225. *Id.* at 303.

226. *Id.* at 304.

227. See *United States v. McClellan*, 794 F.3d 743, 749 (7th Cir. 2015); *United States v. Vargas-Cordon*, 733 F.3d 366, 382 (2d Cir. 2013).

228. See *United States v. Zheng*, 87 F.4th 336, 342 (6th Cir. 2023); *Cruz v. Abbott*, 849 F.3d 594, 600 (5th Cir. 2017); *DelRio-Mocci v. Connolly Props. Inc.*, 672 F.3d 241, 246 (3d Cir. 2012); *United States v. Tipton*, 518 F.3d 591, 595 (8th Cir. 2008).

229. See, e.g., *Tydingco*, 909 F.3d at 302–03.

230. See *id.* at 303–04; *United States v. George*, 779 F.3d 113, 121 (2d Cir. 2015); *McClellan*, 794 F.3d at 751.

Second Circuit found intent where the defendant knew the worker was undocumented, failed to file tax forms, and explicitly instructed the worker to lie about her status.²³¹ Likewise, in *Grayson Enterprises*, the Seventh Circuit emphasized that such intent could be inferred from a pattern of conduct deliberately safeguarding undocumented individuals, such as underpayment or deceptive housing arrangements.²³² Even the Ninth Circuit—which affirmed that the intent to *violate the law* must be shown—allowed for a broad range of evidence to satisfy that requirement, including public actions designed to call attention to unjust immigration laws.²³³

Across both interpretive approaches, the case law makes clear that passive provision of services—such as housing, food, or other humanitarian aid—by itself does not meet the threshold for harboring under 8 U.S.C. § 1324.²³⁴ State and local governments, acting through public programs or policy decisions, do not engage in the type of individualized, concealment-driven conduct that courts have deemed prosecutable.²³⁵ Even under the broader view in *Zheng*, which explicitly rejected a specific intent requirement, the Sixth Circuit still required that the conduct “substantially facilitate” unlawful presence and frustrate detection.²³⁶ General provision of shelter or refusal to cooperate with ICE detainees does not rise to this level.

IV. LIABILITY

The previous sections examined the array of legal tools the Trump Administration has employed or threatened to use against sanctuary jurisdictions. These include efforts to withhold federal funding, initiate civil lawsuits, and even pursue criminal charges²³⁷—all aimed at

231. See *George*, 779 F.3d at 120–21.

232. See *United States v. Grayson Enters., Inc.*, 950 F.3d 386, 407 (7th Cir. 2020).

233. See *Tydingco*, 909 F.3d at 304.

234. See *George*, 779 F.3d at 121–22; *Grayson Enters., Inc.*, 950 F.3d at 407; *McClellan*, 794 F.3d at 749–51; *United States v. Tipton*, 518 F.3d 591, 595 (8th Cir. 2008).

235. See Ahilan Arulanantham, *What Just Happened: Sanctuary Policies and the DOJ Memo’s Empty Threat of Criminal Liability*, JUST SEC. (Jan. 23, 2025), <https://www.justsecurity.org/106723/sanctuary-policies-federalism-1324/> [https://perma.cc/CJ4H-ZPSH].

236. *United States v. Zheng*, 87 F.4th 336, 342–43 (6th Cir. 2023).

237. IMMIGRANT LEGAL RES. CTR., DOJ GRANTS AND SANCTUARY CITIES 1 (2018), https://www.ilrc.org/sites/default/files/resources/doj_grants_sanct_cities-20180808.pdf [https://perma.cc/4GLN-WSP9]; NAT’L LEAGUE OF CITIES, IMPACTS OF IMMIGRATION EXECUTIVE ORDERS ON LOCAL GOVERNMENTS WEBINAR RESOURCE: FAQ ¶ 19 (2025), <https://www.nlc.org/wp-content/uploads/2025/02/Impacts-of-Immigration-Executive-Orders-on-Local-Governments-Webinar-Resource.pdf> [https://perma.cc/98KV-3BWT].

