Dear Culver City Councilmembers:

We write as a courtesy and a resource in advance of the Council meeting this coming Monday, February 13. During the comment period, we intend to call upon you publicly to take swift, strong action to declare Culver City a “sanctuary city” and to develop and implement appropriate policies to that end.

Since the election, this issue has been raised with you directly and widely discussed in the press. As Culver City residents, we believe that now it is time to act. Doing so would be consistent with, and make more concrete, your commendable pre-election resolution expressing solidarity with people under threat on the basis of immigration status, religion, race, ethnicity, and/or sexual orientation. Likewise, it would affirm, add force to, and elaborate on Police Chief Bixby’s helpful post-election message to the community. It also would complement the CCUSD School Board’s “Safe Zones” resolution that passed at a November meeting packed with supporters whose attendance we helped organize. Cities across the country also have been acting, including in Santa Ana, San Francisco, Seattle, and in Boston, where Mayor Martin Walsh declared “I will use City Hall itself to shelter and protect them [immigrants] from persecution.” We hope you will join these exercises of strong, principled leadership.

The Trump Administration’s recent actions, most notably the string of Executive Orders, have confirmed the worst fears about disrespect of and assault on immigrants, on Muslims, on African Americans, and indeed on all who hold dear our democracy, civil liberties, and rule of law. Clearly there is more to come. Further delaying a response is unacceptable.

These dangerous times call for us to speak loudly, act boldly, and love our entire community proudly. As our current elected officials, we call on you do so on behalf of Culver City. In particular, we call for a City Council resolution that takes the following steps:

1. **Declare Culver City to be a “sanctuary city.”**

   Culver City should strive to do everything in its power to serve and protect all its residents without regard to immigration status, national origin, religion, and race, among other things. When specific communities face specific threats—such as noncitizens, or Muslims—this means responding specifically to those threats. At a minimum, it means refusing to use the City’s powers and resources in ways that facilitate or carry out such threats, including threats emanating from the federal government. Using the term “sanctuary” captures this spirit of affirmative protection, and it makes explicit common cause with others pursuing similar aims in their cities, schools, religious congregations, and private homes.
2. **Decline to perform or assist with any immigration enforcement.**
   Culver City has considerable discretion over how it chooses to use its scarce resources and legal authority. So far as legally possible, it should decline to use its funds, personnel, and authority, including that of the Culver City Police Department, to enforce federal immigration law or to assist or facilitate the enforcement of federal immigration law by other federal, state, or local government agencies or officials.

3. **Protect personal information against use for immigration enforcement.**
   So far as legally possible, Culver City should not require, seek, or receive any information about individuals’ immigration status. Although the city sometimes could be legally obligated to share any immigration status information that it does possess, it should not share or allow access to any other personal information—such as name, address, etc.—when that information would be used for immigration enforcement purposes.

4. **Contribute to the L.A. Justice Fund for legal assistance to residents facing deportation.**
   Immigrants often have legal defenses against deportation but cannot invoke them effectively without legal assistance. Culver City should contribute appropriately to the County-wide effort to ensure that no one is deported because she could not afford to hire a lawyer.

5. **Reject and refuse to cooperate with any efforts to profile, register, or otherwise restrict the liberty of Muslims or people of Middle Eastern descent.**
   Culver City should not share or allow access to any personal information for the purpose of constructing or using any Muslim registry or its practical equivalent, including registries or other lists based on national origin traceable to Muslim-majority or Middle Eastern countries. Nor should Culver City devote any resources to assisting any other entity in constructing or using such a registry or its equivalent. Moreover, Culver City should affirmatively commit to using its resources, including law enforcement resources, to protect Muslim and Middle Eastern residents or visitors from any public or private individual or group attempting to target them based on religion or national origin.

6. **Celebrate and protect the exercise of civil rights and civil liberties, including public demonstrations.**
   Except as strictly necessary to maintain public safety, Culver City should refrain from using public resources to limit, disperse, or punish public demonstrations or other exercises of constitutional rights to speech, assembly, and petition. Likewise, the City should refuse to cooperate with or assist federal or other efforts to criminalize, harass, surveil, or disrupt dissent.

7. **Review and modify City ordinances and policing practices to avoid indirectly facilitating immigration enforcement, racial or religious profiling, or political repression against those taken into City custody.**
   Arrest, detention, and/or prosecution for minor offenses can have vastly disproportionate and unintended consequences by making Culver City residents or visitors vulnerable to the policies or practices of other jurisdictions. In particular, Culver City should take care to avoid unnecessarily transferring
individuals into the custody of the LA Sheriff’s Department (such as for detention in the County jail), where they become subject to the County’s cooperation with US Immigration & Customs Enforcement (“ICE”). This can be done by implementing policies and offering training that reduce the risk of racial profiling, prioritize policing of violent or other serious offenses, decriminalize certain minor offenses (as Los Angeles is doing for street vending violations), and use release with a citation instead of pre-trial detention, including by accepting identification issued by other countries.

We recognize that implementing these broad principles will require working out many important details with appropriate time, consultation, and research. That necessity, however, provides no excuse for inaction. Instead, the best way forward is to enact the guiding principles promptly and to direct appropriate personnel to develop the necessary specifics for subsequent adoption. Support for adequate training on implementation would also be important.

In addition, we note that other jurisdictions are taking similar action and that resources are available to facilitate this process. To assist the Council in its consideration of these matters, we attach or hyperlink:

- recent resolutions, consistent with the points above, from Santa Ana and Seattle,
- a “model” resolution, drafted by local advocates with the City of Los Angeles in mind,
- a legal memorandum, commissioned by the U.S. Conference of Mayors and the Major Cities Chiefs Association, addressing legal issues concerning local authority and the Trump Administration’s threats to cut off federal funding from “sanctuary cities,”
- the guide *Local Options for Protecting Immigrants* produced by the Immigrant Legal Resource Center

We hope that these resources help demonstrate that our request is reasonable and feasible, and that they lessen the burden of rapidly drafting an appropriate resolution for consideration at an upcoming Council meeting.

Thank you for considering this important and urgent matter, and for your service to Culver City. See you Monday!

Sincerely,
Kelly Lytle Hernandez
Noah Zatz
Tiffany Lanoix
Jessica Cattelino
Joy Kecken

on behalf of Culver City Action Network
Attachments to Letter to Culver City Council Regarding Sanctuary Resolution

1. Santa Ana Resolution (page 2)
2. Seattle Resolution (page 16)
3. Model Los Angeles Resolution (page 29)
4. Legal memorandum on local authority and federal funding threats (page 32)
5. Local Options for Protecting Immigrants (page 54)
REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE:

JANUARY 17, 2017

TITLE:
SECOND READING ORDINANCE:
RELATING TO THE CITY’S PROCEDURES CONCERNING SENSITIVE INFORMATION AND THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW FOLLOWING THE DECLARATION OF THE CITY OF SANTA ANA AS A SANCTUARY FOR ALL ITS RESIDENTS {STRATEGIC PLAN NO. 5, 6F}

CITY MANAGER

RECOMMENDED ACTION
Place revised ordinance on second reading and adopt.

DISCUSSION
On December 20, 2016, the following ordinance was introduced for first reading and City Council authorized publication of title by a vote of 7-0:

ORDINANCE NO. NS-2908 - RELATING TO THE CITY’S PROCEDURES CONCERNING SENSITIVE INFORMATION AND THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW FOLLOWING THE DECLARATION OF THE CITY OF SANTA ANA AS A SANCTUARY FOR ALL ITS RESIDENTS

The ordinance as amended removes Section 7(f) regarding the applicability of Section 7 to subjects in the following circumstances: subjects who have an outstanding criminal warrant; subjects who have been convicted of a felony; and subjects who are defendants who have a pending felony charge. Additional non-substantial changes were made to the ordinance to reorganize and clarify remaining sections, as reflected in Exhibit 1.

STRATEGIC PLAN ALIGNMENT
Approval of this item supports the City’s efforts to meet Goal #5 - Community Health, Livability, Engagement & Sustainability, Objective 6 (focus projects and programs on improving the health and wellness of all residents.), Strategy F (incorporate health, wellness, and equity into all applicable policies and plans).
FISCAL IMPACT

There is no fiscal impact associated with this action.

Maria D. Huizar
Clerk of the Council

EXHIBITS: 1. Ordinance No. NS-2908 – Marked up version reflecting changes
           2. Ordinance No. NS-2908 – Final version without markups
ORDINANCE NO. NS-XXX

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA RELATING TO THE CITY’S PROCEDURES CONCERNING IMMIGRATION STATUS SENSITIVE INFORMATION AND THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW FOLLOWING THE DECLARATION OF THE CITY OF SANTA ANA AS A SANCTUARY FOR ALL ITS RESIDENTS

THE CITY COUNCIL OF THE CITY OF SANTA ANA DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council of the City of Santa Ana hereby finds, determines, and declares as follows:

A. The City of Santa Ana has long embraced and welcomed individuals of diverse racial, ethnic, religious, and national backgrounds, including a large immigrant population.

B. The City of Santa Ana welcomes, honors, and respects the contributions of all of its residents, regardless of their immigration status.

C. Immigrants and their families in Santa Ana contribute to the economic and social fabric of the City by establishing and patronizing businesses, participating in the arts and culture, and achieving significant educational accomplishments.

D. Fostering a relationship of trust, respect, and open communication between City officials and residents is essential to the City’s mission of delivering efficient public services in partnership with our community, which ensures public safety, a prosperous economic environment, opportunities for our youth, and a high quality of life for residents.

E. The City of Santa Ana seeks to continue to foster trust between City officials and residents to protect limited local resources, to encourage cooperation between residents and City officials, including law enforcement officers and employees, and to ensure public safety and due process for all.

F. In recognition of the City’s continued commitment to the equal, respectful, and dignified treatment of all people, the City Council, on December 6, 2016, adopted Resolution No. 2016-086 declaring the City of Santa Ana a sanctuary for all its residents, regardless of their immigration status. This Resolution

Exhibit 1
called for certain actions by the City relative to the administration and enforcement of federal immigration law, which is the exclusive authority of the federal government.

G. The City now wishes to enact specific procedures consistent with Resolution No. 2016-086 and the City's commitment to social justice and inclusion.

**SECTION 2. Purpose and Intent.** The City of Santa Ana is one of the most ethnically, racially, and religiously diverse cities in the United States, with immigrants comprising approximately 46 percent of the City's population. The City has long derived its strength and prosperity from its diverse community, including those who identify as immigrants, and prides itself on their achievements. The cooperation of the City's immigrants is essential to advancing the City's mission, vision, and guiding principles, including community safety, support for youth and education, economic development, and financial stability. Through the City's commitment to social justice and inclusion, one of the City's most important objectives is to enhance its relationship with all its residents, including immigrants. Due to the City's limited resources, the complexity of federal civil immigration laws, the need to promote trust and cooperation from the public, including immigrants, and to attain the City's objectives, the City Council finds that there is a need to clarify the communication and enforcement relationship between the City and the federal government. The purpose of this ordinance is to establish the City's procedures concerning immigration status and enforcement of federal civil immigration laws.

**SECTION 3. Requesting or Maintaining Information Prohibited.** No City agency, department, officer, employee, or agent shall request or maintain information about sensitive information about any person except as provided in this ordinance. Sensitive information includes any information that may be considered sensitive or personal by nature, including a person's status as a victim of domestic abuse or sexual assault; status as a victim or witness to a crime generally; citizenship or immigration status; status as a recipient of public assistance; sexual orientation; biological sex or gender identity; or disability, or otherwise investigate or assist in the investigation of, the citizenship or immigration status of any person unless such inquiry is required by state or federal law or judicial decision.

**SECTION 4. Disclosing Information Prohibited.** Except as otherwise provided under applicable federal law, a No City agency, department, officer, employee, or agent shall disclose sensitive information regarding the citizenship or immigration status of any person except as provided in this ordinance.

**SECTION 5. Prohibitions Applicable to Sensitive Information.** The prohibitions in Sections 3 and 4 of this ordinance shall also apply to any information that may be considered sensitive or personal by nature, including, but not limited to, the following: a person's status as a victim of domestic abuse or sexual assault; status as a witness to a crime; status as a recipient of public assistance; sexual orientation; or disability.
SECTION 65. Exceptions to Prohibitions. The prohibitions in Sections 3 and 4 of this ordinance shall not apply where the individual to whom such information pertains provides his or her consent (or if such individual is a minor, the consent of that person's parent or guardian), where the information or disclosure is necessary to provide a City service, or where otherwise required by state or federal law or judicial decision.

SECTION 76. Use of City Resources Prohibited. No City agency, department, officer, employee, or agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal civil immigration law or to gather or disseminate information regarding the citizenship or immigration status of any person, unless such assistance is required by any valid and enforceable federal or state law or is contractually obligated. Nothing in this Section shall prevent the City, including any agency, department, officer, employee, or agent of the City, from lawfully discharging his or her duties in compliance with and in response to a lawfully issued judicial warrant or subpoena.

The prohibition set forth in this Section shall include but not be limited to:

(a) identifying, investigating, arresting, detaining, or continuing to detain a person solely on the belief that the person is not present legally in the United States or that the person has committed a civil-immigration violation of immigration law;

(b) assisting with or participating in any immigration enforcement operation or joint operation or patrol that involves, in whole or in part, the enforcement of federal immigration laws;

(bc) arresting, detaining, or continuing to detain a person based on any immigration detainer or federal administrative warrant, when such immigration detainer or administrative warrant is based solely on a violation of federal civil immigration law, or otherwise honoring any such detainer, warrant, or request to detain, interview, or transfer;

(cd) notifying federal authorities about the release or pending release of any person for immigration purposes;

(de) providing federal authorities with non-public information about any person for immigration purposes; and

(ef) enforcing any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.

(f) This Section shall not apply when an investigation conducted by any City agency, department, officer, employee, or agent indicates that the subject of the investigation:

Ordinance No. NS-XXX
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has an outstanding criminal warrant;

2. has been convicted of a felony in any court of competent jurisdiction; or

3. is a defendant in any court of competent jurisdiction where a judgment has not been entered and a felony charge is pending.

