

Sanctuary Cities: A Threat to Public Safety
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Thank you for the opportunity to testify on the public safety problems created when local governments adopt policies that obstruct immigration enforcement, commonly known as sanctuary policies. According to ICE records, as of October 2014 there were 276 such jurisdictions in the United States. Over an eight-month period in 2014, more than 8,100 criminal aliens who were the subject of detainers were instead released back to the streets as a result of local non-cooperation policies. Approximately two-thirds of these individuals had a serious criminal history at the time of their release. Nearly 1,900 have subsequently re-offended. Only 28 percent have been re-apprehended by ICE.

Sanctuary policies do nothing to build trust between immigrant communities and local law enforcement. They do not improve access to law enforcement services for immigrants; nor have they been shown to increase the likelihood that more immigrant crime victims will report crimes. On the contrary, they destroy the trust of the community at large that the laws will be faithfully enforced to preserve the quality of life for all.

Despite widespread public outrage at the San Francisco Sheriff's policies that caused the release of a man with five prior deportations and seven felony convictions, and who was the subject of an ICE detainer, who then went on to kill Kathryn Steinle, it is clear that some jurisdictions will not budge from their criminal alien sanctuary policies. To make matters worse, the Obama administration's new Priority Enforcement Program (PEP) explicitly allows local jurisdictions to obstruct ICE – and also establishes the entire country as a sanctuary for nearly all illegal aliens by further narrowing enforcement priorities and severely restricting the ability of ICE officers to deport removable aliens, including many with criminal records. Therefore, Congress must step in to correct the situation by a) clarifying in the law that local law enforcement agencies are expected to comply with ICE detainers; b) establishing that local law enforcement agencies will have qualified immunity when cooperating in good faith; c) implementing sanctions for those jurisdictions that continue to refuse to obstruct enforcement; and d) reversing the Obama administration's non-enforcement policies.

SANCTUARIES ARE NOT A NEW PROBLEM

The Steinle case was not the first time that an illegal alien killed someone after being released back to the streets because a local law enforcement agency ignored an ICE detainer. In 2014, a man was released by the Cook County Sheriff after serving a 60-day sentence for a domestic assault conviction, despite an ICE detainer. Soon afterwards, in Romeoville, Illinois, he killed a 15-year old girl named Brianna Valle, and also shot her mother. In 2011, in Albion New York, a man was released after bonding out on burglary charges, despite an ICE detainer. He later stabbed and killed 45-year old Kathleen Byham outside a Walmart store.

DATA ON REJECTED DETAINERS

Local refusal to comply with ICE detainers has become a public safety problem in many communities and a mission crisis for ICE that demands immediate attention.

According to a report¹ prepared by ICE that I obtained in a FOIA request, as of October, 2014 there were 276 state and local jurisdictions that had adopted policies of non-compliance with some or all ICE detainers, or

¹ "Declined Detainer Outcome Report, ICE Law Enforcement Systems & Analysis Unit, October 4, 2014, http://cis.org/sites/cis.org/files/Declined%20detainers%20report_0.pdf.

other forms of immigration enforcement obstruction, such as barring ICE from interviewing inmates in jails. These took the form of policies, laws, executive orders or regulations. These jurisdictions were located in 43 states and the District of Columbia.

Sanctuary policies are not considered mainstream law enforcement practice, by any measure. The 276 jurisdictions represent a small fraction of the more than 17,000 law enforcement jurisdictions nationwide. Nevertheless, they include jurisdictions with large populations of illegal aliens and also significant problems with a direct connection to illegal immigration, such as drug trafficking and gang crime – such as Chicago, San Francisco, New York, Philadelphia, Miami, Baltimore and Washington, DC.

Number of Detainers Refused: From January 1, 2014 to August 31, 2014, local law enforcement agencies refused to comply with a total of 8,811 detainers, resulting in their release from custody. These detainers were associated with 8,145 individuals, of whom:

- 7,600 had one declined detainer
- 464 had two declined detainers
- 81 had three or more detainers.

As of June, 2015 the total number of detainers declined by local law enforcement agencies reportedly was over 17,000.

