



Between Federal Authority and Municipal Autonomy: Sanctuary Jurisdictions in United States Migration Governance

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Abstract

This article examines the constitutional status of sanctuary jurisdictions within United States (US) migration governance, challenging narratives of uniform federal control over immigration enforcement. It analyses the extent to which local governments in the US can lawfully refuse participation in the enforcement of federal immigration law, a question rendered salient by President Trump's restrictive immigration agenda. Focusing on recent litigation following executive pressure against sanctuary policies, the blog argues that municipal non-cooperation is constitutionally protected. Drawing on the anti-commandeering doctrine, the Separation of Powers principle, the Spending Clause, and binding precedent, it concludes that sanctuary jurisdictions possess a legally secured autonomous role.

Key words: Sanctuary Jurisdictions; United States Migration Governance, Trump Administration, Federalism, Municipal Autonomy, Power of the Purse, Anti-Commandeering Doctrine, Separation of Powers

Introduction

The growing role of cities in migration law offers a perspective of hope for the protection, inclusion, and integration of migrants in times of crisis. This perspective, however, stands in sharp contrast to the exclusionary migration discourse advanced by United States (US) President Donald Trump. At the 80th anniversary of the United Nations (UN) in September of 2025, he called on states to “end the failed experiment of open borders,” presenting the US as an ideological model for restrictive migration governance. Trump's solution to heavy immigration lies in aggressive enforcement. He explains: *“In America we’ve taken bold action to swiftly shut down uncontrolled migration. Once we started detaining and deporting everyone who crossed the border and removing illegal aliens from the US, they simply stopped coming.”*

Framed in this way, the US migration policy appears unified, effective, and firmly aligned behind federal authority. Yet, this narrative obscures a more complex legal reality. Migration governance in the US is neither monolithic, nor exclusively federal. Rather, it is inherently marked by sustained divergence and autonomy at the subnational level. This divergence takes institutional form in sanctuary jurisdictions, which include policies that limit the extent to which local authorities and resources are used to assist federal immigration enforcement. Such resistance towards the federal government’s restrictive migration agenda raises the central legal question of the extent to which local governments in the US can lawfully refuse participation in the enforcement of federal immigration law. Accordingly, this article argues that sanctuary jurisdictions demonstrate how cities in the US function as autonomous, constitutionally protected actors capable of shielding immigrants from restrictive federal policies.

From Religious Sanctuary to Municipal Policy

Sanctuary jurisdictions in the US did not emerge as a reaction to recent federal migration policies but are rooted in the sanctuary movement of the 1980s. At the time, individuals fleeing political violence in Central America received disproportionately low asylum approval rates. Churches and synagogues across the US responded by sheltering these individuals, marking early tensions between humanitarian commitments at the local level and restrictive migration policies at the federal level.

Over the course of the 1990s and early 2000s, increasingly harsh federal and state laws caused

sanctuary practices to shift away from a focus on refugees and toward supporting undocumented immigrants.¹ This marks the transformation from a purely ideological, faith-based form of sanctuary to municipal, policy-based sanctuary. Such sanctuary jurisdictions have not been shown to correlate with increased crime rates. Nonetheless, growing media attention accused them of making America less safe, ultimately contributing to the political polarisation within the country.² After the 9/11 attacks, federal immigration enforcement intensified, with increased deportations by the newly formed Immigration and Customs Enforcement (ICE). In reaction, many cities adopted or strengthened their sanctuary policies to counterbalance restrictive federal approaches. These include prohibitions of immigration detention facilities, restrictions on sharing certain information on migrants with federal institutions, and refusals to comply with ICE detainer requests.