SECTION 37. Implementation of Policies. Within a reasonable time following adoption of this ordinance, the City shall implement policies to prevent biased-based policing and directing its law enforcement personnel to exercise discretion to cite and release individuals in lieu of detaining them at a local detention facility or county jail based on the nature of the crime alleged to be committed. The City shall also provide appropriate training and establish a commission, task force, or similar body composed of community members to advise the City Council on these and all policies related to this ordinance.

SECTION 98. Ordinance Not to Conflict with Federal Law. Nothing in this ordinance shall be construed or implemented to conflict with any valid and enforceable duty and obligation imposed by a court order or any federal or applicable law.

SECTION 409. No Private Right of Action. This ordinance does not create or form the basis of liability on the part of the City, its agencies, departments, officers, employees, or agents. It is not intended to create any new rights for breach of which the City is liable for money or any other damages to any person who claims that such breach proximately caused injury. The exclusive remedy for violation of this ordinance shall be through the City’s disciplinary procedures for employees under applicable City regulations, unless the agency, department, officer, employee, or agent of the City is lawfully discharging his or her duties as set forth in Section 76.

SECTION 410. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions were to be declared invalid or unconstitutional.

SECTION 421. Effective Date. This ordinance shall become effective thirty (30) days after its adoption.
SECTION 1312. Certification by Clerk. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this ______ day of ______________, 2017.

__________________________________________________________________________
Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonia R. Carvalho, City Attorney

By: John M. Funk
   Assistant City Attorney

AYES: Councilmembers

NOES: Councilmembers

ABSTAIN: Councilmembers

NOT PRESENT: Councilmembers

CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Maria D. Huizar, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXX to be the original ordinance adopted by the City Council of the City of Santa Ana on ______________, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: ________________________________

Clerk of the Council
City of Santa Ana
ORDINANCE NO. NS-XXX

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SANTA ANA RELATING TO THE CITY’S PROCEDURES CONCERNING SENSITIVE INFORMATION AND THE ENFORCEMENT OF FEDERAL IMMIGRATION LAW FOLLOWING THE DECLARATION OF THE CITY OF SANTA ANA AS A SANCTUARY FOR ALL ITS RESIDENTS

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B. The City of Santa Ana welcomes, honors, and respects the contributions of all of its residents, regardless of their immigration status.

C. Immigrants and their families in Santa Ana contribute to the economic and social fabric of the City by establishing and patronizing businesses, participating in the arts and culture, and achieving significant educational accomplishments.

D. Fostering a relationship of trust, respect, and open communication between City officials and residents is essential to the City’s mission of delivering efficient public services in partnership with our community, which ensures public safety, a prosperous economic environment, opportunities for our youth, and a high quality of life for residents.

E. The City of Santa Ana seeks to continue to foster trust between City officials and residents to protect limited local resources, to encourage cooperation between residents and City officials, including law enforcement officers and employees, and to ensure public safety and due process for all.

F. In recognition of the City’s continued commitment to the equal, respectful, and dignified treatment of all people, the City Council, on December 6, 2016, adopted Resolution No. 2016-086 declaring the City of Santa Ana a sanctuary for all its residents, regardless of their immigration status. This Resolution called for certain actions by the City relative to the administration and enforcement of federal immigration law, which is the exclusive authority of the federal government.

Exhibit 2
G. The City now wishes to enact specific procedures consistent with Resolution No. 2016-086 and the City's commitment to social justice and inclusion.

SECTION 2. Purpose and Intent. The City of Santa Ana is one of the most ethnically, racially, and religiously diverse cities in the United States, with immigrants comprising approximately 46 percent of the City's population. The City has long derived its strength and prosperity from its diverse community, including those who identify as immigrants, and prides itself on their achievements. The cooperation of the City's immigrants is essential to advancing the City's mission, vision, and guiding principles, including community safety, support for youth and education, economic development, and financial stability. Through the City's commitment to social justice and inclusion, one of the City's most important objectives is to enhance its relationship with all its residents, including immigrants. Due to the City's limited resources, the complexity of federal civil immigration laws, the need to promote trust and cooperation from the public, including immigrants, and to attain the City's objectives, the City Council finds that there is a need to clarify the communication and enforcement relationship between the City and the federal government. The purpose of this ordinance is to establish the City's procedures concerning immigration status and enforcement of federal civil immigration laws.

SECTION 3. Requesting or Maintaining Information Prohibited. No City agency, department, officer, employee, or agent shall request or maintain information about sensitive information about any person except as provided in this ordinance. Sensitive Information includes any information that may be considered sensitive or personal by nature, including a person's status as a victim of domestic abuse or sexual assault; status as a victim or witness to a crime generally; citizenship or immigration status; status as a recipient of public assistance; sexual orientation; biological sex or gender identity; or disability.

SECTION 4. Disclosing Information Prohibited. No City agency, department, officer, employee, or agent shall disclose sensitive information about any person except as provided in this ordinance.

SECTION 5. Exceptions to Prohibitions. The prohibitions in Sections 3 and 4 of this ordinance shall not apply where the Individual to whom such information pertains provides his or her consent (or if such individual is a minor, the consent of that person's parent or guardian), where the information or disclosure is necessary to provide a City service, or where otherwise required by state or federal law or judicial decision.

SECTION 6. Use of City Resources Prohibited. No City agency, department, officer, employee, or agent shall use City funds, resources, facilities, property, equipment, or personnel to assist in the enforcement of federal immigration law, unless such assistance is required by any valid and enforceable federal or state law or is contractually obligated. Nothing in this Section shall prevent the City, including any agency, department, officer, employee, or agent of the City, from lawfully discharging his or her duties in compliance with and in response to a lawfully issued judicial warrant or subpoena.
The prohibition set forth in this Section shall include but not be limited to:

(a) identifying, investigating, arresting, detaining, or continuing to detain a person solely on the belief that the person is not present legally in the United States or that the person has committed a violation of immigration law;

(b) assisting with or participating in any immigration enforcement operation or joint operation or patrol that involves, in whole or in part, the enforcement of federal immigration laws;

(c) arresting, detaining, or continuing to detain a person based on any immigration detainer or federal administrative warrant, when such immigration detainer or administrative warrant is based solely on a violation of federal immigration law, or otherwise honoring any such detainer, warrant, or request to detain, interview, or transfer;

(d) notifying federal authorities about the release or pending release of any person for immigration purposes;

(e) providing federal authorities with non-public information about any person for immigration purposes; and

(f) enforcing any federal program requiring the registration of individuals on the basis of religious affiliation or ethnic or national origin.

SECTION 7. Implementation of Policies. Within a reasonable time following adoption of this ordinance, the City shall implement policies to prevent biased-based policing and directing its law enforcement personnel to exercise discretion to cite and release individuals in lieu of detaining them at a local detention facility or county jail based on the nature of the crime alleged to be committed. The City shall also provide appropriate training and establish a commission, task force, or similar body composed of community members to advise the City Council on these and all policies related to this ordinance.

SECTION 8. Ordinance Not to Conflict with Federal Law. Nothing in this ordinance shall be construed or implemented to conflict with any valid and enforceable duty and obligation imposed by a court order or any federal or applicable law.

SECTION 9. No Private Right of Action. This ordinance does not create or form the basis of liability on the part of the City, its agencies, departments, officers, employees, or agents. It is not intended to create any new rights for breach of which the City is liable for money or any other damages to any person who claims that such breach proximately caused injury. The exclusive remedy for violation of this ordinance shall be through the City's disciplinary procedures for employees under applicable City regulations, unless the agency, department, officer, employee, or agent of the City is lawfully discharging his or her duties as set forth in Section 6.
SECTION 10. Severability. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Santa Ana hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions were to be declared invalid or unconstitutional.

SECTION 11. Effective Date. This ordinance shall become effective thirty (30) days after its adoption.

SECTION 12. Certification by Clerk. The Clerk of the Council shall certify the adoption of this ordinance and shall cause the same to be published as required by law.

ADOPTED this ______ day of __________________, 2017.

Miguel A. Pulido
Mayor

APPROVED AS TO FORM:
Sonja R. Carvalho, City Attorney

By: John M. Funk
Assistant City Attorney

AYES: Councilmembers ______________________________
NOES: Councilmembers ______________________________
ABSTAIN: Councilmembers ___________________________
NOT PRESENT: Councilmembers ________________________

Ordinance No. NS-XXX
Page 4 of 5
CERTIFICATE OF ATTESTATION AND ORIGINALITY

I, Maria D. Huizar, Clerk of the Council, do hereby attest to and certify that the attached Ordinance No. NS-XXX to be the original ordinance adopted by the City Council of the City of Santa Ana on ______________, and that said ordinance was published in accordance with the Charter of the City of Santa Ana.

Date: ____________________________

Clerk of the Council
City of Santa Ana
CITY OF SEATTLE

RESOLUTION 31730

A RESOLUTION affirming the City of Seattle as a Welcoming City that promotes policies and programs to foster inclusion for all, and serves its residents regardless of their immigration or refugee status, race, color, creed, religion, ancestry, national origin, age, sex, marital status, parental status, sexual orientation, gender identity, political ideology, disability, homelessness, low-income or veteran status, and reaffirming the City’s continuing commitment to advocate and support the wellbeing of all residents.

WHEREAS, Seattle fosters a culture and environment that makes it a vibrant, global city where our immigrant and refugee residents can fully participate in and be integrated into the social, civic, and economic fabric of Seattle; and

WHEREAS, nearly one in five Seattle residents is foreign born and 129 languages are spoken in our public schools; and

WHEREAS, Washington is the country’s 8th largest refugee-receiving state and a majority of the estimated 3,000 new arrivals each year are re-settled in Seattle-King County; and

WHEREAS, an estimated 100,000 Muslim residents are proud to call Washington their home and live peacefully as our neighbors, colleagues and friends; and

WHEREAS, more than 28,000 undocumented youth in Washington are the recipients of the Deferred Action for Childhood Arrivals (DACA) program and they deserve an opportunity to have a bright future and to contribute their time and talent to make Seattle a city of innovation and growth; and

WHEREAS, City employees serve all residents and make city services accessible to all, regardless of immigration status, and City agencies and law enforcement cannot withhold services based on ancestry, race, ethnicity, national origin, color, age, sex, sexual
orientation, gender identity, marital status, physical or mental disability, immigration status or religion; and

WHEREAS, in 2014, to recognize and uphold the 4th Amendment constitutional rights of immigrants to be protected against unreasonable seizures, the Metropolitan King County Council adopted Ordinance 17886 to clarify that the County will only honor U.S. Immigration and Customs Enforcement (ICE) detainer requests that are accompanied by a criminal warrant issued by a federal judge or magistrate; and

WHEREAS, the City of Seattle adopted Ordinance 121063 in 2003 to establish policies of the Seattle Police Department to protect immigrants’ access to police protection and public services regardless of immigration status, subsequently re-affirmed by Resolution 30672 in 2004; and

WHEREAS, the City of Seattle adopted Resolution 30851 in 2006, Resolution 31193 in 2010, and Resolution 31490 in 2013 supporting Federal Comprehensive Immigration Reform and fostering family unity with a pathway to citizenship for the undocumented, including students who arrived in the U.S. as children (DREAMers); and

WHEREAS, the City of Seattle has previously adopted Resolution 30355 in 2001, honoring Seattle’s immigrant community, and Resolution 30796 in 2005, relating to development of an action plan to identify and address issues facing Seattle’s immigrant communities; and

WHEREAS, the City of Seattle enacted Ordinance 123822 in 2012 to create an Office of Immigrant and Refugee Affairs and renaming the Immigrant and Refugee Advisory Board to the Immigrant and Refugee Commission; and
WHEREAS, the City of Seattle adopted Resolution 31724 in 2016 reaffirming Seattle’s values of inclusion, respect, and justice, and the City’s commitment toward actions to reinforce these values; and calling on President Donald Trump to condemn recent attacks and hate speech that perpetuate religious persecution, racism, sexism, homophobia, transphobia and xenophobia; and

WHEREAS, Seattle benefits tremendously from the large number of diverse immigrants and refugees who contribute to the development of a culturally and economically diverse and enriched community; and

WHEREAS, the level of anti-immigrant and anti-refugee rhetoric during the 2016 Presidential campaign, racist hate speech toward immigrant and refugee communities, and anti-immigrant and anti-refugee policies proposed by the current Presidential Administration is alarming; and

WHEREAS, the City of Seattle is committed to recognizing the dignity of all its residents, including the right of all Seattle residents to live in a City that does not subject them to prejudicial treatment or discrimination; and

WHEREAS, Seattle is committed to continue building a welcoming, safe, and hate-free environment in communities, where all immigrants and refugees are welcomed, accepted, and integrated; and to encourage business leaders, civic groups, community institutions, and residents to join in a community-wide effort to adopt policies and practices that promote integration, inclusion, and equity; and

WHEREAS, on November 24, 2016, the Mayor signed Executive Order 2016-08 reaffirming Seattle as a welcoming city and establishing an Inclusive and Equitable City Cabinet and
confirming the City’s intent to protect the civil liberties and civil rights of all Seattle residents; and

WHEREAS, Ordinance 121819 authorizes the Chief of Police or designee to “execute for and on behalf of the City of Seattle an interlocal agreement with other police agencies in King County to provide mutual aid to attempt to enhance the safety and protection of the public in Seattle and King County,” consistent with chapter 10.93 RCW; and

WHEREAS, on January 25, 2017, by Executive Order: Border Security and Immigration Enforcement Improvements, President Trump declared the policy of the executive branch to secure the southern border of the United States through the immediate construction of a physical wall; to detain individuals apprehended on suspicion of violating Federal or State law, including Federal immigration law, pending further proceedings regarding those violations; to expedite determinations of apprehended individuals' claims of eligibility to remain in the United States; to promptly remove individuals whose legal claims to remain in the United States are rejected; to cooperate fully with States and local law enforcement in enacting Federal-State partnerships to enforce Federal immigration priorities, as well as State monitoring and detention programs that are consistent with Federal law and do not undermine Federal immigration priorities; and to hire an additional 5000 Border Patrol Agents; and

WHEREAS, on January 25, 2017, by Executive Order: Enhancing Public Safety in the Interior of the United States, President Trump declared the policy of the executive branch to ensure faithful execution of United States immigration laws against all removable aliens consistent with Article II, Section 3 of the United States Constitution and 5 U.S.C. 3331; to make use of all available systems and resources to ensure the efficient and faithful
execution of the immigration laws of the United States; to ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law; to ensure that aliens ordered removed from the United States are promptly removed; to support victims of crimes committed by removable aliens; to hire an additional 10,000 immigration officers; to empower State and local law enforcement agencies to perform the functions of immigration officers; to provide the Secretary of Homeland Security with the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction; to ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary of Homeland Security; and

WHEREAS, Executive Order: Enhancing Public Safety in the Interior of the United States directs the U.S. Attorney General to take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law, and further directs the Secretary of Homeland Security to, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens; and

WHEREAS, The City of Seattle recommits its policy to be a Welcoming City to all its residents and to continue building a city of inclusion and participation by all; NOW,

THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:
Section 1.