Most Offenders Released Had Prior Arrests; One-fourth Were Already Felons: The majority (63%) of the individuals freed by local agencies had a serious prior criminal record.

- 5,132 were previously convicted or charged with a crime or were labeled a public safety concern. Of these,
- 2,984 had a prior felony conviction or charge
- 1,909 had a prior misdemeanor conviction or charge related to violence, assault, sexual abuse, DUI, weapons, or drug distribution or trafficking
- 239 had three or more other misdemeanor convictions.

The report does not state how many of the released offenders had prior single misdemeanors or other types of violations not directly associated with violence, assault or drugs.

Released Offenders Later Arrested Again: Of the 8,145 individual aliens freed by local agencies, there were 1,867 (23%) who were subsequently arrested again for a criminal offense.

- ICE took action (arrest or removal) against 40 percent (751) of the 1,867 who re-offended.
- 1,116 (60%) of the re-offenders were at large at the time of the study.

Crimes Committed After Subject's Release: The 1,867 offenders who were released and subsequently re-offended were arrested 4,298 times during the eight-month period covered by the study. They accumulated 7,491 new charges in total, after their release. Ten percent of the new charges involved dangerous drugs and seven percent were for driving under the influence of alcohol (DUI).

The report describes six instances of very serious crimes committed by criminal alien felons who were sought by ICE with a detainer, but nevertheless released by a local law enforcement agency with sanctuary policies.

- Santa Clara County, Calif.: On April 14, 2014 an individual with nine previous convictions (including 7 felonies) and a prior removal was arrested for “first degree burglary” and “felony resisting an officer

causing death or significant bodily injury.” Following release, the individual was arrested for a controlled substance crime.

- Los Angeles, Calif.: On April 6, 2014 an alien was arrested for “felony continuous sexual abuse of a child.” After release, the alien was arrested for “felony sodomy of a victim under 10 years old.”
- San Francisco, Calif.: On March 19, 2014 an illegal alien with two prior deportations was arrested for “felony second degree robbery, felony conspiracy to commit a crime, and felony possession of a narcotic controlled substance.” After release, the alien was again arrested for “felony rape with force or fear,” “felony sexual penetration with force,” “felony false imprisonment,” witness intimidation, and other charges.
- San Mateo County, Calif.: On February 16, 2014 an individual was arrested for “felony lewd or lascivious acts with a child under 14.” In addition, the alien had a prior DUI conviction. Following release by the local agency, the individual was arrested for three counts of “felony oral copulation with a victim under 10” and two counts of “felony lewd or lascivious acts with a child under 14.”
- Miami Beach, Fla.: On December 19, 2013 the police department arrested an alien for felony grand theft. This alien had been ordered removed (and presumably absconded) in 2009. The alien also had prior convictions for strong-arm robbery, cocaine possession, larceny, trespassing, theft, marijuana possession, and resisting an officer. After release by the local agency, the alien was arrested on two separate occasions; once for “aggravated assault with a weapon and larceny” and once for “under the influence of a controlled substance.”
- Santa Clara County, Calif.: On November 7, 2013 an alien was arrested (and later convicted) for “felony grand theft and felony dealing with stolen property.” This alien had been ordered removed in 2010 (again, a likely absconder). The alien also had prior felony and misdemeanor convictions for narcotic possession, theft, receiving stolen property, illegal entry and other crimes. After release by local authorities the alien was arrested for “felony resisting and officer causing death or severe bodily injury” and “felony first degree burglary.”

Sanctuaries With the Most Releases: As of the date of the report, 276 counties in 43 states had refused to comply with an ICE detainer. The largest number of detainees were refused in the following jurisdictions:

- Santa Clara County, Calif.
- Los Angeles County, Calif.
- Alameda County, Calif.
- San Diego County, Calif.
- Miami-Dade County, Fla.

The ICE report included a list of the 20 detention facilities that had housed the inmates that were freed, but it was redacted from the document. The report states that the following jails were among the top 20:

- Santa Clara County Jail in San Jose, Calif.
- Santa Rita Jail in Dublin, Calif.
- Twin Tower Correction Facility in Los Angeles, Calif.
- Dade Correctional Facility in Miami, Fla.
- Vista Detention Facility in San Diego, Calif.