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pressuring local governments to align with federal immigration enforcement priorities. In this Part, we turn to the flip side of this dilemma and analyze the significant legal risks that sanctuary jurisdictions may face if they choose to cooperate with federal immigration authorities. In particular, we show that as cities and counties are honoring ICE detainers, courts are increasingly finding that such actions can violate constitutional rights and impose enormous financial liability. Through three key cases, this section reveals a central tension in contemporary immigration policy: local governments are trapped between conflicting demands from federal authorities and their own legal obligations, policy goals, and community values. As is often the case in the American federal system, they find themselves navigating a legal and political landscape where any path forward carries substantial risk.

The first case involves *Orellana v. County of Suffolk*.²³⁸ On April 23, 2017, Joaquin Orellana Castaneda was arrested for traffic violations and detained by the Suffolk County Sheriff's Office.²³⁹ The next day, ICE issued a detainer request.²⁴⁰ Although Orellana was eligible for release on bail, the Sheriff's Office held him for two additional days until ICE took custody.²⁴¹ A similar situation occurred with German Hernandez Argueta, who was also held past his release date.²⁴² In both cases, the Sheriff's Office communicated to ICE that no criminal charges remained yet continued to detain them solely on ICE's request.²⁴³

These two incidents became the basis of a class action lawsuit, ultimately encompassing 650 plaintiffs detained by the Sheriff's Office under similar circumstances between July 2014 and November 2018.²⁴⁴ The plaintiffs alleged violations of their rights under the Fourth and Fourteenth Amendments, as well as Article I of the New York State Constitution.²⁴⁵ The district court found that ICE's detainer requests did not supply sufficient legal authority for continued detention and that the Sheriff's Office lacked probable cause under both federal and state law.²⁴⁶ As a result, the detentions violated the Fourth Amendment.²⁴⁷ The case

238. *Orellana v. County of Suffolk*, No. 17-CV-4267, 2025 WL 481723 (E.D.N.Y. Jan. 2, 2025).

239. *Id.* at *3.

240. *Id.*

241. *Id.*

242. *Id.*

243. *Id.*

244. *Id.* at *2, *4.

245. *Id.* at *4.

246. *Id.* at *16.

247. *Id.* The court dismissed the Fourteenth Amendment claims as duplicative. *Id.* at *15.

is now in the damages phase, with potential liabilities reaching \$60 million.²⁴⁸ Suffolk County appealed the decision, which the Second Circuit Court of Appeals denied.²⁴⁹ This case illustrates how honoring ICE detainers not only exposes local jurisdictions to constitutional litigation but also creates significant financial consequences. The second case is also from the State of New York—this time involving the City of New York. On December 10, 2008, Oscar Onadia was arrested for driving without a license.²⁵⁰ After he was arrested, his criminal history showed that he had a prior charge for unlicensed driving earlier that year in April, for which he served five days in jail.²⁵¹ For the December charge, he alleged he should have been detained for only two days; he attempted to pay his bail in the amount of one dollar, but the New York Department of Corrections rejected his bail considering ICE's detainer request it had received in Onadia's name.²⁵² The New York Department of Corrections accepted his bail over a month later, but it refused to release Onadia from custody forty-two days after the sentence would have ended for the December charge.²⁵³

In *Onadia v. City of New York*, the court initially certified the case as a class action in 2017 based on the initial 9,000-plus individuals who were also detained under similar ICE detaining circumstances by the relevant agencies under the City of New York between August 15, 2009 and December 12, 2012.²⁵⁴ The bases of this action arose from state and federal claims for: false imprisonment; deprivation of federal rights; negligence and negligent hiring, screening, retention, supervision and training; gross negligence; violation of Article I of the New York Constitution.²⁵⁵ A *New York Times* article reported that Onadia's counsel would later speculate that the class action would capture nearly 21,000

248. See *Suffolk County Statements Around Immigration Detention Lawsuit False and Inaccurate, Says LatinoJustice*, LATINOJUSTICE PRLDEF (Jan. 08, 2025), <https://www.latinojustice.org/en/press/suffolk-county-statements-around-immigration-detention-lawsuit-false-and-inaccurate-says> [https://perma.cc/C3LT-RH9V]; Joe Werkmeister, *Suffolk Loses Detainer Case, Judge: It Violated Rights of Hundreds of Immigrants*, NEWSDAY, Jan. 11, 2025, at A12.