A. Seattle will celebrate its diversity by welcoming and supporting immigrants and refugees from all nationalities, religions, and backgrounds with policies and programs that foster inclusion for all. Seattle elected officials and employees shall support the efforts of elected officials and staff in local jurisdictions throughout Washington in developing policies protecting immigrants, refugees, LGBTQ people, women, and other populations whose rights may be abrogated and interests harmed by those hostile to maintaining or expanding protections to these communities and who would unconstitutionally and illegally misuse the power of the federal government to do so.

B. The City of Seattle believes that the Seattle Police Department (SPD) should be focused on the safety and security of all our residents regardless of immigration status and refuses to allow its police officers to be compelled into service as de facto immigration officers. As such, the City will reject any offer from the federal government to enter into a Section 287(g) agreement per the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

C. The City of Seattle commits to exercising its rights under the Tenth Amendment to the U.S. Constitution to refrain from performing the duties of the Department of Homeland Security for purposes of enforcing the Immigration and Nationality Act. Accordingly, SPD, in consultation with the Law Department, shall, by no later than February 28, 2017, file a report with the Office of the City Clerk with a copy to the Chair of the Gender Equity, Safe Communities and New Americans Committee (GESCNA), for subsequent presentation in GESCNA, that includes the following:

1. A copy of all mutual aid agreements between The City of Seattle and other jurisdictions; provided, that where agreements with more than one jurisdiction contain identical
terms, only one copy need be provided along with a list of the jurisdictions that have that identical language;

2. For all jurisdictions with whom The City of Seattle has mutual aid agreements, identification of those jurisdictions that: (1) have entered into a Section 287(g) agreement with the federal government; (2) have explicitly declared their intent to not enter into a Section 287(g) agreement; (3) have neither entered into a Section 287(g) agreement nor declared their intent to not enter into a Section 287(g) agreement; and (4) fall into none of these categories; and

3. Proposed amendments to the City’s mutual aid agreements with jurisdictions that have not explicitly rejected offers to enter into a Section 287(g) agreement to be consistent with the SPD and The City of Seattle’s position related to focusing its limited law enforcement resources on criminal investigations rather than civil immigration law violations, including an analysis of the impact of the proposed amendments.

D. In recognition that immigrants and refugees of all immigration statuses are a contributing and integral part of Seattle, all instances of the word citizen will be replaced with the word resident in the My.Seattle.Gov Mission Statement. This shall include revising the mission statement to reflect a commitment to provide a 24-hour City Hall for the residents of Seattle.

E. The City of Seattle will use all legal avenues at its disposal to resist any efforts to impose on the City any immigration, spending or funding policy that violates the U.S. Constitution and the Laws of the United States.

F. The City of Seattle will continue to protect the rights guaranteed to the City and its people by the United States Constitution and will challenge any unconstitutional policies that threaten the security of its communities.
G. The City of Seattle will not cooperate or assist with any unconstitutional or illegal registration or surveillance programs or any other unconstitutional or illegal laws, rules, or policies targeted at those of the Muslim faith and/or of Middle Eastern descent and rejects any attempts to characterize family, friends, neighbors, and colleagues as enemies of the state.

H. Seattle does not tolerate hate speech towards any Seattle resident or visitor. The Office for Civil Rights will conduct an outreach campaign on, develop a hotline for, and continue to work to enforce federal and local laws against illegal discrimination and harassment based on age, religion, national origin, race, sex, sexual orientation, and other protected groups in housing, employment, public accommodations and contracting. The Seattle Police Department and the Office for Civil Rights will work with the community to ensure that the people of Seattle are protected under state and local malicious harassment laws and understand these protections.

I. Seattle rejects any effort to criminalize or attack the Black Lives Matter social justice movement or any other social justice movement that seeks to address inequalities, inequities and disparities present in Seattle.

J. City employees will defer detainer requests from the U.S. Department of Homeland Security’s Immigration and Customs Enforcement (ICE) to King County. Because jails are in King County’s jurisdiction and enforcing civil federal immigration violations are in the purview of the U.S. Department of Homeland Security, City department directors are hereby directed to comply with the City’s practice to defer to King County on all ICE detainer requests. King County Ordinance 17886 passed in 2014 clarifies that the County will only honor ICE detainer requests that are accompanied by a criminal warrant issued by a federal judge or magistrate. Because City employees do not have legal authority to arrest or detain individuals for civil immigration violations, nor to execute administrative warrants related to civil immigration law
violations, City of Seattle employees are hereby directed, unless provided with a criminal
warrant issued by a federal judge or magistrate, to not detain or arrest any individual based upon
an administrative or civil immigration warrant for a violation of federal civil immigration law,
including administrative and civil immigration warrants entered in the National Crime
Information Center database.

K. City of Seattle employees will continue to serve all residents and make City services
accessible to all residents, regardless of immigration status. The City will not withhold services
on the basis of ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation,
gender identity, marital status, physical or mental disability, religion, or immigration status.

L. City employees will seek to maintain, refine or develop City policies that advocate for
and provide support for all immigrants, refugees, Muslims, LGBTQ people, women, and anyone
else who may face severe adverse effects of newly adopted federal laws or policies.

M. City employees will not require any person seeking or accessing City programs or
services to disclose their immigration status. City employees will make no record of any
immigration status information that is inadvertently disclosed and will treat such immigration
status information as confidential and sensitive information pursuant to the City of Seattle’s
privacy principles as adopted by Resolution 31570 in 2015.

N. The City of Seattle: unequivocally supports full reproductive health care for women,
including immigrants and refugees; stands against attacks on the right to organize or labor
unions; and supports living wages, expanded benefits like paid sick days and paid parental leave
for all, and the push for an end to the fossil fuel economy.

Section 2. The Office of Immigrant and Refugee Affairs in coordination with the
Department of Education and Early Learning and the Human Services Department shall develop
a proposal for assisting children and families associated with Seattle Public Schools affected by
federal policies directed at immigrants and refugees.

Section 3. City department directors will use tools at their disposal, including meetings
and trainings, to direct their staff to comply with the City’s and County’s policies described
above. A communication will be issued by City departments to their staff by February 28, 2017.

Section 4. City departments will annually issue and file with the City Clerk a letter to all
contractors receiving General Fund dollars to clarify and inform about the policies described
above. A communication will be issued and filed with the City Clerk by City departments to
their contractors by February 28, 2017. Additionally, language will be added to Requests for
Proposals (RFPs) to reflect the commitment to the policies described above.

Section 5. An Inclusive and Equitable City Cabinet is hereby established. A Deputy
Mayor shall lead and coordinate efforts across City departments and provide oversight and
evaluation of outcomes. The City Attorney’s Office shall act as legal advisor to the Cabinet.

A. The following Departments shall be primary members of the Inclusive and Equitable
City Cabinet:

* City Budget Office

* Department of Neighborhoods

* Department of Education and Early Learning

* Human Services Department

* Office for Civil Rights

* Office of Economic Development

* Office of Immigrant and Refugee Affairs

* Office of Intergovernmental Relations
B. The goal of the Inclusive and Equitable City Cabinet will be to advise the Mayor and/or City on how to best coordinate City efforts to protect the civil liberties and civil rights of all Seattle residents and provide supportive services and information as necessary to communities of color, people with disabilities, women, LGBTQ residents, people who are low-income, immigrants and refugees in light of potential changes in Federal Government policy and operations.

Section 6. The Inclusive and Equitable City Cabinet shall advise on how the City may:

A. Develop a programmatic investment strategy for $250,000 in funding included in the 4th Quarter Supplemental Budget of 2016 to directly address the needs of children and family members within the Seattle Public Schools system affected by federal policies directed at immigrants and refugees.

B. Prioritize investments to partner with community-based organizations to develop sustainable resources, such as online training and tools, to educate and build the capacity of city staff, educators, and administrators to work with immigrant and refugee children and families.

C. Institute a Rapid Response Policy Coalition that will bring together City staff, private sector attorneys, non-profit staff, and other policy experts to serve on sub-committees based on issue areas. These teams will offer analyses and action items on federal executive orders and legislation. These analyses will be distributed to the larger coalition and be made available to the general public.
D. Develop a comprehensive public awareness effort around anti-hate speech and hate crimes.

E. Conduct a comprehensive review of potential implications on City departments – policy or financial – given direction and available information about any new initiatives and intent of the current Presidential administration.

F. Collaborate with immigrant and refugee community stakeholders and community based organizations to expand and develop partnership efforts with the City, specifically the Office of Immigrant and Refugee Affairs, to identify community needs and priorities.

G. Develop a forum for regional coordination with other cities in King County as well as Pierce and Snohomish Counties to share knowledge and information about the City’s efforts.

H. Develop a strategy for the creation and funding of a Legal Defense Fund to assist immigrant and refugee individuals and families.
Adopted by the City Council the _______ day of _________________________, 2017,

and signed by me in open session in authentication of its adoption this _______ day of

________________________, 2017.

____________________________________

President ____________ of the City Council

The Mayor concurred the _______ day of _________________________, 2017.

____________________________________

Edward B. Murray, Mayor

Filed by me this _______ day of _________________________, 2017.

____________________________________

Monica Martinez Simmons, City Clerk

(Seal)
Los Angeles City Resolution

RESOLUTION NO. XXXXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES, CALIFORNIA TO WELCOME, PROTECT AND DEFEND ALL RESIDENTS BY MAKING LOS ANGELES A SANCTUARY CITY

WHEREAS, Los Angeles is home to millions of people from all walks of life, of different races, religions, sexual orientations, and national and ethnic origins. The City values and celebrates this diversity, which makes our community and our economy strong and vibrant;

WHEREAS, a relationship of trust between the City and all residents, regardless of race, religion, sexual orientation, national origin, ethnicity, or immigration status, is essential for accomplishing core City functions, including protecting the safety and civil and human rights of all residents;

WHEREAS, this trust is threatened when the City is entangled with federal immigration enforcement programs, with the result that immigrant community members fear approaching police when they are victims of, and witnesses to, crimes; seeking basic services; and attending school, to the detriment of the public safety and well-being of all City residents.

WHEREAS, the enforcement of federal civil immigration law falls exclusively within the authority of the federal government. No City department, agency, or commission, including the Los Angeles Police Department, has any inherent authority or duty to investigate violations of federal civil immigration law or to assist in enforcement of such laws;

WHEREAS, the creation of a national registry based on religion or national origin would violate the City’s core values of religious freedom and tolerance and would sow fear and concern among the City’s residents of Muslim faith or Muslim-majority countries;

WHEREAS, voluntary assistance in the enforcement of federal civil immigration law or implementation of a national registry based on race, religion, sexual orientation, national origin, or ethnicity by City departments, agencies, and commissions would drain already-limited City resources, blur lines of accountability between our local and federal government, imperil effective policing, deter access to basic services, and threaten the safety and well-being of City residents.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOS ANGELES AS FOLLOWS:

Section 1: The City Council of the City of Los Angeles, California, hereby finds, determines and declares as follows:
Protection of Residents’ Personal Information. In order to ensure that eligible individuals are not deterred from seeking services or engaging with City departments, agencies, or commissions, all City departments, agencies, or commissions shall review their confidentiality policies and identify any changes necessary to ensure that information collected from individuals is limited to that necessary to perform their duties and is not used or disclosed for any other purpose. It shall be the policy of all City departments, agencies, and commissions not to provide non-publicly available information about any individual to any entity or official, including but not limited to any state or federal government agency or official, unless necessary to perform department, agency, or commission duties or required by law.

Section 2: The City Council of the City of Los Angeles, California, hereby finds, determines and declares as follows:

Restriction on Use of City Law Enforcement Resources. The City shall adopt a policy affirming its commitment to bias-free policing and disallowing the use of any Los Angeles Police Department monies, facilities, property, equipment or personnel for the following:

A. Immigration enforcement, including but not limited to:
   (1) Identifying, investigating, arresting, detaining or assisting in the identification, investigation, arrest or detention of any person on the basis of a suspected violation of immigration law;
   (2) Responding to any civil immigration warrant or request to detain, transfer or notify federal authorities about the release of any individual for immigration purposes;
   (3) Making individuals in City custody available to federal immigration authorities for interviews for immigration purposes; and
   (4) Providing non-publicly available personal information about any individual, including, but not limited to, information about the person’s release date, home address, or work address, for immigration purposes, including by providing access to City databases, except where required by law.

B. Enforcement of any federal program requiring the registration of individuals on the basis of religious affiliation, or national or ethnic origin.