SANCTUARY POLICIES ARE BASED ON “CHILLING EFFECT” MYTH, NOT FACTS

One of the most common reasons offered for non-cooperation policies is that they are needed to enable immigrants to feel comfortable reporting crimes. This frequently-heard claim has never been substantiated, and in fact has been refuted by a number of reputable studies. No evidence of a "chilling effect" from local police cooperation with ICE exists in federal or local government data or independent academic research.

It is important to remember that crime reporting can be a problem in any place, and is not confined to any one segment of the population. In fact, most crimes are not reported, regardless of the victim's immigration status or ethnicity. According to the Bureau of Justice Statistics (BJS), in 2012, only 44 percent of violent victimizations and about 54 percent of serious violent victimizations were reported to police. In 2012, the percentage of property victimizations reported to police was just 34 percent.²

In addition, data from the Bureau of Justice Statistics show no meaningful differences among ethnic groups in crime reporting. Overall, Hispanics are slightly more likely to report crimes. Hispanic females especially are slightly more likely than white females and more likely than Hispanic and non-Hispanic males to report violent crimes.³ This is consistent with academic surveys finding Hispanic females to be more trusting of police than other groups.⁴ A multitude of other studies refute the notion that local-federal cooperation in immigration enforcement causes immigrants to refrain from reporting crimes:

- A major study completed in 2009 by researchers from the University of Virginia and the Police Executive Research Forum (PERF) found no decline in crime reporting by Hispanics after the implementation of a local police program to screen offenders for immigration status and to refer illegals to ICE for removal. This examination of Prince William County, Virginia's 287(g) program is the most comprehensive study to refute the "chilling effect" theory. The study also found that the county's tough immigration policies likely resulted in a decline in certain violent crimes.⁵
- The most reputable academic survey of immigrants on crime reporting found that by far the most commonly mentioned reason for not reporting a crime was a language barrier (47 percent), followed by cultural differences (22 percent), and a lack of understanding of the U.S. criminal justice system (15 percent) — *not* fear of being turned over to immigration authorities. (Davis, Erez, and Avitable, 2001).
- The academic literature reveals varying attitudes and degrees of trust toward police within and among immigrant communities. Some studies have found that Central Americans may be less trusting than other groups, while others maintain that the most important factor is socio-economic status and feelings of empowerment within a community, rather than the presence or level of immigration enforcement. (See Davis and Henderson 2003 study of New York; Menjivar and Bejarano 2004 study of Phoenix).
- A 2009 study of calls for service in Collier County, Fla., found that the implementation of the 287(g) partnership program with ICE enabling local sheriff's deputies to enforce immigration laws, resulting in significantly more removals of criminal aliens, did not affect patterns of crime reporting in immigrant communities. (Collier County Sheriff's Office).

² Jennifer Truman, Ph.D., Lynn Langton, Ph.D., and Michael Planty, Ph.D., Bureau of Justice Statistics, "Crime Victimization 2012," <http://www.bjs.gov/content/pub/pdf/cv12.pdf>.

³ See additional data from the National Crime Victimization Survey here: <http://www.bjs.gov/content/pub/pdf/cvus0805.pdf>.

⁴ Lynn Langton, Marcus Berzofsky, Christopher Krebs, and Hope Smiley-McDonald, Bureau of Justice Statistics report, "Victimizations Not Reported to the Police, 2006-2010," <http://www.bjs.gov/content/pub/pdf/vnrp0610.pdf>.

⁵ *Evaluation Study of Prince William County's Illegal Immigration Enforcement Policy: FINAL REPORT 2010*, <http://www.pwcgov.org/government/dept/police/Documents/13185.pdf>.