249. See *Castaneda v. County of Suffolk*, No. 17-cv-4267, 2025 WL 2319643 (2d Cir. June 16, 2025).

250. *Onadia v. City of New York*, 44 N.Y.S. 3d 1, 2 (N.Y. Sup. Ct. 2017).

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.* at 1–2, 8.

255. *Id.* at 3.

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people in the lawsuit, rather than the initial number, especially collecting plaintiffs dating back to April 1, 1997.²⁵⁶

New York City has not admitted to any wrongdoing.²⁵⁷ Nevertheless, in December 2024, the city agreed to pay \$92.5 million to resolve this lawsuit, where individual members could receive between \$10,000 and \$48,000, depending on the amount of time each claimant was over-detained.²⁵⁸ As this case underscores, local compliance with ICE detainers can result in mass civil rights violations and enormous settlement costs—even in jurisdictions that do not admit liability.

The third case *Roy v. County of Los Angeles* similarly highlights the risks that cities face when they comply with detainer requests.²⁵⁹ The case involves four individuals, including Duncan Roy, a British citizen held in the Los Angeles County Sheriff's Department facility for eighty-nine days pursuant to an ICE detainer and the Department's refusal to accept his bail.²⁶⁰ Another immigrant, Alain Martinez-Perez, a Mexican citizen, was detained for six days following his criminal arrest.²⁶¹ Other plaintiffs included Annika Alliksoo, an Estonian citizen, who was detained for eighteen days, including three days after a judge in state court ordered her release, and Clemente De La Cerda, a Mexican citizen and lawful permanent resident of the United States.²⁶²

Together, the four individuals initiated a class action of over 18,500 victims who had been similarly situated and wrongfully detained from October 2010 to June 2014.²⁶³ They collectively sued the Department for their unlawful practices, generally, the practice of unlawfully denying

256. See Luis Ferré-Sadurní, *New York City to Pay \$92.5 Million to Improperly Detained Immigrants*, N.Y. TIMES (Dec. 18, 2024), <https://www.nytimes.com/2024/12/18/nyregion/migrants-detention-settlement-deportation.html> [https://perma.cc/KE4E-HGHQ].

257. See *id.*

258. *\$92.5M New York City Department of Correction ICE Class Action Settlement*, TOP CLASS ACTIONS (Mar. 17, 2025), <https://topclassactions.com/lawsuit-settlements/open-lawsuit-settlements/92-5m-new-york-city-department-of-correction-ice-class-action-settlement/> [https://perma.cc/U8M4-NNLN]. Plaintiff Onadia unfortunately passed away before this settlement came into fruition. See Ferré-Sadurní, *supra* note 256.

259. *Roy v. County of Los Angeles*, No. CV 12-09012-AB (FFMx), 2018 U.S. Dist. LEXIS 27268 (C.D. Cal. Feb. 7, 2018).

260. *Roy, et al. v. Los Angeles County*, ACLU (Oct. 19, 2012), <https://www.aclu.org/cases/roy-et-al-v-los-angeles-county#press-releases> [https://perma.cc/A6SD-SDRU].

261. *Roy v. County of Los Angeles*, No. CV 12-09012-BRO (FFMx), 2016 U.S. Dist. LEXIS 186634, at *2 (C.D. Cal. Sep. 9, 2016).

262. *Id.*

263. *Los Angeles County Settles Immigrant Detention Suit for \$14 Million*, ACLU (Oct. 13, 2020, at 14:00 ET), <https://www.aclu.org/press-releases/los-angeles-county-settles-immigrant-detention-suit-14-million/> [https://perma.cc/Z2FK-Q5VC].

individuals' option to post bail, as well as the practice of detaining individuals, solely on the basis of the ICE detainers, beyond the time and authority under state law.²⁶⁴ Within the class action, Plaintiffs were divided based on group classes: (1) Fourth Amendment Class, for those who were detained beyond their release dates solely because of the issued immigration detainers; (2) Equal Protection Class, for those whose monetary bail was a low amount and would have been otherwise released; and (3) No-Bail Class, for those denied posting bail entirely because of the immigration detainer.²⁶⁵