Further Politicisation of Sanctuary Jurisdictions

San Francisco constitutes a paradigmatic example of a sanctuary city, as its municipal ordinance prohibits “the use of City funds or resources to assist in the enforcement of Federal immigration law, except for individuals who have been convicted of a violent or serious felony.” At the same time, it also illustrates the core line of criticism directed at sanctuary jurisdictions. This tension became particularly visible in 2015, when García-Zárate had been arrested on a marijuana possession charge that was later dropped. ICE nevertheless issued a civil detainer request for his continued detention, but San Francisco released him on the grounds of the municipal ordinance, given the fact that he had not been convicted of a violent or serious felony. Shortly after release, García-Zárate fatally shot a woman named Kate Steinle. The case was brought to court and he was convicted of unlawful possession of a firearm, but acquitted of both murder and manslaughter due to lack of proof of criminal intent. Nonetheless, Trump repeatedly invoked the case to portray sanctuary cities as a threat to public safety altogether. During his presidential campaign in 2016, Trump covered immigration in 77 percent of his speeches, and specifically referenced sanctuary cities in roughly 26 percent. Thereby, he transformed sanctuary cities into a recurrent national frame for linking immigration and crime, generalising from isolated incidents such as the Steinle case.³

¹ Loren Collingwood and Benjamin Gonzalez O'Brien, *Sanctuary Cities: The Politics of Refuge* (online edn, Oxford Academic 2019)

²Ibid.

³Ibid.

Once in office, Trump translated this campaign rhetoric into executive action. During his first administration, sanctuary jurisdictions became direct targets of federal pressure, most notably through Executive Order 13768 in 2017. This marked the first major federal action targeting sanctuary jurisdictions, as it sought to penalise cities and counties for limiting cooperation with federal immigration enforcement. It was however blocked on the basis of constitutional concerns, before former president Biden finally rescinded it.

Research Suggests That Sanctuary Jurisdictions Increase Safety

In contrast to Trump’s claims, the evidence indicates that sanctuary jurisdictions do not make cities unsafe but can, in fact, enhance public safety. Boston provides a clear example of sanctuary policies correlating with increased safety. Under the Boston Trust Act, local law enforcement is prohibited from detaining individuals solely on the basis of ICE civil detainer requests unless there is a criminal warrant.⁴ During the period in which this policy has been in effect, Boston has experienced long term decline in both violent and property crime and has reported historic lows in homicides and shootings. This clearly contrasts Trump’s claim of sanctuary policies making cities less safe. Research further shows that when local law enforcement assists ICE, undocumented immigrants are less likely to report crimes to the police. When crimes go unreported, police have fewer opportunities to investigate and prevent criminal activity, which ultimately undermines public safety.

Federal Enforcement Pressure on the Local Level

Despite these findings, following Trump’s return to office in early 2025, his administration has issued a series of Executive Orders aimed at deterring sanctuary policies, claiming they “protect criminals rather than victims.” Among these, Executive Orders 14159 and 14218 sought to compel local cooperation with federal immigration enforcement by threatening to withhold, freeze, or condition federal funding. In addition to financial threats, the orders instructed the Department of Justice to pursue civil and criminal actions against sanctuary jurisdictions.

In response to those measures, San Francisco, Santa Clara, and fourteen other cities and counties sued the Trump administration to shield themselves from federal interference. In *San Francisco*

⁴CBC 1985 11-1.9; Ord. 2019 c. 9 (B)

v. Trump, the US District Court of the Northern District of California (N.D. Cal.) is currently examining whether the Trump administration possesses the authority to unilaterally deny federal funding to jurisdictions that refuse to implement its immigration agenda. The litigation has already resulted in two preliminary injunctions, issued in April and August 2025, blocking the Trump administration from withholding funds from the plaintiff jurisdictions. While the case is still pending, these injunctions provide significant insight into the constitutional limits of the executive power in the context of sanctuary jurisdictions.