C. Notwithstanding the above, and consistent with Sections 1373 and 1644 of Title 8 of the United States Code, nothing in this Section requires, prohibits or restricts any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of any individual, or from maintaining or exchanging information regarding the immigration status, lawful or unlawful, of any individual, with any other federal, state, or local government entity. This Section does not alter any existing confidentiality policies of the City.
Section 3: The City Council of the City of Los Angeles, California, hereby finds, determines and declares as follows:

Training and Oversight. To ensure meaningful implementation, the City will:

A. Develop a plan for dissemination of the policies described in Sections 1-2 above and appropriate training to ensure all relevant officers, employees and agents of the City understand their responsibilities.
B. Appoint a commission composed of directly impacted individuals from the community and their advocates, which will:
   (1) advise the City on implementation of Sections 1-2 above;
   (2) monitor the City’s activities on the matters described in Sections 1-2 above; and
   (3) provide input on an accountability mechanism for resolving complaints of any violation of the policies described in Sections 1-2.

Section 4: The City Council of the City of Los Angeles, California, hereby finds, determines and declares as follows:

Defense of Sanctuary Designation. The City will resist any improper effort by the federal government to withhold or withdraw federal funding as a result of the City’s policies to protect and defend its residents, including immigrants and members of religious minorities.
I. Introduction

This memorandum addresses legal issues surrounding municipal, county or state jurisdictions with laws or policies limiting involvement of local government officials and employees in efforts to enforce federal immigration laws.1 Specifically, this memo addresses potential federal legislation or administrative policy that would either force localities to take part in immigration enforcement, or bar cities and municipalities that fail to comply with “immigration detainers” or other federal immigration enforcement programs from wide sources of federal funds. This memo also addresses the Department of Justice’s position that 8 U.S.C. § 1373 is an applicable federal law with which a state or locality must certify compliance in order to be eligible for certain grants.

In summary, federal legislation or administrative policy seeking to direct local or state governments to take part in immigration enforcement would face significant challenges under current interpretations of the Tenth Amendment of the U.S. Constitution. Similarly, legislative or administrative attempts to cut off wide sources of federal funding to localities unless they partake in immigration enforcement schemes would also face significant challenges under current interpretations of the Tenth Amendment and Spending Clause of the U.S. Constitution.

1 The current discourse refers to jurisdictions with local laws or policies limiting local enforcement of immigration laws as “sanctuary cities.” The term “sanctuary city” is not defined by federal law, but it is often used to refer to those localities which, as a result of a state or local act, ordinance, policy, or fiscal constraints, place limits on their assistance to federal immigration authorities seeking to apprehend and remove unauthorized aliens. See MICHAEL JOHN GARCIA, CONG. RESEARCH SERV., RS22773, “SANCTUARY CITIES”: LEGAL ISSUES (Jan. 15, 2009), available at http://www.ilw.com/immigrationdaily/news/2011,0106-crs.pdf. According to some law enforcement officials, the term distracts from the real purpose of the policies to provide safe communities for all residents. See Bill Ong Hing, Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy, 2 UC IRVINE L. REV. 247, 253 (2012). Further, the term is overly broad. Accordingly, this memo will not use the term and will instead describe specific policies.
Section 1373, a federal law which prohibits local and state governments from enacting laws or policies that limit communication with the Department of Homeland Security (DHS) about information regarding the “immigration or citizenship status” of individuals and prohibits restrictions on “[m]aintaining such information,” is limited by its plain terms.2 Unless a local jurisdiction’s policies or laws specifically limit communication with DHS or affirmatively forbid the maintenance of information specifically about an individual’s citizenship or immigration status, that jurisdiction’s policies will not conflict with the plain terms of Section 1373.

The analysis as set forth in this memo is based on current assumptions, and may be modified as the federal government’s potential legislative and administrative responses to local governmental policies on immigration enforcement become more specific.

II. Background on Local and State Restrictions on Local Enforcement of Federal Immigration Laws

In the 1980s, churches, community organizations and concerned private individuals established networks that provided assistance and shelter to Central American immigrants who were fleeing civil unrest in their home countries and had been denied asylum in the United States.3 Though some polices existed beforehand,4 in response to the “sanctuary” movement of the 1980s and related immigration-related concerns, a number of municipalities passed resolutions, policies, or laws limiting local law enforcement’s role in federal immigration enforcement. These measures were implemented in large part to facilitate public safety by encouraging all residents, regardless of immigration status, to report crimes to local police without fear of immigration consequences.5

Community policing, a philosophy that calls for trust and engagement between law enforcement and the people they protect, is increasingly recognized as vital to effective public safety measures. That trust is undermined when individuals fear interaction with the police because of concerns that local officers will enforce federal immigration laws. As a result, immigrant communities are less likely to trust and cooperate with local police, and local law enforcement suffers. One study of Latinos in four major cities found that 70% of undocumented immigrants and 44% of all Latinos are less likely to contact law enforcement

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2 As discussed in more detail below, some jurisdictions have policies barring local officers from requesting or collecting immigration status information that do not address or affect the “maintenance” of such information.


5 See e.g. Chicago, IL, Mayor Harold Washington Exec. Order 85-1: Equal Access to City Services, Benefits and Opportunities, (March 7, 1985), available at http://www.chicityclerk.com/legislation-records/journals-and-reports/executive-orders?page=1; and the similar 1984 Executive Order issued by Washington D.C Mayor Marion Barry. See also Villazor, supra note 3; and Hing, supra note 1 (discussing history of local ordinances and stating that “[t]he idea is that by seeking to create good relations and trust with immigrant communities, law enforcement is more effective for the entire community.”)
authorities if they were victims of a crime for fear that the police will ask them or people they know about their immigration status, and 67% of undocumented immigrants and 45% of all Latinos are less likely to voluntarily offer information about, or report, crimes because of the same fear.6

Current local and state policies limiting local and state involvement in federal immigration enforcement seek to address this issue of trust, and take several different forms. These policies generally seek to preserve local and state resources and improve public safety by promoting cooperation between law enforcement and the communities they serve.7

First, some administrative policies or laws include formal restrictions on local law enforcement’s ability to apprehend or arrest an individual for federal immigration violations. These policies include restrictions on arrests for civil violations of federal immigration law,8 as well as restrictions on arrests for criminal immigration violations, such as illegal reentry.9

6 Nik Theodore, Dep’t of Urban Planning and Policy, Univ. of Ill. at Chicago, Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement 5-6 (May 2013), available at https://www.policyl ink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF; see also id. at 1 (“Survey results indicate that the greater involvement of police in immigration enforcement has significantly heightened the fears many Latinos have of the police, . . . exacerbating their mistrust of law enforcement authorities.”).


8 The Supreme Court in Arizona v. United States clarified that local law enforcement agents do not have authority to stop or detain people for suspected violations of civil immigration law. Although authority to arrest is generally a matter of state law, the Supreme Court struck down part of an Arizona law that sought to authorize detention based on suspicion of immigration violations, finding that such authority was preempted by federal law. See Arizona v. United States, 132 S.Ct. 2492, 2505 (2012) (“[I]t would disrupt the federal framework to put state officers in the position of holding aliens in custody for possible unlawful presence without federal direction and supervision.”); see also Melendres v. Arpaio, 695 F.3d 990, 1001 (9th Cir. 2012) (“[the sheriff] may not detain individuals solely because of unlawful presence.”); Santos v. Frederick Cnty. Bd. Of Com’rs, 725 F.3d 451, 464-65 (4th Cir. 2013) (holding that local police do not have authority to make their own immigration arrests); Buquer v. Indianapolis, 797 F. Supp. 2d 905, 919 (S.D. Ind. 2011) (granting preliminary injunction against a state law authorizing LLEAs to make civil immigration arrests).

9 See Michael John Garcia and Kate M. Manuel, Cong. Research Serv., R43457, State and Local “Sanctuary” Policies Limiting Participation in Immigration Enforcement, 9 (July 10, 2015), available at https://www.fas.org/sgp/crs/homesec/R43457.pdf; see also OR. REV. STAT. ANN. § 181A.820 (“No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.”); Washington, DC, Mayor’s Order 2011-174: Disclosure of Status of Individuals: Policies and Procedures of District of Columbia Agencies (Oct. 19, 2011), at 2 (“No person shall be detained solely on the belief that he or she is not present legally in
Second, some policies include restrictions on local law enforcement inquiries or investigations into a person’s immigration status or the gathering of such information on a local level.\textsuperscript{10}

Third, many jurisdictions include a policy or law preventing continued detention pursuant to an immigration detainer, a request from ICE that the local agency hold an individual in local custody in order to give ICE the opportunity to take the individual into federal custody.\textsuperscript{11} The implementation of the Secure Communities program by Immigration and Customs Enforcement’s (ICE) between 2008 and 2014 relied heavily on the use of immigration detainers. Under Secure Communities, DHS emphasized that it prioritized noncitizens who posed a danger to national security or a risk to public safety, specifically, aliens convicted of “aggravated felonies,” as defined by the Immigration and Nationality Act, or two or more crimes each punishable by more than one year.\textsuperscript{12} DHS discontinued the Secure Communities Program and established the Priority Enforcement Program (PEP) in November 2014.\textsuperscript{13} The prior immigration detainer form (I-247) was replaced with three separate forms: DHS Form I-247D, used to request detention of a subject for up to forty-eight hours, when the subject is considered to be a priority for removal because he or she is suspected of terrorism, has a prior felony conviction, or has three prior misdemeanor convictions; DHS Form I-247N, used to request advance notification of the subject’s release

\textsuperscript{10} See, e.g., DC Order, supra note 9 (public safety employees “shall not inquire about a person’s immigration status ... for the purpose of initiating civil enforcement of immigration proceedings that have no nexus to a criminal investigation”).

\textsuperscript{11} 8 C.F.R. § 287.7; see also GARCIA AND MANUEL, supra note 9, at 14.


date; and DHS Form I-247X, used to request a detention of up to forty-eight hours, when the subject is a removal priority for some other reason.14

As discussed further below, detainers have raised numerous issues for local jurisdictions, including resource concerns, reports of detainers being issued for persons who were not convicted of any offense under Secure Communities, and Fourth Amendment compliance concerns. A number of courts have found that detentions pursuant to detainers violate the probable cause requirement of the Fourth Amendment,15 and that detainers exceed ICE’s warrantless arrest authority.16 Accordingly, many jurisdictions have adopted policies against continued detention of an individual based on immigration detainer requests for at least some categories of noncitizens.17 Several states, including California, Connecticut and Rhode Island, have statewide laws, executive orders, or policies that limit how much local police can cooperate with detainer requests, and at least 364 counties and 39 cities have policies limiting cooperation with detainers.18 Some of these jurisdictions will honor immigration detainers only where law enforcement determines that the noncitizen is being held for felony crime, is believed to post a threat to the community, or meets another specific factor.19 Some policies state that the jurisdiction will not honor an ICE detainer unless there is a judicial determination of probable cause for that detainer, or a warrant from a judicial officer.20 Other policies additionally require a prior written agreement with the federal government by which all costs incurred by the jurisdiction in complying with the ICE detainer shall be reimbursed.21 Some jurisdictions further indicate that local officials should not expend time responding to ICE inquiries regarding a person’s custody status or release date.22

15 See infra, Part IV.A.
16 See Moreno, 2016 WL 5720465 at *8 (“ICE’s issuance of detainers that seek to detain individuals without a warrant goes beyond its statutory authority to make warrantless arrests under 8 U.S.C. § 1357(a)(2).”).
17 GARCIA AND MANUEL, supra note 9 at 14.
19 See, e.g., CONN. GEN. STAT. ANN. § 54-192h.
22 See, e.g., Cook County, IL Code § 46-37(b): Policy for Responding to ICE Detainers. As discussed below, the types of communications regarding custody status and release dates differ from communications regarding “immigration or citizenship status” contemplated under Section 1373.
Finally, related to policies regarding compliance with detainers, some jurisdictions also limit the ability of ICE or other federal officers to physically access local jails or facilities.23

III. **Background on Section 1373 and the Department of Justice’s Recent Guidance**

This section provides a background on Section 1373 and guidance issued by the Department of Justice regarding the intersection of Section 1373 and certain DOJ grants. An analysis of Section 1373’s application is provided below in Part IV.D.

Enacted as part of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Section 1373, 8 U.S.C. § 1373, titled “Communication between Government agencies and the Immigration and Naturalization Service,” forbids the restriction of communications with the federal government regarding “citizenship or immigration status,” and the restriction of the maintenance of such information, and states in relevant part as follows:

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.

(2) Maintaining such information.

(3) Exchanging such information with any other Federal, State, or local government entity.24

Local jurisdictions around the country are eligible for Edward Byrne Memorial Justice Assistance Grants ("JAG") pursuant to 42 U.S.C. § 3751(a) and funds under the

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23 Id.

24 8 U.S.C. § 1373; see also IIRIRA § 642(a).
State Criminal Alien Assistance Program (SCAAP) pursuant to 8 U.S.C. § 1231(i).

According to the U.S. Department of Justice Office of Justice Programs (“OJP”), “[t]he JAG Program provides states and units of local governments with critical funding necessary to support a range of program areas including law enforcement; prosecution and court programs; prevention and education programs; corrections and community corrections; drug treatment and enforcement; crime victim and witness initiatives; and planning, evaluation, and technology improvement programs.”

The SCAAP program provides partial reimbursement to state, local, and tribal governments for prior year costs associated with incarcerating qualifying undocumented individuals, namely, those with at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated at least four consecutive days.

On May 31, 2016, the Department of Justice’s (DOJ) Office of the Inspector General (OIG) issued a memorandum to DOJ’s Office of Justice Programs (OJP) analyzing whether ten different state and local laws regarding local enforcement of federal immigration laws violate 8 U.S.C. § 1373 and whether such a violation can disqualify the state or locality from receiving SCAAP and JAG block grant awards.