- Data from the Boston, Mass., Police Department, one of two initial pilot sites for ICE's Secure Communities program, show that in the years after the implementation of this program, which ethnic and civil liberties advocates alleged would suppress crime reporting, showed that calls for service decreased proportionately with crime rates. The precincts with larger immigrant populations had less of a decline in reporting than precincts with fewer immigrants. (Analysis of Boston Police Department data by Jessica Vaughan, 2011).
- Similarly, several years of data from the Los Angeles Police Department covering the time period of the implementation of Secure Communities and other ICE initiatives that increased arrests of aliens show that the precincts with the highest percentage foreign-born populations do not have lower crime reporting rates than precincts that are majority black, or that have a smaller foreign-born population, or that have an immigrant population that is more white than Hispanic. The crime reporting rate in Los Angeles is most affected by the amount of crime, not by race, ethnicity, or size of the foreign-born population. (Analysis of Los Angeles Police Department data by Jessica Vaughan, 2012).
- Recent studies based on polling of immigrants about whether they might or might not report crimes in the future based on hypothetical local policies for police interaction with ICE, such as one recent study entitled "Insecure Communities", by Nik Theodore of the University of Illinois, Chicago, should be considered with great caution, since they measure emotions and predict possible behavior, rather than record and analyze actual behavior of immigrants. Moreover, the Theodore study is particularly flawed because it did not compare crime reporting rates of Latinos with other ethnic groups.

For these reasons, law enforcement agencies across the country have found that the most effective ways to encourage crime reporting by immigrants and all residents are to engage in community outreach, hire personnel who speak the languages of the community, establish anonymous tip lines, and set up community sub-stations with non-uniform personnel to take inquiries and reports – not by suspending cooperation with federal immigration enforcement efforts.

Proposals to increase ICE-local cooperation, most recently the Davis Oliver Act, which was passed by this committee, enjoy strong support among law enforcement leaders across the country. These leaders — sheriffs, police, and state agency commanders — routinely and repeatedly express concern over crime problems associated with illegal immigration and routinely and repeatedly express their willingness to assist ICE, and that it is their duty to assist ICE.⁶ The National Sheriffs Association and numerous individual sheriffs and police chiefs have expressed support for the Davis Oliver Act.

DETAINER NON-COOPERATION POLICIES MORE COMMON TODAY

While local sanctuary policies aiming to shield illegal aliens from detection or provide access to public benefits and driver's licenses have existed for many years, the policies on rejecting detainees are a much more recent phenomenon.

As recently as 2007, the Department of Justice (DOJ) investigated the nature of sanctuary policies, and found that while a number of local jurisdictions did not go out of their way to inquire about immigration status during encounters or notify ICE of an alien in custody, nearly all jurisdictions

⁶ See for example, the remarks of Sheriffs at these events by the Center for Immigration Studies: <http://cis.org/Videos/Sanctuary-Cities-Panel>, <http://cis.org/Videos/Panel-Crime-Challenges>, and <http://cis.org/vaughan/sheriffs-skeptical-chilling-effect-secure-communities>.

accepted detainers at that time.⁷ The DOJ audit found that 94 out of 99 (95%) jurisdictions surveyed about detainer acceptance were fully compliant. All seven of the jurisdictions that were investigated in the audit in the most detail (Oregon state corrections, New York City; San Francisco; California state corrections; Texas state corrections; Clark County, Nev.; and Cook County, Ill.) fully complied with detainers at that time. In 100 percent of the individual alien cases audited, the local agency accepted the ICE detainer.

The 2007 DOJ audit found even higher apparent recidivism rates among criminal aliens released from custody than the 2014 ICE analysis found. Looking at a four-year period after release (compared to the 8-month period covered in the 2014 ICE study), the DOJ found that 73 out of a random sample of 100 criminal aliens had re-offended after release. The aliens committed an average of six new crimes apiece after release. Noted the report: “If this data is indicative of the full population of 262,105 criminal histories [from the four-year time period], the rate at which released criminal aliens are re-arrested is extremely high.”

Some jurisdictions now claim that sanctuary policies are needed because holding aliens on ICE detainers is too costly, but back in 2007, the DOJ auditors found no local agencies that had released aliens due to lack of resources.

I believe the increase in policies prohibiting compliance with all or some detainers has less to do with legitimate law enforcement concerns and more to do with the Obama administration’s scheme to drastically scale back immigration enforcement.

