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## **Police, Jails, and Immigrants:**

### **How Do Immigrants and the Immigration Enforcement System Interact with Local Law Enforcement?**

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In recent years, one contentious component of the immigration debate has been that of so-called sanctuary cities, which are municipalities, or local law enforcement jurisdictions that have adopted policies that limit their cooperation with Immigration and Customs Enforcement (ICE) and other federal immigration authorities due to concerns that this cooperation limits their ability to provide public safety in immigrant communities. Critics of sanctuary cities, including the Trump administration, have countered that sanctuary city policies prevent ICE from detaining and deporting criminal non-citizens who present a threat to communities.

This debate has placed the roles and responsibilities of state and local law enforcement agencies center-stage in the immigration debate. However, two misconceptions about these agencies' operations and their interaction with the immigration enforcement system persist in the debate.

First, many participants in the sanctuary cities debate fail to recognize the complexity of overlapping law enforcement agency jurisdictions in many areas,



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where different agencies may adopt conflicting policies regarding cooperation with immigration enforcement. Second, a particular focus on whether or not a law enforcement agency honors ICE requests to keep individuals in custody until they can be transferred to ICE, known as “detainers,” often conflates the roles of local police forces that conduct local arrests and counties, which generally operate local jails and detention facilities. Simply labeling a geographic area as a “sanctuary city” misrepresents these realities.

The actual operation of local law enforcement agencies and their work with immigration enforcement agencies is more complex and nuanced than is often reported in the public debate. A review of the local law enforcement agencies in Atlanta, Austin, Charlotte, Denver, and Los Angeles shows that:

1. The term “local law enforcement” in these areas involves a range of law enforcement agencies that operate in multilateral territorial jurisdictions established by their respective state’s constitution.
2. The city and local police departments in Los Angeles and Charlotte have or had sanctuary policies while their sheriff’s departments actively worked with ICE, showing that “sanctuary jurisdictions” can consist of local authorities with conflicting policies.
3. The sheriff’s offices in these areas operate their jails and respond to ICE requests rather than officers who work for the city’s local police departments.

Although these examples represent a small sample of the local law enforcement jurisdictions in the United States, they show the importance of using a fact-based understanding of local enforcement to develop a more robust debate—and effective policies—on the role that local law enforcement officers play in enforcing the nation’s immigration laws.

## Key Terms

***Sanctuary City/Jurisdiction:*** Although a formal legal definition does not exist for these entities, the term is frequently applied to city governments, local police departments, and/or sheriff’s offices that have adopted policies that limit cooperation with federal immigration enforcement agencies. These policies may include prohibiting police officers from inquiring about a person’s immigration status, not honoring administrative detainers that request them to extend detention of suspected unauthorized immigrants, and restricting information sharing of other types with federal immigration agents.

***Territorial Jurisdiction:*** These jurisdictions consist of geographic territories where federal, state, and local law enforcement agencies can make warrantless arrests. At the local level, city police operate within municipal limits while county sheriffs work within county lines. States can determine the jurisdictions for state, county, city, and other law enforcement agencies that operate within their boundaries, meaning these jurisdictions can vary from state to state.

# *Understanding the Division of Territorial Jurisdictions for Local Police*

One of the frequent misconceptions in the sanctuary cities debate revolves around the manner that critics and advocates conflate different local law enforcement agencies under the title of “local law enforcement,” especially for municipal police departments and sheriff’s departments that detain these individuals and subsequently house them in local jails. Under the U.S. federal system, states can establish different territorial jurisdictions and responsibilities for all law enforcement agencies within their boundaries. As a result, the term “local law enforcement” actually varies across states, encompassing a range of local agencies that work in multilateral jurisdictions to enforce federal, state, and local laws across a region in its respective state.