On July 7, 2016, OJP responded to the OIG stating that 8 U.S.C. § 1373 is an “other applicable federal law” that a state or locality must certify that they are in compliance with in order to be eligible for SCAAP and JAG block grant funds. OJP also issued a Question and Answer document relative to Section 1373 and grant recipients, stating in part that “Section 1373 does not impose on states and localities the affirmative obligation to collect information from private individuals regarding their immigration status, nor does it require that states and localities take specific actions upon obtaining such information. Rather, the statute prohibits government entities and officials from taking action to prohibit or in any way restrict the maintenance or intergovernmental exchange of such information, including through written or unwritten policies or practices.”

On October 6, 2016, OJP issued “Additional Guidance Regarding Compliance with 8 U.S.C. § 1373,” stating in part that “[a]uthorizing legislation for the Byrne/JAG grant program requires that all grant applicants certify compliance both with the provisions of that authorizing legislation and all other applicable federal laws. The Office of Justice Programs has determined that 8 U.S.C. § 1373 (Section 1373) is an applicable federal law under the Byrne/JAG authorizing legislation. Therefore, all Byrne/JAG grant applicants must certify compliance with all applicable federal laws, including Section 1373, as part of


26 See 8 U.S.C. § 1231(i).


the Byrne/JAG grant application process.”29 The October 6, 2016 Additional Guidance also stated:

If a recipient is found out of compliance with Section 1373, the recipient must take sufficient and effective steps to bring it into compliance and submit documentation that details the steps taken, contains a validation that the recipient has come into compliance, and includes an official legal opinion from counsel (including related legal analysis) adequately supporting the validation. Failure to remedy any violations could result in a referral to the Department of Justice Inspector General, the withholding of grant funds or ineligibility for future OJP grants or subgrants, suspension or termination of the grant, or other administrative, civil, or criminal penalties, as appropriate.30

DOJ’s Office of Community Oriented Policing Services (COPS) also provides grants to law enforcement agencies to hire and/or rehire career law enforcement officers in an effort to increase their “community policing” capacity and crime prevention efforts.31 In its Fiscal Year 2016 Application Guide for the COPS Hiring Program (CHP), the COPS Office stated that “all recipients for this program should understand that if the COPS Office receives information which indicates that a recipient may be in violation of 8 U.S.C. section 1373 (or any other applicable federal law) that recipient may be referred to the DOJ Office of Inspector General for investigation. If the recipient is found to be in violation of an applicable federal law by the OIG, the recipient may be subject to criminal and civil penalties, in addition to relevant DOJ programmatic penalties, including suspension or termination of funds, inclusion on the high-risk list, repayment of funds, or suspension and debarment.”32

IV. Analysis

This section addresses four issues. First, it addresses constitutional concerns with ICE detainers that have led numerous jurisdictions to make clear that they will not continue to detain individuals pursuant to ICE detainer requests. Second, it addresses the constitutional limitations on congressional or administrative attempts to directly compel local or state jurisdictions to comply with immigration enforcement schemes, namely the


30 Id.

31 See Dep’t Justice, Office of COPS, CHRP Background and Award Methodology, https://cops.usdoj.gov/Default.asp?Item=2267 (last visited Jan. 11, 2017); see also 42 U.S.C. § 3796dd et seq.

Tenth Amendment. Third, it addresses similar limitations on congressional or administrative attempts to cut broad sources of federal funds to jurisdictions with policies limiting local enforcement of immigration laws, including under the Tenth Amendment and the Spending Clause of the Constitution. Finally, it addresses DOJ’s guidance with respect to § 1373, and the limited requirements of that section, which only prohibit local and state governments from enacting laws or policies that limit maintenance and communication with DHS about information regarding the “immigration or citizenship status” of individuals.

A. Fourth Amendment Concerns Regarding ICE Detainers

As discussed above, one of the central aspects of local enforcement of federal immigration laws is the use of ICE detainers, a request from ICE that a local agency hold an individual in custody in order to give ICE the opportunity to take the individual into federal custody. Detentions pursuant to ICE detainers, however, have raised numerous constitutional concerns, namely that continued detention under an ICE detainer violates the probable cause requirement of the Fourth Amendment.

The Supreme Court has found that being held in jail, “regardless of its label”—whether it is “termed ‘arrest[]’ or ‘investigatory detention[]’”—is a seizure that triggers the Fourth Amendment’s protections. Courts have also recognized that when a person is kept in custody after he or she should otherwise be released, the detention is a new seizure that requires its own Fourth Amendment justification. The Fourth Amendment’s most basic

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33 The Tenth Amendment to the United States Constitution states: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.” U.S. CONST. AMEND. X.

34 The Spending Clause is found in Article I, Section 8 of the Constitution, and states: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States. U.S. CONST. ART. I, § 8.

35 Courts have held that an immigration detainer is a request that does not impose any obligation on the receiving jurisdiction. Galarza v. Szalczyk, 745 F.3d 634, 641 (3d Cir. 2014) (local law enforcement agencies are free to disregard detainers and cannot use them as a defense of unlawful detention); Villars v. Kubiatowski, 45 F.Supp.3d 791, 802 (N.D. Ill. 2014) (federal courts and all relevant federal agencies and departments consider ICE detainers to be requests).


37 See Illinois v. Caballes, 543 U.S. 405, 407-08 (2005) (once the initial reason for a seizure is resolved, officers may not prolong the detention without a new, constitutionally adequate justification); see also Anaya v. Crossroads Managed Care Sys., Inc., 195 F.3d 584, 592 (10th Cir. 1999) (“A legitimate-though-unrelated criminal arrest does not itself give probable cause to detain the arrestee [for a separate civil purpose]”; Barnes v. Dist. of Columbia, 242 F.R.D. 113, 118 (D.D.C. 2007) (“Plaintiffs allege that, despite being entitled to release, they were taken back into custody . . .
requirement is that all arrests must be supported by probable cause. Probable cause requires that “the facts and circumstances within . . . the officers’ knowledge and of which they ha[ve] reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” Probable cause must be based on specific, individualized facts, not generalized suspicion.

The Fourth Amendment also requires that at some point, the probable cause “determination must be made by a judicial officer” who can make a neutral and detached assessment. This judicial determination must occur “either before” the seizure in the form of a judicially issued warrant, or “promptly after” the seizure in the form of a probable cause hearing.

Under these precedents, numerous federal courts have found that continued detention under an ICE detainer, absent probable cause, would state a claim for a violation of the Fourth Amendment and subject the detaining officer or jurisdiction to civil liability.

38 See Dunaway, 442 U.S. at 213.
42 Id.
43 See Morales v. Chadbourne, 996 F. Supp. 2d 19 (D. R.I.), aff’d on appeal, 2015 WL4385945 (1st Cir. 2015) (holding that plaintiff stated a Fourth Amendment claim where she was held for 24 hours on an ICE detainer issued without probable cause); Galarza v. Szalczyk, No. 10-6815, 2012 WL 1080020, at *10, *13 (E.D. Pa. Mar. 30, 2012) (unpub.) (holding that where plaintiff was held for 3 days after posting bail based on an ICE detainer, he stated a Fourth Amendment claim against both federal and local defendants; it was clearly established that the “detainer caused a seizure” that must be supported by “probable cause”), rev’d on other grounds, 745 F.3d 634 (3d Cir. 2014) (holding that the County operating the jail, too, may be liable for violating the Fourth Amendment); Miranda-Olivares v. Clackamas Cnty., No. 12-02317, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (holding that plaintiff’s detention on an ICE detainer after she would otherwise have been released “constituted a new arrest, and must be analyzed under the Fourth Amendment;” and resulting in a settlement in the amount of $30,100); Mendoza v. Osterberg, No. 13-65, 2014 WL 3784141, at *6 (D. Neb. July 31, 2014) (recognizing that “[t]he Fourth Amendment applies to all seizures of the person,” and thus, “[i]n order to issue a detainer[,] there must be probable cause”) (internal quotation marks, ellipses, and citations omitted); Villars v. Kubiatowski, 45 F.Supp.3d 791 (N.D. Ill. 2014) (holding that plaintiff stated a Fourth Amendment claim where he was held on an ICE detainer that “lacked probable cause,” and resulting in settlement as to local defendants); Uroza v. Salt Lake Cnty., No. 11-713, 2013 WL 653968, at *5-6 (D. Ut. Feb. 21, 2013) (holding that plaintiff stated a Fourth Amendment claim where ICE issued his detainer without probable cause; finding it clearly established that “immigration enforcement agents need probable cause to arrest . . . [and] detainees who post bail should be set free in the absence of probable cause to detain them again,” and resulting in settlement as to local defendants in amount of $75,000); Vohra v. United States, No. 04-0972, 2010
These courts have found that local jails must have a warrant or probable cause of a new offense to detain a person after they would otherwise be released from custody.44

In 2015, ICE changed its detainer forms in response to court decisions regarding probable cause violations. A revised form, Form I-247D, requests that the state or local enforcement agency “maintain custody of” an individual for a period not to exceed 48 hours “beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody.”45 The revised form contains boilerplate language stating that “probable cause exists that the subject is a removable alien,” and that “this determination is based on” one of four check-boxes. The revised detainer form does not address the requirement of a prompt judicial probable cause hearing before a neutral judicial officer following arrest.46

Further, the generalized categories on the revised detainer form do not establish that ICE has made an individualized determination of probable cause based on the facts and circumstances of a particular case, as required under the Fourth Amendment. Additionally, the revised form does not require ICE agents to obtain a judicial warrant before issuing a detainer, and thus the detainer request is lawful only if it complies with the statutory limitations on ICE’s warrantless arrest authority.47 Under the INA, ICE may only make warrantless arrests if ICE has “reason to believe” that the alien “is likely to


44 See, e.g., Morales, 793 F.3d at 217 (1st Cir. 2015) (“Because Morales was kept in custody for a new purpose after she was entitled to release, she was subjected to a new seizure for Fourth Amendment purposes—one that must be supported by a new probable cause justification.”); Vohra, 2010 U.S. Dist. LEXIS 34363 (C.D. Cal. 2010).

45 DHS Form I-247D; see also 8 C.F.R. §287.7(d) (“Upon a determination by the Department to issue a detainer for an alien not otherwise detained by a criminal justice agency, such agency shall maintain custody of the alien for a period not to exceed 48 hours, excluding Saturdays, Sundays, and holidays in order to permit assumption of custody by the Department.”)

46 The only form of post-arrest review that ICE provides is an examination conducted by a non-judicial enforcement officer within 48 hours after the subject of the detainer is taken into ICE custody, not when the individual is held in local custody pursuant to an ICE detainer. See 8 U.S.C. § 1357; 8 C.F.R. § 287.3.

47 See Moreno v. Napolitano, No. 11 C 5452, 2016 WL 5720465, *8 (N.D. Ill. Sept. 30, 2016) (“Defendants do not argue that the changes they invoke warrant decertification as to Plaintiffs’ claim that ICE’s practice of issuing detainers without obtaining a warrant exceeds its statutory authority under 8 U.S.C. § 1357(a)(2). Nor can they.”).
escape before a warrant can be obtained for his arrest.”

The revised detainer form, as well as ICE’s policies and practices, do not require any individualized determination that an individual is likely to escape before a warrant can be obtained for his arrest. As with probable cause, ICE is required to make an individualized determination of flight risk prior to making a warrantless arrest or requesting that another agency make such arrest on its behalf.

Because the revised detainer request form lacks an individualized determination as to probable cause and risk of flight, any detention subject to an ICE detainer has and would continue to subject individual officers and jurisdictions to potential liability.

B. **Constitutional Implications of Potential Congressional or Administrative Attempts to Directly Compel Local Jurisdictions to Enforce Federal Immigration Laws**

This section addresses federal attempts to directly compel local jurisdictions to enforce federal immigration laws, including ICE detainers.

The relationship between federal immigration priorities and municipal and state action implicates the Tenth Amendment and the Spending Clause of the U.S. Constitution. Should the federal government make attempts to directly compel compliance with certain immigration enforcement provisions, such as immigration detainers, these attempts will face strong challenges under the Tenth Amendment.

The Tenth Amendment provides that “powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” In its 1992 decision in *New York v. United States*, the U.S. Supreme Court addressed a congressional attempt to regulate in the area of low-level radioactive waste by providing that states must either develop legislation on how to dispose of all low-level radioactive waste generated within the states, or the states would be forced to take title to such waste, making the waste the states’ responsibility. The Court found that Congress had attempted to require the states to perform a duty, and thus sought to “commandeer” the legislative process of the states. The Court found that this power was not found in the text or structure of the Constitution, and it was thus a violation of the Tenth Amendment.

48 *Id.* at *4; see also 8 U.S.C. § 1357(a)(2).

49 *Id.* at *6 (“Defendants acknowledge that, ‘as part of the process of issuing immigration detainers, ICE’s policies and practices do not require any individualized determination that a class member is likely to escape before a warrant can be obtained for his arrest.’ . . . . Defendants further admit that, in fact, ‘ICE agents do not make any determination at all that the class member is likely to escape before a warrant can be obtained for his arrest.’”) (citations and internal quotation marks omitted).

50 U.S. CONST. AMEND. X.


52 505 U.S. at 175-76.
Subsequently, in Printz v. United States, the Supreme Court held that Congress could not, in an effort to regulate the distribution of firearms in the interstate market, compel state law-enforcement officials to perform background checks. Under the Brady Handgun Act, Congress sought to temporarily require state and local law enforcement officers to conduct background checks on prospective handgun purchasers within five business days of an attempted purchase. This portion of the act was challenged under the Tenth Amendment, under the theory that Congress was without authority to “commandeer” state executive branch officials. The Supreme Court concluded that commandeering of state executive branch officials, even temporarily, was outside of Congress’s power, and thus a violation of the Tenth Amendment. The Court held that “[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.”

Thus, under New York and Printz, a legislative attempt to directly compel state and local compliance with immigration enforcement would likely violate the Tenth Amendment and would be struck down by a reviewing court. Under these precedents, it is unlikely that legislation stating that local jurisdictions shall comply with requests from ICE to detain individuals will survive a challenge by states or local jurisdictions on Tenth Amendment grounds.