The Los Angeles Sheriff's Department has agreed to settle the class action lawsuit for \$14 million, where eligible members could receive between \$250 to \$25,000, based on the length of wrongful detention and other relevant circumstances.²⁶⁶ Any excess funds will go to programs that will provide immigrants legal representation if they are facing arrest or conviction.²⁶⁷

Taken together, these three cases illustrate a profound dilemma: local governments face increasing pressure from federal authorities to assist in immigration enforcement, yet doing so often places them in direct conflict with constitutional protections and state law. The resulting legal exposure has already cost municipalities tens of millions of dollars and undermined public trust in local institutions.²⁶⁸

V. CONCLUSION

It is not easy being a sanctuary city in an era of mass deportation. More than at any other time in our history, local governments are subject to fiscal, legal, and political pressure to commit their resources to federal immigration enforcement. At the same time, because of the federalist divide between the federal government and the states, even localities willing to participate face liability for doing so. All the while, local leaders are navigating the social and economic fallout of federal policies developed in Washington, D.C. The effects of the renewed federal assault on sanctuary cities are not just felt by the sanctuary cities themselves.

But in documenting the various ways that the Trump Administration has renewed its assault on sanctuary cities, are we overlooking an even more basic form of assault? Even as we write this, the Trump

264. *Roy*, 2018 U.S. Dist. LEXIS 27268, at *11.

265. *Id.* at *20–22.

266. *See Los Angeles County Settles Immigrant Detention Suit for \$14 Million*, *supra* note 263.

267. *Id.*

268. *See e.g., id.*; Werkmeister, *supra* note 248; Ferré-Sadurní, *supra* note 256.

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Administration has descended upon Minneapolis with an army of federal officials intent on sowing fear and provoking unrest—an operation that has already claimed the lives of two American citizens, Alex Pretti and Renée Good.²⁶⁹ This deployment followed similar surges in Portland, Chicago, and Los Angeles,²⁷⁰ where President Trump federalized or attempted to mobilize state National Guard, and where, in the case of Los Angeles, 700 active-duty Marines were activated to support immigration enforcement operations.²⁷¹ In the days following the killings in Minneapolis, Border Czar Tom Homan offered to draw down a portion of these federal forces, but only if the city agreed to comply with federal demands for immigration enforcement.²⁷² It may be too soon to say if American cities are under siege. These developments remind us, however, that one alternative to the legal assault on local democracy is, quite literally, a military one.

Given this, the stakes in the sanctuary cities fight may ultimately be about more than immigration, immigrants, or even local power. The cities might just be the proverbial canary in the coal mine, whose demise foreshadows a broader constitutional reordering. We know how the initial assault on sanctuary cities ended at the conclusion of the first Trump Administration.²⁷³ In a functioning legal system shaped by precedent, this should mean we know much more this time around about how the renewed assault might fare. Whether this will be the case remains to be seen.

269. See Barajas, *supra* note 4.

270. See Rebecca Falconer & Russell Contreras, *Trump Orders ICE to Step Up Deportation Efforts in Democrat-Run Cities*, AXIOS (June 16, 2025), <https://www.axios.com/2025/06/16/trump-ice-democrat-cities-immigration-deport> [<https://perma.cc/MX58-XNAJ>].

271. *Id.*

272. Jeff Day, *White House: Federal Agents Will Draw Down, but State Must Cooperate*, MINN. STAR TRIB. (Jan. 29, 2026, at 17:23 ET), <https://www.startribune.com/white-house-border-czar-tom-homan-plans-federal-agent-drawdown-says-minnesota-must-cooperate-with-feds/601572758> [<https://perma.cc/U7EP-PXYV>].

273. See, e.g., Katy Murdza, *Biden Moves to End Trump's War on 'Sanctuary Cities'*, AM. IMMIGR. COUNCIL (May 4, 2021), <https://immigrationimpact.com/2021/05/04/biden-sanctuary-city-policy/> [<https://perma.cc/9DTN-C6XU>].