In some instances, these divides fall cleanly along geographic and jurisdictional lines. For instance, the city of Denver is the county seat of Denver County, Colorado. Under this jurisdictional arrangement, the municipal Denver Police Department<sup>1</sup> oversees day-to-day crime, traffic, and enforcement while the Denver Sheriff Department<sup>2</sup> oversees two separate jail facilities and the district and county courts. The consolidated City and County of Denver also has one Department of Public Safety which oversees both the Police Department and the Sheriff Department.<sup>3</sup> At the state level, Colorado’s laws are enforced by the Colorado Department of Public Safety,<sup>4</sup> which includes patrolling highways and assisting county sheriffs and municipal police departments. Although these law enforcement agencies work within a complex multitier system that counters simple notions that one agency represents local law enforcement authorities, the jurisdictional divides are nested and clearly organized for clear cooperation across the Denver metropolitan area.

In cases like the city of Austin, Texas, these jurisdictional divides are more complicated to navigate. Under the jurisdiction of the City of Austin, the Austin Police Department is the main municipal law enforcement agency.<sup>5</sup> In addition to being located in Travis County, the city is also part of Williamson, Hays, and Bastrop counties.<sup>6</sup> As a result, Austin Police Department officers operate in the same jurisdictions as the Travis, Williamson, Hays, and Bastrop County Sheriff’s Departments at different locations throughout the greater Austin area.<sup>7</sup> Further, state agencies like the Texas Ranger Division, the Texas Highway Patrol, and the Texas Department of Criminal Justice operate across this metropolitan region as well.<sup>8</sup> In contrast to the Denver metropolitan area, the jurisdictional divides for the Austin metropolitan area incorporate multiple sheriff’s offices, compounding the difficulty of assigning one local law enforcement body as wholly representative for the entire area.

In addition to state and local law enforcement agencies, it is important to note that ICE’s status as a federal law enforcement agency enforcing federal law means it can operate in all territorial jurisdictions, including localities where cities and one or more local law enforcement agencies have adopted sanctuary policies. While the agency has non-binding guidelines on sensitive locations such as churches and schools that instruct agents to enter them only if they detect national security concerns, this policy does not extend to states, counties, or cities, including jurisdictions where state, municipal, or local law enforcement officials have adopted sanctuary policies.<sup>9</sup>

As shown by varying jurisdictions such as Austin and Denver, local law enforcement officers operate across multilateral jurisdictions that encompass a range of federal, state, and local agencies. Given that each state has the capacity to

establish the structure of these jurisdictions, their composition varies across the United States, making it difficult to reduce a complex term like local law enforcement to singular examples that populate the debate over sanctuary cities.

## Law Enforcement and Conflicting Policies over Cooperation with ICE

Aside from jurisdictional issues in cities and counties, local law enforcement agencies can also have contrasting immigration enforcement policies that present a more nuanced picture of what constitutes a sanctuary city or sanctuary jurisdiction. In some instances, an entire state may adopt pro- or anti-sanctuary city policies in response to the independent decisions of its city elected officials, local police departments, or sheriff's offices to cooperate or limit cooperation between police or sheriff's officers and ICE. Texas and California, for example, each passed state-wide legislation on opposite ends of this debate.

Within states without such overarching policies a city or a police department may adopt a policy that limits cooperation with ICE while the local sheriff may allow ICE agents into their jails or have 287(g) agreements with ICE. The 287(g) program allows local law enforcement agencies to sign an agreement with ICE to receive training and delegated authority for enforcing immigration laws in jails or during the course of an officer's daily activities.<sup>10</sup> These responsibilities include checking an individual's immigration status, adding and checking data in DHS databases, issuing ICE detainers or Notices to Appear for removal hearings, and transferring individuals to ICE custody.<sup>11</sup>

Differing immigration enforcement policies at different levels of law enforcement can create conflict between one or more local law enforcement agencies and state governments. In Austin, for instance, Travis County Sheriff Sally Hernandez reversed<sup>12</sup> her predecessor's active cooperation with ICE and allowed the county's officers to reject requests to detain individuals based on their immigration status unless the individual has committed murder, sexual assault, or human smuggling. Although the Austin Police Department has not adopted a formal policy on cooperation with ICE, Austin City Police Chief Brian Manley has organized town hall meetings<sup>13</sup> with members of the city's immigrant community to reassure them that his officers would focus on their safety rather than their immigration status. However, the chief has also noted<sup>14</sup> that his officers would partner with federal agencies in immigration matters as long as the case has "a criminal nexus."