Similarly, regulatory or administrative attempts to compel state and local compliance with immigration detainers would likely fail, given that the courts will apply the same “anti-commandeering” principals to regulations and administrative action. In Galarza v. Szalceyk, for example, the Third Circuit Court of Appeals addressed whether detainers issued under a regulation, 8 C.F.R. § 287.7, were mandatory, and found that in light of New York and Printz, detainers are explicitly not mandatory and that electing not to respond to them is entirely within the discretion of local law enforcement. The Galarza Court stated:

[I]t is clear to us that reading § 287.7 to mean that a federal detainer filed with a state or local LEA is a command to detain an individual on behalf of the federal government, would violate the anti-commandeering doctrine of

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55 521 U.S. at 935.
56 Id.
57 See also Erwin Chemerinsky, Annie Lai and Seth Davis, Trump Can’t Force ‘Sanctuary Cities’ to Enforce His Deportation Plans, WASHINGTON POST, Dec. 22, 2016, available at https://www.washingtonpost.com/opinions/trump-cant-force-sanctuary-cities-to-enforce-his-deportation-plans/2016/12/22/421174d4-c7a4-11e6-85b5-76616a33048d_story.html?utm_term=.d69495c29f77 (“Trump insists that he can force states and cities to participate in his plan to deport undocumented immigrants. But this ignores the 10th Amendment, which the Supreme Court has repeatedly interpreted to prevent the federal government from ‘commandeering’ state and local governments by requiring them to enforce federal mandates.”).
the Tenth Amendment. As in New York and Printz, immigration officials may not compel state and local agencies to expend funds and resources to effectuate a federal regulatory scheme. The District Court’s interpretation of § 287.7 as compelling Lehigh County to detain prisoners for the federal government is contrary to the Federal Constitution and Supreme Court precedents.\footnote{745 F.3d 634, 643 (3d. Cir. 2014).}

As such, any congressional or administrative action seeking to directly compel states or local officers to act would likely fail under the Tenth Amendment.

C. Constitutional Implications of Potential Congressional or Administrative Attempts to Withhold General Federal Funds from Local Jurisdictions That Do Not Enforce Federal Immigration Laws

In lieu of legislation or regulations seeking direct compliance with enforcement schemes, Congress may attempt to withhold general federal funds from municipalities and jurisdictions that do not continue to detain individuals pursuant to ICE detainers or take part in other enforcement mechanisms. Congress has made attempts in the past to enact this type of legislation, which would expressly tie various types of federal funding to compliance with immigration detainers and other civil immigration enforcement.\footnote{See, e.g., H.R. 3009, “Enforce the Law for Sanctuary Cities Act”; S.1814, “Stop Sanctuary Cities Act”} For example, S. 3100, introduced in June 2016, would revoke federal funding for Economic Development Administration Grants and the Department of Housing & Urban Development’s Community Development Block Grants programs unless jurisdictions comply with all DHS detainer requests.\footnote{Stop Dangerous Sanctuary Cities Act, S. 3100, 114th Cong. (2nd Sess. 2016) (Sec. 4 places limitations on grants through the U.S. Department of Housing and Urban Development’s Community Development Block Grant program (“CDBG”), as well as the U.S. Economic Development Administration).} President-elect Trump has also said that his administration will pursue a policy of blocking all federal funding for cities where local law enforcement agencies do not cooperate with ICE agents.\footnote{See, e.g., Donald J. Trump for President, Inc., Donald J. Trump Contract with the American Voter (Oct. 22, 2016), https://www.donaldjtrump.com/press-releases/donald-j.-trump-delivers-groundbreaking-contract-for-the-american-vote1.}

These laws or policies regarding general federal funding will face similar challenges under the Tenth Amendment and the Spending Clause of the U.S. Constitution.

The Spending Clause grants Congress the power “to pay the Debts and provide for the . . . general Welfare of the United States.”\footnote{U.S. Const., Art. I, § 8, cl. 1.} Under the Spending Clause, Congress can allocate money to states, private entities, or individuals, and require those recipients to engage in or refrain from certain activities as a condition of receiving and spending that

money. However, under precepts of federalism, there are limitations on Congress’ ability to apply such requirements to the states. The Supreme Court has scrutinized Spending Clause legislation to ensure that “Congress is not using financial inducements to exert ‘a power akin to undue influence.’”

In *South Dakota v. Dole*, the Court considered a challenge to federal law that threatened to withhold five percent of a State’s federal highway funds if the State did not raise its drinking age to 21. The Court noted that under the Spending Clause, there are limits to the conditions on the receipt of federal funds: they must be (1) related to the general welfare, (2) stated unambiguously, (3) clearly related to the program’s purpose, and (4) not otherwise unconstitutional. The Court asked whether “the financial inducement offered by Congress” was “so coercive as to pass the point at which ‘pressure turns into compulsion,’” and, whether the condition was related to the particular national project or program to which the money was being directed. The Court upheld the condition in *Dole*, finding that the amount of money at issue was only “relatively mild encouragement to the States,” and that the drinking age condition was “directly related to one of the main purposes for which highway funds are expended—safe interstate travel.”

Subsequently, in *National Federation of Independent Business v. Sebelius*, the Supreme Court addressed a provision of the Affordable Care Act (ACA) that would have withheld Medicaid reimbursement to a state unless that state complied with an expansion of its Medicaid program. Under the ACA, if a state did not comply with the Act’s coverage requirements, it would lose not only the federal funding for those requirements, but all of its federal Medicaid funds. The Court held that the Medicaid expansion was unconstitutionally coercive.

Chief Justice Roberts, writing for a plurality, noted that while Congress may use its spending power to create incentives for states to act in accordance with federal policies, Congress may not exert undue influence by compelling states’ policy choices. He stated that “when, for example, such conditions take the form of threats to terminate other significant independent grants, the conditions are properly viewed as a means of pressuring the States to accept policy changes.” The Roberts plurality found that in the ACA, Congress had unconstitutionally threatened states with the loss of all of their existing Medicaid funds,

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65 483 U.S. at 207-208.
66 *Id.* at 211 (citing *Steward Machine*, 301 U.S. at 590).
67 *Id.* at 207-209.
68 *Id.* at 211.
69 132 S. Ct. 2566, 2582.
70 *Id.* at 2604.
which amounted to a “gun to the head.” The plurality concluded that the threatened loss of all Medicaid funds, which constitute over 10% of a state’s overall budget, left the States with no real option but to acquiesce in the Medicaid expansion.

Further, Sebelius also affirms that Congress cannot create a funding condition that is unrelated to the original funding purpose; that is, there must be a relationship between the grant condition and the underlying grant program. By finding that the Medicaid expansion was not a modification of the existing Medicaid program, he rejected Justice Ginsburg’s assertion in her concurrence that Dole is distinguishable because in the ACA, “Congress has not threatened to withhold funds earmarked for any other program.” Chief Justice Roberts also noted that Congress may not surprise states with post-acceptance or retroactive conditions. Thus, if a policy goal is unrelated to the underlying grant condition, the condition will not survive constitutional scrutiny under the Spending Clause.

Thus, cuts to general federal funds would be examined based on the percentage of the local or state budget threatened and the nexus between the grant condition and the underlying grant program. This doctrine applies to both congressional and executive threats to pull unrelated federal funding for municipalities and jurisdictions that have local laws or policies limiting local enforcement of federal immigration law, such as the honoring of ICE detainers. First, restricting general federal funding would most certainly be coercive: New York City alone could lose $10.4 billion annually in federal money. Further, general federal funding has no direct connection to immigration enforcement, and certainly has less of a connection or nexus than the Medicaid funding at issue in Sebelius to the condition imposed.

The same lack of nexus would apply to unrelated Economic Development Administration (EDA) Grants and the Department of Housing & Urban Development’s Community Development Block Grants (CBDG) contemplated in proposed legislation. EDA funding supports economic development, public works, and other projects with the goal of building durable regional economies, including those in economically distressed areas of the United States. CDBG funds are intended to ensure decent affordable housing, provide

71 Id. at 2604.
72 Id. at 2605.
73 Id. at 2605; id. at 2634 (Ginsburg, J., dissenting)
74 Id. at 2606.
75 See also KENNETH R. THOMAS, CONG. RESEARCH SERV., THE CONSTITUTIONALITY OF FEDERAL GRANT CONDITIONS AFTER NATIONAL FEDERATION OF INDEPENDENT BUSINESS v. SEBELIUS 15, (July 17, 2012); see also Chemerinsky, Lai and Davis, supra note 57 (“Nor can the federal government do indirectly — by threatening to withdraw federal funding from states — what it cannot do directly.”).
services to vulnerable community members, and expand and retain businesses. Grants are also provided for areas recovering from Presidentially declared disasters, as well as areas affected by housing foreclosures. Project funds have been used for various projects wholly unrelated to immigration, for instance, to help deliver groceries to vulnerable populations in California; construct a shelter for youth experiencing homelessness in Fairbanks, Alaska; and to create a family-friendly park and recreational area in Arlington, Texas.

Finally, the Court in Dole held that Congress’ Spending Clause power “may not be used to induce the States to engage in activities that would themselves be unconstitutional. Thus, for example, a grant of federal funds conditioned on invidiously discriminatory state action . . . would be an illegitimate exercise of the Congress’ broad spending power.” With respect to any federal legislation or action withholding funds unless a jurisdiction complies with detainers, a growing number of courts have recognized that DHS, state, and local officials may be held liable for causing wrongful detentions under a detainer in violation of the Fourth Amendment. The current Secretary of DHS has acknowledged the “increasing number of federal court decisions that hold that detainer-based detention by state and local law enforcement agencies violates the Fourth Amendment.” As such, any legislation or administrative attempts to tie funding to compliance with ICE detainers could face this additional challenge.

It should be noted, however, that despite this analysis, the federal government or the incoming administration could attempt to withhold generalized federal funds pending legal challenges, affecting the budgets of local and state governments or agencies.

D. Section 1373 and the Department of Justice’s Position on Certification of Compliance

As discussed above, following a memo issued by the DOJ Office of the Inspector General (OIG), DOJ’s Office of Justice Programs (OJP) and Office of Community Oriented Policing Services (COPS) have issued guidance that they consider 8 U.S.C. § 1373 an applicable federal law with which grant applicants must certify compliance.

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80 Dole, 483 U.S. at 210–11.
81 See, e.g., Miranda-Olivares v. Clackamas Cty., No. 3:12-CV-02317-ST, 2014 WL 1414305, at *11 (D. Or. Apr. 11, 2014) (“There is no genuine dispute of material fact that the County maintains a custom or practice in violation of the Fourth Amendment to detain individuals over whom the County no longer has legal authority based only on an ICE detainer which provides no probable cause for detention.”); See also Moreno v. Napolitano, Case No. 11 C 5452, 2014 WL 4814776 (N.D. Ill. Sept. 29, 2014) (denying judgment on the pleadings to the government on plaintiffs’ claim that ICE’s detainer procedures violate probable cause requirements).
82 See Secure Communities Letter, supra note 12 at 2 n.1.
Thus far, neither the memo issued by OIG nor guidance issued by OJP or COPS has concluded that any jurisdiction’s policy with respect to local enforcement of federal immigration laws is in violation of § 1373, nor does either recommend the withholding of any grants. Further, the OIG memo and grant-related guidance issued by OJP and COPS appear to be at odds with the recommendations of the President’s 21st Century Policing Task Force, which states that law enforcement agencies “should build relationships based on trust with immigrant communities.” In order to do that, the Task Force recommends “[d]ecoupling federal immigration enforcement from routine local policing for civil enforcement and nonserious crime,” and that DHS “should terminate the use of the state and local criminal justice system, including through detention, notification, and transfer requests, to enforce civil immigration laws against civil and non-serious criminal offenders.” However, the Task Force was convened by the outgoing administration, and is not binding in any event.

i. Section 1373’s Limited Application

Section 1373 has limited application. It states in relevant part that “a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [DHS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” It also prohibits restrictions on “[m]aintaining such information.”

By its terms, the statute in pertinent part only prohibits local and state governments and agencies from enacting laws or policies that limit communication with DHS about information regarding the “immigration or citizenship status” of individuals. The statute does not prohibit laws or policies that limit communications regarding criminal case information, custody status, or release dates of individuals in local or state custody.

The statute also does not compel compliance with ICE detainers or prohibit policies or laws regarding compliance with ICE detainers. As discussed above, in addition to their questionable constitutionality under the Fourth Amendment, detainers cannot be mandatory under federalism principles and the Tenth Amendment, and nothing in § 1373 or the guidance issued by DOJ changes that analysis.

Section 1373 also does not impose any affirmative obligation on local law enforcement to collect information regarding immigration or citizenship status, nor does it

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83 FINAL REPORT ON PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING, 1.9 Recommendation: Law enforcement agencies should build relationships based on trust with immigrant communities. This is central to overall public safety, p. 18, available at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.
84 Id.
86 Id. Since local governments are not required to maintain such information, the ban on restricting the maintenance of such information is of less significance.
87 Id. (emphasis added).
88 See supra Part IV.B.
prevent any local jurisdiction from enacting a law or ordinance instructing local employees not to collect such information. Nor does the statute affirmatively obligate local law enforcement to assist ICE in collecting such information through jail visits or interviews, or prohibit policies restricting ICE access to local jails or facilities. The statute only bars prohibitions on government entities from maintaining or sharing citizenship or immigration status information.

Thus, unless a local jurisdiction’s policies or laws specifically limit communication with DHS about an individual’s citizenship or immigration status, or affirmatively forbids the maintenance of information, the jurisdiction would be in compliance with the plain terms of 8 USC § 1373.