Detainers have been used for decades and are a perfectly legitimate, lawful tool to enable ICE take custody of aliens from local authorities.⁸ They help protect the public and ICE officers by allowing officers to take custody of removable aliens in a secure setting rather than on the street, in homes or at work places. The administration is pretending that it abandoned this tool because of unfavorable court rulings, but in fact top agency leaders helped instigate these rulings by reversing long-standing agency policy (over the objections of career personnel and without legal foundation) and declaring that detainers were suddenly optional for local agencies to honor. This new policy was then simply accepted by certain federal judges – leaving ICE’s local law enforcement partners who had cooperated in good faith (and in compliance with federal regulations) twisting in the wind and subject to significant legal and financial liability.⁹

PEP WILL MAKE MATTERS WORSE

On November 20, 2014 the President announced a series of controversial executive actions, including the termination of the Secure Communities program and the establishment of a new program known as the Priority Enforcement Program (PEP). In addition to further reducing the categories and numbers of illegal aliens who will be subject to deportation, and further restricting the circumstances in which ICE officers may issue detainers or move to deport aliens, the program explicitly allows local jurisdictions to obstruct ICE by choosing to ignore ICE requests to be notified of aliens’ release dates. According to Department of Homeland Security officials, already, five of the largest jurisdictions in the

⁷ U.S. Department of Justice, Office of the Inspector General, Audit Report 07-07, “Cooperation Of SCAAP Recipients In The Removal Of Criminal Aliens From The United States,” January, 2007, <https://www.oig.justice.gov/reports/OJP/a0707/final.pdf>.

⁸ 8 USC 1226 (a) and 1357.

⁹ See Dan Cadman and Mark H. Metcalf, *Disabling Detainers: How the Obama Administration Has Trashed a Key Immigration Enforcement Tool*, Center for Immigration Studies, January, 2015: <http://cis.org/disabling-detainers>.

country have indicated that they still will obstruct ICE and refuse to participate in PEP, not matter how much enforcement is watered down by the prioritization guidelines.

Since it is now clear that many of the sanctuaries will not reform themselves, and that the Obama administration will not move to discourage or penalize them, it is up to Congress to fix this problem.

Debarring sanctuaries from certain federal funding – specifically, debarring those jurisdictions that do not honor all ICE detainees from all law enforcement and homeland security funding – would be a reasonable interim action by Congress. But the only effective and lasting solution to local sanctuary policies would be for Congress to take multiple actions: a) clarifying in the law that local law enforcement agencies are expected to comply with ICE detainees; b) establishing that local law enforcement agencies will have qualified immunity when cooperating in good faith; c) implementing sanctions for those jurisdictions that continue to refuse to obstruct enforcement; and d) reversing the Obama administration’s non-enforcement policies.

Members of Congress should beware of proposals that attempt to spell out specific criminal convictions that trigger mandatory cooperation, such as felonies, crimes of moral turpitude, or other definitions of “serious” crimes. These do more harm than good, because by distinguishing between felons and other types of aliens against whom detainees might be filed, Congress would be suggesting that it's acceptable for state and local governments to ignore detainees based on other types of immigration violations -- even though the many laws laying out what constitutes a deportable offense were written and passed by Congress and signed by the president. Moreover, allowing agencies to reject detainees for aliens convicted of misdemeanors and other crimes ignores the reality that these offenders also can be a threat to public safety, in addition to being deportable. Such conditions on cooperation and enforcement will only undermine these laws and serve as an endorsement of the Obama administration’s disastrous “worst of the worst only” limitations on enforcement.

In addition, distinguishing between types of detainees for immigration violations that must (or need not) be honored could expose ICE’s partners to predatory litigation as a result of their cooperation. There are a number of law enforcement agencies that have been reluctant to fully honor detainees solely because they fear getting sucked into costly litigation. To address this, Congress must clarify ICE’s authority to issue detainees, and provide qualified immunity for ICE’s local law enforcement partners (as the law now provides for 287(g) partners).

These provisions and more are included in the Davis Oliver Act, which has been passed by this committee. It has earned the endorsement of the National Sheriffs Association as well as many individual sheriffs and police chiefs, indicating that San Francisco Sheriff Mirkarimi’s sanctuary policies and all others are well out of the mainstream of law enforcement practices in America. Congress – and the presidential candidates – should join the sheriffs’ association in supporting these provisions in order to keep the list of victims from growing.