In response to Hernandez's decision, the Texas state legislature passed<sup>15</sup> Senate Bill 4<sup>16</sup> in May 2017, an anti-sanctuary city bill that prohibits cities from adopting sanctuary policies that limit cooperation with immigration enforcement authorities, allows all state and local officers to ask all detained individuals about their immigration status, and requires all local officials to honor detainer requests. The law also established penalties for officers that refused or failed to enforce its provisions on immigration enforcement. In addition to receiving criticisms from Hernandez, Manley also criticized<sup>17</sup> the law because it would require his officers to pursue civil immigration issues instead of violent crime. A challenge to the law is currently moving<sup>18</sup> through the federal court system after a coalition of plaintiffs, including the city of Austin, filed<sup>19</sup> a suit against the bill stating that it violated the First and Fourteenth Amendment rights of officers and immigrants.

Other cases involve instances in which the city, the local police department, and the state have limited cooperation with immigration agents while the sheriff's office works with ICE. In 2017, Los Angeles Mayor Eric Garcetti issued an executive order<sup>20</sup> that prohibits city employees from collecting personal information from individuals, including immigration status,

unless required by law. The Los Angeles Police Department (LAPD) also adopted Special Order 40,<sup>21</sup> a 1979 order that prohibits<sup>22</sup> LAPD officers from investigating an individual's immigration status, as well as other policies refusing<sup>23</sup> to honor ICE detainer requests or sign 287(g) agreements. In September 2017, the city council introduced<sup>24</sup> a resolution that adopted the sanctuary city label and started the process of developing potentially new enforcement policies. In October 2017, the California state legislature passed<sup>25</sup> Senate Bill 54,<sup>26</sup> a statewide sanctuary policy that prohibits<sup>27</sup> state and local law enforcement from using personnel or funds to hold, question, or share information about individuals with federal immigration enforcement unless those individuals have a conviction for one of 800 crimes in the law's 2013 predecessor.<sup>28</sup>

However, the Los Angeles County Sheriff's Department has adopted a far more ambiguous policy on cooperating with ICE. In 2015, the Los Angeles County Board of Supervisors voted<sup>29</sup> to limit ICE's access to immigrants in its jails, a decision that Los Angeles County Sheriff Jim McDonnell reversed by allowing ICE agents to access inmates released from jail and interview individuals convicted of serious crimes. Although the Sheriff's Department appeared to move away from this policy by stating<sup>30</sup> publicly it was limiting cooperation with ICE, the county's Inspector General found<sup>31</sup> that the department allowed ICE agents to operate an office in the county's jails that provided information about prisoners that the facilities would release in the future. McDonnell<sup>32</sup> and other sheriffs<sup>33</sup> also opposed Senate Bill 54 because the law would force ICE agents to enter into immigrant communities rather than jails, generating fear among these populations and limiting their willingness to work with law enforcement.

Similar issues related to the conflicts between cities, counties, and states also emerged in the Charlotte, North Carolina, metropolitan area. In 2015, the city of Charlotte, which serves as the county seat for Mecklenburg County, passed a civil rights resolution stating that Charlotte-Mecklenburg Police Department (CMPD) officers could not ask about an individual's immigration status unless they believed they belonged to a gang or a terrorist organization.<sup>34</sup> CMPD also issued a directive stating that its officers would not enforce federal immigration law.<sup>35</sup> In response, the state's General Assembly passed House Bill 318,<sup>36</sup> which banned<sup>37</sup> these types of policies across the state, forcing the city to remove this policy from the resolution and the police department's policies. Furthermore, the Mecklenburg County Sheriff's Office, which runs Mecklenburg County's jails, has maintained a 287(g) agreement<sup>38</sup> with ICE since 2006 that allows its officers to identify and detain undocumented immigrants, a policy that conflicted with Charlotte and CMPD's policies that limited cooperation with ICE and other agencies.

As these examples show, different law enforcement agencies and cities in the same jurisdiction can have contradictory policies related to cooperation with ICE, presenting a more complex picture of what constitutes a sanctuary jurisdiction. While states can adopt policies that can force local law enforcement agencies such as sheriff's offices or police departments to cooperate or not cooperate with federal law enforcement agencies, in many cases state action happens only after the emergence of policies by various local jurisdictions. The use of the terminology of sanctuary cities or sanctuary states does not reflect the complex nature of the actual relationships in states and local areas, often generalizing actions taken by single cities or law enforcement agencies to entire localities or regions.