Why the Federal Government Cannot Compel Local Immigration Enforcement

At first glance, the executive orders appear to rest on a straightforward US constitutional claim, under the Supremacy Clause, federal law generally pre-empts conflicting state or local measures, and the Supreme Court has consistently recognised immigration regulation as falling within the federal government's plenary powers. On that basis, the Trump administration attempted to transform federal supremacy in immigration regulation into a duty on subnational governments to assist in its enforcement. Accordingly, sanctuary jurisdictions appear legally vulnerable insofar as their policies depart from the federal government's approach. This reasoning, however, neglects the constitutional structure within which federal authority in the US operates.

Federalism and the Anti-Commandeering Doctrine

The US operates under a system of dual sovereignty, in which both federal and state governments derive authority directly from the Constitution. While the Supremacy Clause ensures that valid federal law prevails over conflicting state law, it does not extinguish state and local autonomy. Under the Tenth Amendment's anti-commandeering doctrine, the federal government may not require states or localities to administer or enforce federal regulatory schemes. Sanctuary policies do not interfere with federal immigration law itself. Instead, they govern how local resources are allocated and how local officials engage with federal authorities. As such, they fall within a constitutionally protected zone of non-cooperation. Consequently, the anti-commandeering doctrine permits the federal government to enforce immigration law directly but prohibits it from forcing states or cities to do so on its behalf. The N.D. Cal. 's preliminary injunctions reflect this principle, criticising not federal immigration authority as such, but the means chosen to enforce it.

Separation of Power and the Power of the Purse

The power of the purse is assigned to Congress by the US Constitution. As the representative legislative branch, Congress alone determines how federal funds are allocated and under what conditions. This reflects the broader separation of powers in the US, under which control over public finances is deliberately vested in Congress to prevent unilateral control. The executive orders at issue, however, direct federal agencies to freeze, withhold or condition funds to deter sanctuary cities. By doing so, the Trump administration effectively assumes legislative authority over federal spending. As noted by the Ninth Circuit, the President lacks this power. Thus, the executive orders violate Congress' power of the purse and the separation of powers principle.

Spending Clause

Under the Spending Clause, Congress may attach conditions to federal funds to encourage state cooperation with federal policy objectives. The power to regulate conditional federal spending is reserved exclusively for Congress, which aims to protect states from financial coercion. It follows that the President may neither refuse to disperse federal funds or attach conditions to them for sanctuary cities without congressional authorisation. On this basis, Trump's executive orders violate the constitutional limits imposed by the Spending Clause.

San Francisco v. Trump: Sanctuary as a Constitutional Role

In issuing both preliminary injunctions temporarily blocking the withholding of federal funding, the N.D. Cal. explicitly relied on binding Ninth Circuit precedent. The N.D. Cal. emphasised that *San Francisco v. Trump* is "on all fours" with *County of Santa Clara v. Trump*, where an analogous executive order had been enjoined. Applying that precedent, the N.D. Cal. found it likely that the plaintiffs would succeed on their Separation of Powers, Spending Clause, Tenth Amendment, and further related constitutional claims, and accordingly issued the first preliminary injunction in April 2025. The second preliminary injunction issued in August 2025 reaffirmed this assessment and extended the protection to additional plaintiffs.

Concluding Thoughts:

Read together, the preliminary injunctions situate sanctuary policies within a broader constitutional debate over federalism by foregrounding a central question: to what extent can local governments in the US lawfully refuse participation in the enforcement of federal immigration law? The N.D. Cal.'s rulings in the pending litigation demonstrate that sanctuary jurisdictions are

not merely political outliers, but constitutionally protected and autonomous actors within the federal system. Their refusal to cooperate does not amount to defiance of federal law; rather, it reflects the operation of structural safeguards designed to preserve the constitutional balance between federal and local authority. Although immigration regulation falls within the sphere of federal supremacy, local governments can indeed lawfully refuse participation in its enforcement, as this autonomy is conferred upon them by the Constitution of the US of America. Accordingly, the growing role of cities in migration law offers a perspective of hope for the protection, inclusion, and integration of migrants in times of crisis.

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