Further, under the prior program of Secure Communities, and under DHS’s current Priority Enforcement Program (PEP), when an individual is arrested and booked by a law enforcement officer for a criminal violation and his or her fingerprints are submitted to the FBI for criminal history and warrant checks, the same biometric data is also sent to ICE to check against immigration databases so that ICE can determine whether the individual is a priority for removal. Given this reality, it is unclear whether in practice local officials do actually prohibit local government entities or officials from sharing information regarding immigration status or citizenship to ICE.

ii. Challenges Involving Section 1373

Section 1373 has been found by at least one court to be valid under the Tenth Amendment. The City of New York and Mayor Rudolph Giuliani challenged the statute after it was passed in 1996, in light of the City’s 1989 Executive Order which prohibited any City officer or employee from transmitting information regarding the immigration status of any individual to federal immigration authorities except under certain circumstances. The City brought a facial challenge to § 1373, arguing that it violated the Tenth Amendment because it forbid state and local government entities from controlling the use of information regarding immigration status, and that interference with a state’s control over its own workforce was outside Congress’s plenary power over immigration. Citing New York and Printz, the Second Circuit found that in § 1373:

Congress has not compelled state and local governments to enact or administer any federal regulatory program. Nor has it affirmatively conscripted states, localities, or their employees into the federal government’s

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90 See City of New York v. U.S., 179 F.3d 29, 31 (2d Cir. 1999). The City also challenged a similar provision codified at 8 U.S.C. § 1644, passed as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which states that “Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.”

91 City of New York, 179 F.3d at 33.
service. These Sections do not directly compel states or localities to require or prohibit anything. Rather, they prohibit state and local governmental entities or officials only from directly restricting the voluntary exchange of immigration information with the INS.\textsuperscript{92}

The Court in \textit{City of New York} also found that the City had failed to show that § 1373 constituted an impermissible intrusion on the City's authority to control the use of confidential information and to determine how such information will be handled by City employees, because the City's Executive Order was the only city policy the City claimed was affected. The Court, however, stated that “[w]hether these Sections would survive a constitutional challenge in the context of generalized confidentiality policies that are necessary to the performance of legitimate municipal functions and that include federal immigration status is not before us and we offer no opinion on that question.\textsuperscript{93} In the wake of the Second Circuit's decision, the City of New York revoked its Executive Order and put in place a new order (Executive Order 41) which incorporated privacy protections for immigration-related information into a more generalized privacy policy that applies to a broader category of information in a variety of contexts.\textsuperscript{94}

While the Second Circuit found § 1373 to be valid under the Tenth Amendment in \textit{City of New York}, the decision makes clear that while § 1373 prohibits state and local governments from placing restrictions on the reporting of immigration status, it does not actually mandate that states or localities take any affirmative action.\textsuperscript{95} This finding has been made by other courts as well.\textsuperscript{96} For example, in \textit{Sturgeon v. Bratton}, a resident of Los Angeles brought a challenge in California state court to the validity of the policy of the Los Angeles Police Department (LAPD) which stated that “[o]fficers shall not initiate police action where the objective is to discover the alien status of a person,” and that “[o]fficers shall neither arrest nor book persons for violation of” the federal illegal reentry statute.\textsuperscript{97} The plaintiff alleged that the LAPD policy violated the Supremacy Clause of the U.S. Constitution because it was in direct conflict with § 1373.\textsuperscript{98} The Court found no conflict because the LAPD policy said nothing about communication with ICE, the only topic

\textsuperscript{92} Id. at 35.

\textsuperscript{93} Id. at 37.


\textsuperscript{95} \textit{City of New York}, 179 F.3d at 35 (“These Sections do not directly compel states or localities to require or prohibit anything.”).

\textsuperscript{96} \textit{See Doe v. City of N.Y.}, 19 Misc. 3d 936, 940, 860 N.Y.S.2d 841, 844 (Sup. Ct. 2008), aff'd, 67 A.D.3d 854, 890 N.Y.S.2d 548 (2009) (“However, while said provision prohibits state and local governments from placing restrictions on the reporting of immigration status, it does not impose an affirmative duty to make such reports.”).

\textsuperscript{97} 95 Cal. Rptr. 3d 718, 722 (Ct. App. 2009); \textit{see also} LAPD Special Order 40 (SO40) (1979).

\textsuperscript{98} Id.
addressed by § 1373, and § 1373 said nothing about initiation of police action or arrests for illegal entry.\(^9^9\)

Further, *City of New York* did not address provisions that prohibit the gathering, rather than the sharing of confidential immigration-related information. New York City’s Executive Order 41, for example, prohibits city employees, except in limited circumstances, from inquiring about immigration status,\(^1^0^0\) and such a policy does not conflict with the plain terms of § 1373.

**iii. Authority to Require Certification with Compliance of Mandate Training**

DOJ has not provided specific authority under which the SCAAP or COPS reimbursement or grant programs will seek to require certification of compliance with § 1373. With respect to the SCAAP program, the statutory provision, does not require certification of compliance with any specific federal laws, including § 1373,\(^1^0^1\) and there are no specific implementing regulations for the SCAAP program. Similarly, the statutory provision regarding COPS grants, including the COPS Hiring Program,\(^1^0^2\) does not contain a requirement for certification of compliance with any specific federal laws, including § 1373, and the regulations regarding the COPS program do not contain any provisions regarding conditions for COPS Hiring Program grants, including compliance with § 1373.\(^1^0^3\)

With respect to JAG grants, the statute and regulations do require a certification of compliance with the JAG statutory provisions and “all other applicable Federal laws.”\(^1^0^4\) However, the phrase “all other applicable Federal laws” is not defined in the statute or regulations.

None of the three programs, SCAAP, COPS, or JAG, have legislative or regulatory provisions specifically authorizing DOJ to mandate that local jurisdictions provide guidance or training to their personnel, as contemplated by the DOJ guidance on JAG Grants.\(^1^0^5\) Such requirements would likely raise similar Tenth Amendment or Spending Clause considerations raised above.

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\(^{9^9}\) 95 Cal. Rptr. 3d at 731-32.

\(^{1^0^0}\) N.Y., Exec. Order No. 41, §§3-4.

\(^{1^0^1}\) 8 U.S.C. § 1231(i).

\(^{1^0^2}\) 42 U.S.C. § 3796dd *et seq.*

\(^{1^0^3}\) 28 C.F.R. § 92 *et seq.*

\(^{1^0^4}\) 42 U.S.C. § 3752(5); see 28 C.F.R. § 33.41(f)(5).

\(^{1^0^5}\) See *supra* note 28, July 7, 2016 Q & A (“Your personnel must be informed that notwithstanding any state or local policies to the contrary, federal law does not allow any government entity or official to prohibit the sending or receiving of information about an individual’s citizenship or immigration status with any federal, state or local government entity and officials.”).
V. Conclusion

Cities and states have various policies regarding local enforcement of federal immigration laws, and the expenditure of local resources on cooperation with ICE enforcement programs. These policies seek to preserve trust between local law enforcement organizations and the communities they serve, which is undermined when individuals fear that local law enforcement will enforce federal immigration laws. These policies also seek to preserve the limited financial resources available to state and local governments. Though they take many forms, these policies include limitations on local law enforcement making arrests based on immigration violations, limitations on local law enforcement gathering information about immigration status, compliance with ICE detainers, and sharing certain information with ICE, including an individual’s custody status or release date from local custody.

Any future efforts by the federal government to limit or defeat these local policies will likely face challenges under the Tenth Amendment and Spending Clause of the Constitution. Any attempts to directly compel local law enforcement to comply with ICE detainers or other enforcement provisions are likely to be struck down. Attempts to cut off all federal funding to jurisdictions with local policies limiting local enforcement will likely be found to exceed Congressional power under the Spending Clause, as will attempts to cut off large, general grants unrelated to immigration enforcement.

While § 1373 has been found by at least one court to be valid under the Tenth Amendment, its pertinent language is limited to prohibiting local and state governments from enacting laws or policies that limit communication with DHS about information regarding the “immigration or citizenship status” of individuals. It does not mandate any affirmative action on the part of local officials. Unless a local jurisdiction’s policies or laws specifically limit communication with DHS about and individual’s citizenship or immigration status, or prohibit the “maintaining” (but not the collecting) of such information, the jurisdiction would be in compliance with the plain terms of 8 USC § 1373.
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INTRODUCTION
In response to President-elect Donald Trump’s promise to deport two to three million immigrants when he takes office, many cities and counties across the United States are seeking to enact local policies (often referred to as “sanctuary” or “welcoming”) to protect their immigrant residents.

These policies seek to keep immigrant communities safe, ensure that all individuals are treated equally (regardless of immigration status) devote local resources to local priorities, and uphold the Constitution.

At the forefront of this battle is when the local criminal legal system cooperates with Immigration & Customs Enforcement (ICE). Many local law enforcement agencies voluntarily offer assistance to ICE at their own expense.

**Cities and counties have no legal obligation to help enforce federal immigration laws.** In ceasing this voluntary cooperation, cities and counties can take important steps today to ensure that they do not serve as a pipeline to deportation.

This resource identifies and explains some key provisions that cities and counties can enact in order to protect immigrants from discrimination and deportation.
COUNTY & JAIL PROVISIONS

In the majority of states in America, police departments take primary responsibility for patrolling cities and towns, while sheriffs manage and operate county jails. When police arrest a person, unless they are released very quickly, they will be brought to the county jail, run by the sheriff. Most people are turned over to ICE for deportation from these jails.

Therefore, the county jail’s policies regarding assistance to ICE is where a local policy can have the greatest impact on deportation.

The following items are elements that advocates should consider in seeking to build a local policy that will prevent a simple police stop from being the gateway to deportation.

1. No 287(g) program

   The 287(g) program is an agreement between Department of Homeland Security (DHS) and certain law enforcement agencies to allow local or state law enforcement officers to have some authority to enforce civil immigration laws. Under 287(g), local law enforcement are indistinguishable from federal immigration authorities, and immigrants may risk deportation proceedings as a result of any contact with law enforcement agents. Currently only about 32 agencies in the country participate in 287(g). Ending or preventing a 287(g) program is necessary to enacting any local sanctuary-type policy.

2. No Intergovernmental Service Agreement (IGSA)

   An IGSA is a contract between a local jail and ICE to detain immigrants in deportation proceedings. Many counties make money off immigration detention, although in some cases, the counties actually lose money and are subsidizing ICE. When a local jail has an IGSA, immigrants may get transferred directly to ICE detention without due process. Individuals are often held in immigration detention for months without any guarantee of a lawyer or other basic rights. There is no legal obligation for localities to enter into immigration detention contracts.

   For a list of immigration detention centers, see: www.endisolation.org/resources/immigration-detention/
COUNTY & JAIL PROVISIONS

3. No detention on ICE holds to facilitate transfer to ICE

No jail should prolong the detention of an immigrant who is otherwise due for release under state law on the basis of an ICE hold or ICE detainer. This practice has been found unconstitutional or illegal by several federal courts.


See a legal memo with further analysis here: https://www.ilrc.org/legal-analysis-immigration-detainers

Real Policies in Practice

i. “Effective Thursday, June 12, the Hennepin County Sheriff’s Office will no longer honor U.S. Immigration and Customs Enforcement detainers absent judicial authority”

ii. It is the policy of the county to only honor civil immigration hold requests from United States Immigration and Customs Enforcement for individuals that are accompanied by a criminal warrant issued by a U.S. District Court judge or magistrate.

iii. Effective immediately, we will no longer detain individuals based solely on a federal immigration detainer (Form I-247). A recent federal court ruling in Oregon makes it clear that these forms are not mandatory, but merely requests. Accordingly, we have no lawful reason to detain individuals who are otherwise releasable based on the issuance of an ICE detainer. Individuals having a valid arrest warrant issued by another jurisdiction or federal agency may still be detained according to our current protocol.

4. General prohibitions on assistance or joint patrols with ICE

Local and state law enforcement have no authority to stop or arrest individuals based on immigration status or suspected civil immigration violations. Nor is there any obligation for officers to assist ICE in immigration enforcement, whether that involves providing ICE with information or conducting joint arrests or raids.

Real Policies in Practice

i. No law enforcement agency of the State of Oregon or of any political subdivision of the State shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

ii. Officers shall not contact ICE or CBP for assistance on the basis of a suspect’s or arrestee’s race, ethnicity, national origin, or actual or suspected immigration status.

iii. Officers shall not prolong any stop in order to investigate immigration status or to allow CBP or ICE to investigate immigration status.
5. No ICE agents or officers in jails

Although local law enforcement agencies have no obligation to assist ICE, ICE agents often have unfettered access to detainees, databases, and in some jails even have desks and offices of their own within the local jail. In others, they visit daily or multiple times per week. ICE agents may get access to the booking information of individuals (which includes foreign birth and address), and sometimes are able to log in directly to the jail’s databases.

Given this broad access to jail data and people in custody, ICE is able to interrogate people who are detained about their immigration status or place of birth, often doing so in a threatening and coercive way, and then uses this information to deport them. Often due to abusive, deceptive ICE practices, jurisdictions have determined that they will not let ICE into the secure area of the jail to interrogate inmates. Others have established procedures for individuals to give knowing consent before agreeing to such ICE interviews.

6. Don’t ask about immigration status or place of birth

Immigration status is irrelevant to criminality and to regular enforcement of criminal laws or protection of public safety. Many jurisdictions prohibit inquiring into immigration status by local law enforcement or other agencies, particularly in order to mitigate potential racial or ethnic profiling.

Real Policies in Practice

i. The District shall not provide to any ICE agent an office, booth, or any facility or equipment for a generalized search of or inquiry about inmates or permit an ICE agent to conduct an individualized interview of an inmate without giving the inmate an opportunity to have counsel present.

ii. In advance of any interview between ICE and an individual in local law enforcement custody regarding civil immigration violations, the local law enforcement entity shall provide the individual with a written consent form that explains the purpose of the interview, that the interview is voluntary, and that he or she may decline to be interviewed or may choose to be interviewed only with his or her attorney present.

The written consent form shall be available in English, Spanish, Chinese, Tagalog, Vietnamese, and Korean. The written consent form shall also be available in any additional languages that meet the county threshold as defined in subdivision(d) of Section 128552 of the Health and Safety Code if certified translations in those languages are made available to the local law enforcement agency at no cost.

