

*Additional resource for Open Space Sanctuary discussion, during AED's March, 2017 Conference.
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HISTORY OF SANCTUARY CITIES

This is not a new phenomenon. New York City had a law prohibiting city employees from reporting to federal immigration authorities until Congress pre-empted it in 1996. Then-Mayor Rudy Giuliani, of all people, fought for the city's law in court and lost. "We can remind people that no one is required to turn in the names of illegal aliens," he said at the time, "and we can encourage people not to do that." But even though cities can no longer mandate "don't tell" provisions, they can still adopt "don't ask" and "don't enforce" rules, and so they have.

Today, the nation's three biggest cities, New York, L.A., and Chicago, alone [account](#) for about 2 million of the undocumented residents who help make up the fabric of American life. Can cities—and the hundreds of other jurisdictions that have some kind of explicit sanctuary policy—serve as a bulwark against a Trump administration pushing to deport millions? The answer is almost certainly yes.

ICE divides deportations into two categories: border and interior. The former is straightforward: Agents apprehend entrants on the coastlines, at airports, and in the desert around the southern border with Mexico. The latter is much more complicated. Once immigrants have integrated into society, their evictions are harder to achieve—in part because they're harder to justify: They have homes, jobs, children, and communities.

For years, immigration enforcement was the purview of the federal government, which managed to deport tens of thousands each year. Then came the [1996 immigration bill](#), which gave immigration officials vast powers and expanded the types of crimes that enabled detention. Annual deportations [leaped](#) from 70,000 in the 1996 fiscal year to nearly 200,000 two years later. The law also deputized local law enforcement as immigration police. In the wake of Sept. 11, 2001, dozens of jurisdictions signed up, which helped the Bush administration deport 200,000, and then 300,000, and finally nearly 400,000 people a year during his terms. Under a [287\(g\) agreement](#), counties such as Texas' Harris (which includes Houston) and states such as Florida opted to make their cops into the eyes and ears of ICE, changing the nature of police work. The largest local collaborator was Arizona's Maricopa County, home of Phoenix, where Sheriff Joe Arpaio waged a yearslong [campaign of intimidation](#), harassment, and racial profiling against immigrants. (The Department of Homeland Security rescinded the agreement with Maricopa County in 2010.)

This was a crucial factor in the linear growth of deportations under Bush. ICE is the largest investigative agency in DHS and employs about 6,000 enforcement officers. But its numbers are tiny compared with the nation's full-time law enforcement officers, who numbered about 725,000 [in 2013](#).

In 2008, at the recommendation of the 9/11 Commission, the Bush administration introduced a new information-sharing program called Secure Communities. The idea was simple: Any time a participating jurisdiction took fingerprints, it sent them to the FBI. Now, those prints would also be checked against a DHS database. If DHS found someone it suspected could be deported,

the agency issued a detainer request. Flagged individuals would then be held in local jails until ICE could arrive and place them in federal custody. Some [saw](#) a judge, some didn't. Few had legal representation. Between [2011 and 2013](#), when the program was at its peak, S-Comm led to 243,000 deportations—about 40 percent of the total interior removals.

In 2011, states and cities began to withdraw from the program. Part of municipalities' reluctance stemmed from the human cost of complying with ICE. Jobs were lost and families ruined over minor offenses. Between 2007 and 2012, for example, 260,000 noncitizens were deported for drug possession. Through 2011, according to ICE, [more than half](#) of those deported through S-Comm either had no criminal record or had been convicted of minor offenses like traffic violations.

The economic impact of deportations was also becoming obvious, especially in small towns. Postville, Iowa, lost a fifth of its residents over a few hours when 1,000 DHS agents raided the nation's largest kosher meatpacking plant. The company filed for bankruptcy. The raid cost \$5 million.

Perceived as agents of ICE, local police officers were met with growing distrust in Hispanic neighborhoods by both legal and illegal immigrants. A [survey](#) of Latinos in Chicago, Houston, Los Angeles, and Phoenix—four of the nation's largest Latino population centers—found that 44 percent of Latinos were less likely to contact the police when they were the victims of crimes for fear of ensuing investigations. Even among citizens of Latino origin, nearly a third were less likely to contact the police for fear that cops would use the interaction to investigate their family, friends, or neighbors. The President's Task Force on 21st Century Policing, a report released last year, recommended DHS [terminate its reliance](#) on state and local criminal justice.

Finally, the policy had a dubious legal foundation. By detaining people on the word of ICE, cities made themselves vulnerable to Fourth Amendment lawsuits. In 2014, a handful of federal district courts [concluded](#) that local police would be liable for civil rights violations for heeding ICE detainer requests without warrants.

Three things changed in Obama's second term that conspired to send deportation numbers plummeting to a 10-year low. The Obama administration replaced S-Comm with a less stringent protocol. DHS Secretary Jeh Johnson declared a new focus on high-risk individuals. And local resistance flourished.

A crucial question heading into the Trump administration is this: To what extent did local noncompliance precipitate the deportation decline?

When the Obama administration ditched S-Comm, its replacement was a more flexible system called the Priorities Enforcement Program. In some cases, instead of asking local authorities to detain immigrants until they could be picked up, ICE started asking to know release dates. This decreased cities' liability for complying, and DHS was able to boast that dozens of sanctuary jurisdictions had come back around. It also allowed both federal enforcers and cities to claim victory. Under PEP, only a small percentage of detainer requests are rejected. At the same time, many fewer requests are made. Many advocates, however, saw little difference between S-Comm and PEP and doubted the administration's claim to be focused on more serious criminals.

Still, deportations fell rapidly. Apprehensions at the border now account for more than two-thirds of deportations, up from about one-third in 2008. The number of ICE deportations that start in the interior and evict U.S. residents has fallen by 70 percent since 2009.

But forcing cities and states to participate will be more difficult. Thanks to a 1997 Supreme Court [case](#) (over, of all things, federally mandated background checks for gun sales), local police can't be dragooned into doing Washington's work. On the campaign trail, Trump promised to get noncompliant jurisdictions on board. But if the past decade is any guide, local police will resist any stricter policy. Major city police chiefs have [repeatedly stated](#) their opposition to enforcing federal immigration law.

They were once the single most important funnel of immigrants into detainment, according to Muzaffar Chishti of the Migration Policy Institute. "I don't know of a single major city police chief that does not abhor the general entanglement of federal immigration enforcement and local police," he said. Chishti is optimistic that local authorities can effectively slow a deportation push by Trump.

But while Congress almost certainly cannot force local cops to hold suspects, it can withhold funding—a common way to avoid violating the 10th Amendment, which gives power not explicitly held by the federal government to the states. Trump has said he will cut all federal funding from sanctuary cities as a threat to ensure compliance, taking up a threat that congressional Republicans made last year after a San Francisco woman was [murdered](#) by an undocumented immigrant with a criminal record whose detainer request had been ignored by the county sheriff's department.

The version of that bill that was proposed by Sen. Pat Toomey of Pennsylvania this summer would have cut two types of federal grants to sanctuary jurisdictions, amounting to a penalty of about \$700 million, [collectively](#), on the 10 largest noncompliant localities. That is a small portion of the money cities receive from the federal government but would still put local authorities in a difficult position.

Legal experts seem to agree that the Trump administration would have a difficult time enacting the type of defunding it wishes to see. The most basic argument against the federal government's ability to do that is nested in the Tenth Amendment. "It's about federalism. It's about separation of powers," Hing said. Phil Torrey, a lecturer at Harvard Law School and the supervising attorney of the Harvard Immigration Project.