Real Policies in Practice

i. Do not ask the detainee about his/her immigration status or place of birth.

ii. [Officers] may not inquire about a person’s civil immigration status unless civil immigration status is necessary to the ongoing investigation of a criminal offense. It is important to emphasize that personal characteristics are not a reason to ask about civil immigration status.

iii. Acceptable forms of identification, which must include a photograph of the individual, include, but are not limited to driver’s licenses from any U.S. state or foreign country, government-issued IDs by a U.S. jurisdiction, foreign passports, and consular ID cards. An individual should not be stopped or detained solely for the purpose of establishing his or her identity. [Officers] may utilize federal databases in attempts to establish an individual's identity. [Officers] shall utilize federal databases in attempts to establish an individual’s identity only when all other attempts to identify the person have failed. Contact with federal authorities made to determine an individual’s identity is restricted to the purpose of determining his or her identity.
7. No notifications of release dates

In some places that will not agree to detain immigrants for an ICE arrest, ICE sends a request for notice of release date, so that they can arrive in time to seize the person exactly when they would be leaving the jail. This practice has the exact same effect as the other ICE detainer request -- it turns the jail into a pipeline to deportation and undermines local law enforcement's ability to engage with immigrant communities. Stopping this practice is, therefore, important for any sanctuary-type policy.

Real Policies in Practice

i. Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals’ incarceration status or release dates while on duty.

ii. 1. The department [shall not honor a civil immigration detainer by: (i) holding a person beyond the time when such person would otherwise be released from the department’s custody, except for such reasonable time as is necessary to conduct the search specified in paragraph two of this subdivision, or (ii) notifying federal immigration authorities of such person’s release.

iii. No department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of Federal immigration law or to gather or disseminate information regarding the immigration or release status of individuals or any other such personal information as defined in Chapter 12I in the City and County of San Francisco unless such assistance is required by Federal or State statute, regulation, or court decision.
CHAPTER 03

CRIMINAL LEGAL PROVISIONS
1. Provisions to Protect Equal Rights for Immigrants in Criminal Courts

Because of perceived lack of immigration status, immigrants are often discriminated against within the criminal legal system. To the right are some provisions related to ensuring that immigrants have equal access to bail, jail alternatives, treatment programs, and other protections in the criminal legal process so that they can have fair and just outcomes of their criminal case. This in turn may mitigate the risk of deportation.

These examples are not exhaustive of issues affecting immigrants within the criminal legal process.

2. Criminal Courts

Criminal courts have a duty to administer justice fairly and impartially. To the right are some provisions to ensure that criminal courts do not discriminate against immigrants and afford them due process.

Real Policies in Practice

i. Any inmate who has bondable charges upon admission shall be allowed to post bond to secure his or her release. An immigration detainer request or an administrative warrant shall not inhibit an inmate’s ability to post bond.

ii. Inmates with an ICE detainer will be sent to court for their commitment charge(s) as a straight/out court appearance. In the event all local charges are disposed of, the inmate will not be returned to the Correctional facilities.

iii. Neither the Illinois Department of Corrections nor any other State of Illinois law enforcement agency may consider an immigration detainer or administrative immigration warrant in determining an individual’s eligibility or placement in any educational, rehabilitative, or diversionary program described in Chapter 730 of the Illinois Compiled Statutes or any other educational, rehabilitative or diversionary program administered by a law enforcement agency.

Real Policies in Practice

It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public’s safety is at immediate risk.

Procedural protections: Stop courts from inquiring into immigration status and to provide warnings about possible immigration consequences of a plea, e.g. CA Penal Code 1016.5


3. Criminal Defenders

Criminal defenders have a constitutional duty under the Sixth Amendment of the U.S. Constitution to affirmatively and competently advise of the immigration consequences of criminal offenses. Because even misdemeanor offenses can have devastating immigration consequences, it is crucial that defenders be armed with the resources to comply with this duty.

4. Prosecutors

Similarly, prosecutors should adopt written local policies and/or practices where they consider the immigration consequences to the defendant and their family during plea negotiations. This can help result in a criminal case outcome that will mitigate or prevent deportation or other immigration consequences. Even the U.S. Supreme Court has stated that such consideration can only be beneficial for both parties. Prosecutors may also voluntarily share information with ICE or report people to ICE and these practices should be prohibited.

5. U Visa Policies

One simple thing that local and state law enforcement, prosecutors, judges, and certain other agencies can do, is establish policies and protocols for signing U visa certifications.

A U Visa is immigration relief for victims of certain crimes who have been, or are likely to be, helpful to law enforcement in the investigation or prosecution of a crime that can lead to a green card.

The first step in applying for a U visa is to obtain a U Visa certification from one of the aforementioned agencies.
CITY PROVISIONS

In addition to interactions with ICE at the county level, individuals may come in contact with ICE through local police. Although ICE accesses most people from the county jail/sheriff's department (see Part I above), there are still policies that police and cities can adopt to mitigate ICE’s presence and immigration consequences. If your city runs a jail, see the various jail policy advice above.

1. General prohibitions on assistance or joint patrols with ICE

Local and state law enforcement have no authority to stop or arrest individuals based on immigration status or suspected civil immigration violations. Nor is there any obligation for officers to assist ICE in immigration enforcement, whether that involves providing ICE with information or conducting joint arrests or raids.

2. Don’t ask Policies

Cities interact with individuals in a number of ways on a regular basis. It is important that during those interactions immigration status is not requested or investigated since it is a civil immigration matter outside the city’s jurisdiction. Policies can make clear that city agencies and departments, including local police, should not solicit information about immigration status.

3. Prohibition on NCIC Immigration Arrests

Police use the national NCIC database to check whether individuals in their custody have outstanding warrants. ICE also puts administrative immigration warrants for civil violations into NCIC, which confuses law enforcement officers, who generally do not have legal authority to make arrests on the basis of civil immigration violations.

Real Policies in Practice

i. No department, agency, commission, officer, or employee of the City and County of San Francisco shall use any City funds or resources to assist in the enforcement of Federal immigration law

ii. No law enforcement agency of the State of Oregon or of any political subdivision of the state shall use agency moneys, equipment or personnel for the purpose of detecting or apprehending persons whose only violation of law is that they are persons of foreign citizenship present in the United States in violation of federal immigration laws.

Real Policies in Practice

i. No agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or immigration status of any person unless such inquiry or investigation is required by Illinois State Statute, federal regulation, or court decision.

ii. Except as otherwise provided under applicable federal law, no agent or agency shall disclose information regarding the citizenship or immigration status of any person unless required to do so by legal process or such disclosure has been authorized in writing by the individual to whom such information pertains, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or guardian.

Real Policies in Practice

i. Hartford police officers shall not make arrests or detain individuals based on administrative warrants for removal entered by ICE into the National Crime Information Center database.
CITY PROVISIONS

4. Prohibition on joint operations with ICE

In addition to 287(g) agreements with counties discussed above, ICE will also rely on local law enforcement for resources and assistance with their immigration efforts. Police are not required to divert their resources to federal law enforcement for the investigation of civil immigration matters.

Real Policies in Practice

i. Members are not permitted to accept requests by ICE or other agencies to support or assist in immigration enforcement operations, including but not limited to requests to establish traffic perimeters related to immigration enforcement. In the event a member receives a request to support or assist in a civil immigration enforcement action he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the Superintendent through the chain of command.

ii. Sweeps intended solely to locate and detain undocumented immigrants shall not be conducted. Staff will not participate in ICE organized sweeps to locate and detain undocumented residents.

5. No holds and no notifications of release dates

As previously discussed under counties above, police generally take individuals to jail, which are operated by the county sheriff’s department. While it’s through the sheriff that ICE is able to pick up individuals, police departments do hold individuals and may receive hold or notification (also called detainer) requests. As a result, it is important that local police have policies against holds and notifications.

Real Policies in Practice

i. If a CCPD arrestee receives an ICE detainer request, it should be attached to the booking forms indicating that the detainer was received. The jailer/booking officer shall write the word “REJECTED” at the top of the detainer. The ICE detainer will not be honored without documentation indicating a Federal Probable Cause hearing has occurred.

ii. Unless an agency or agent is acting pursuant to a legitimate law enforcement purpose that is unrelated to the enforcement of a civil immigration law, no agency or agent shall, while on duty, expend their time responding to ICE inquiries or communicating with ICE regarding a person’s custody status or release date.
5. Statement of Support

While a statement of support does not provide any benefits or protections, it does signal the city’s commitment to inclusiveness and protecting the rights of all residents, including immigrants. These statements can take many forms and are an important vehicle for easing fears within the immigrant community, as well as holding officials accountable or laying the groundwork for an enforceable policy later on.

Real Policies in Practice

i. It is hereby affirmed that the City and County of San Francisco is a City and County of Refuge.

ii. The vitality of the City of Chicago (the “City”), one of the most ethnically, racially and religiously diverse cities in the world, where one-out-of-five of the City’s residents is an immigrant, has been built on the strength of its immigrant communities. The City Council finds that the cooperation of all persons, both documented citizens and those without documentation status, is essential to achieve the City’s goals of protecting life and property, preventing crime and resolving problems. The City Council further finds that assistance from a person, whether documented or not, who is a victim of, or a witness to, a crime is important to promoting the safety of all its residents. The cooperation of the City’s immigrant communities is essential to prevent and solve crimes and maintain public order, safety and security in the entire City. One of the City’s most important goals is to enhance the City’s relationship with the immigrant communities.
CHAPTER 05

OTHER THINGS CITIES & COUNTIES CAN DO
OTHER THINGS CITIES AND COUNTIES CAN DO

In addition to the policies listed above, cities can take a number of additional actions:

• Ensure city benefits and services are available without regard to immigration status.

City employees will serve all residents and city services will be accessible to all residents, regardless of immigration status. Seattle Resolution 30672 passed in 2004 reaffirms Ordinance 121063 and states that City agencies and law enforcement cannot withhold services based on several identities, including ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, gender variance, marital status, physical or mental disability, or religion.

• Issue municipal IDs that can also serve as a form of identification when working with local police.

IDNYC is the new, free identification card for all New York City residents, which gives all of us the opportunity to show who we are—New Yorkers.

• Provide language services so that foreign language speakers are able to access services.

All City agencies that provide direct public services shall ensure meaningful access to such services by taking reasonable steps to develop and implement agency-specific language assistance plans regarding LEP persons.

• Establish an office dedicated to Civic Engagement and Immigrant Affairs to enact city or county-wide programs such as the integration of immigrant services (e.g. citizenship outreach), language access, and other programs.

See: www.sfgov.org/oeia

• Establish a fund for appointed representation of individuals in deportation proceedings.

Chicago Legal Protection Fund

• Enact safety policies within the school districts.

CHAPTER

06

MAPPING LOCAL AUTHORITIES
Who has the power to make policy about ICE collaboration at the local level?

Law enforcement reports to local government. Sheriffs or county law enforcement often report to county-level government, such as a county executive, or a county commission or board of supervisors. Power over the sheriff’s budget can be an important avenue for establishing new rules about collaboration with ICE, if an independent rule is hard to obtain. This chart examines common figures in county-level governance and law enforcement.

<table>
<thead>
<tr>
<th>COUNTY AUTHORITIES</th>
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<tbody>
<tr>
<td><strong>Type of Power</strong></td>
</tr>
<tr>
<td>Jurisdiction</td>
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<tr>
<td>Elected or appointed</td>
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</table>
Who has the power to make policy about ICE collaboration at the local level?

Most towns have a municipal police department that is accountable to a governing body or authority, a mayor or city council, for example. It is often these governing bodies that create the rules that law enforcement must follow. In addition, the city government will also control the police budget, which can be an important wedge.

<table>
<thead>
<tr>
<th>Type of Power</th>
<th>Police Chief or Commissioner</th>
<th>Mayor or City Manager</th>
<th>City Council</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Police can make arrests, search, and detain people</td>
<td>• Mayor is generally in charge of running a town or city</td>
<td>• City Council is a group of officials with power to pass local laws, often called ordinances</td>
</tr>
<tr>
<td></td>
<td>• Chief is the head of city police</td>
<td>• Usually manages local budgets and oversees city agencies</td>
<td>• May also conduct oversight hearings of the jail or police</td>
</tr>
<tr>
<td></td>
<td>• Authority over police practices, training, and protocol</td>
<td>• May have managerial authority to tell police or jails what to do</td>
<td>• Likely has a subcommittee with specific focus on police, public safety, or immigration issues</td>
</tr>
<tr>
<td></td>
<td>• Police usually manage the city jail or hold rooms, where people would be held during temporary detention after arrest</td>
<td>• Some towns have a City Manager, which is similar to a Mayor</td>
<td>• In some cities has power to appoint the mayor or city manager</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Police Chiefs are usually an appointed position or reached by promotion</th>
<th>Mayor is the chief executive of a town or city, like the President, but on a local level</th>
<th>City Council is usually the legislative branch of city government</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• No jurisdiction over neighboring towns</td>
<td>• Usually has power to pass executive orders</td>
<td>• Does not have power to override county or state laws</td>
</tr>
<tr>
<td></td>
<td>• May detain people after arrest or before trial</td>
<td>• Does not have authority over other towns</td>
<td></td>
</tr>
</tbody>
</table>

| Elected or appointed | Policing Chiefs are usually an appointed position or reached by promotion | Usually elected by residents of the city, but may be appointed by a city council | Council Members may be elected at large or based on wards or districts |

But remember, every jurisdiction’s structure is different! These charts describe common authorities and powers of city government and law enforcement.
ADDITIONAL RESOURCES

For more detailed explanation of ICE enforcement programs in local jails, see these other ILRC resources:

- Guide to the Criminal Alien Program
- Guide to the Priority Enforcement Program (PEP-Comm)
- A comprehensive guide to separating local law enforcement from ICE

CONTACT

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This resource can be downloaded directly from: https://www.ilrc.org/local-options

For questions about this resource, please email:

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Angie Junck (ajunck@ilrc.org) or
Nikki Marquez (nmarquez@ilrc.org) with "[Local Options Resource]" included in the subject line of your request.