# Understanding the Ownership and Operations of Jails in the United States

Another gap related to understanding the interaction between the immigration enforcement system and local law enforcement revolves around the ownership of local jails. Jails are largely county-level confinement facilities that local law enforcement agencies such as sheriff’s offices or departments of correction operate for individuals awaiting trial or sentencing, or whose inmates are generally sentenced to a term of less than one year, including individuals who committed misdemeanors.<sup>39</sup> In contrast, prisons are facilities run by the state or federal government for felons and persons with sentences of more than one year.<sup>40</sup> In 2015, the country’s network of local jails held approximately 728,200 individuals and had 10.9 million admissions;<sup>41</sup> the rated capacity<sup>42</sup> in jails reached 904,900 beds in the same year, a 5.5 percent increase from 2010.<sup>43</sup>

Within the five metropolitan areas profiled in this report, the respective county sheriff’s offices operate the jails that house immigrant and non-immigrant populations. As Figure 1 shows, the number of facilities range from eight in Los Angeles County to one in Fulton County, which includes the city of Atlanta. Although the data for total jail population is sparse, the 2014 jail populations for these counties range from 1,696 in Mecklenburg County to 19,500 in Los Angeles County.

**Figure 1: Overview of Ownership of Jails in Profiled Metropolitan Areas**

Metropolitan Area	Law Enforcement Entity Responsible for Jails	Number of Jail Facilities	Total Jail Population (2014)
Atlanta	Fulton County Sheriff’s Office	1	2,487
Austin	Travis County Sheriff’s Office	2	2,726
Charlotte	Mecklenburg County Sheriff’s Office	2	1,696
Denver	Denver County Sheriff’s Office	2	1,968
Los Angeles	Los Angeles County Sheriff’s Office	8	19,500

**Sources:** Denver Sheriff Department,<sup>44</sup> Fulton County Sheriff’s Office,<sup>45</sup> Mecklenburg County Sheriff’s Office,<sup>46</sup> Los Angeles Sheriff’s Department,<sup>47</sup> and the National Association of Counties.<sup>48</sup>

In the area of immigration enforcement, sheriff’s offices that operate jails primarily interact with ICE on immigration detainers or “ICE holds” where ICE requests a local jail to hold individuals up to 48 hours beyond their scheduled release date from the facility. County governments that operate jails are not required to honor detainer requests under federal regulations, a position supported by several court rulings.<sup>49</sup> Sheriff’s offices can also join ICE’s 287(g) program that allows local law enforcement officers to take on additional immigration enforcement duties such as checking an individual’s immigration status or issuing immigration detainers and Notices to Appear.<sup>50</sup>

The sheriff’s offices that operate these jails have adopted drastically different policies related to 287(g) agreements and working with ICE to have access to their detainees. As Figure 2 shows, county agencies such as the Travis County Sheriff’s Office have completely cut ties with ICE, giving their officers the ability to reject requests to detain individuals based on their immigration status.<sup>51</sup> In contrast, the Mecklenburg County Sheriff’s Office has maintained a 287(g) agreement with ICE since 2006. Finally, the Los Angeles County Sheriff’s Office has allowed ICE agents into its jails even though it does not have a formal 287(g) agreement with ICE.

**Figure 2: Overview of Federal Immigration Cooperation Policies for Sheriff’s Offices**

Metropolitan Area	Law Enforcement Entity Responsible for Jails	287(g) Agreement	Other Policies Related to Cooperation with ICE
Atlanta	Fulton County Sheriff’s Office	No	-
Austin	Travis County Sheriff’s Office	No	Officers can reject requests to detain individuals based on their immigration status.
Charlotte	Mecklenburg County Sheriff’s Office	Yes	-
Denver	Denver County Sheriff’s Office	No	The department honors immigration detainers but will not hold inmates beyond release periods or ask for immigration status.
Los Angeles	Los Angeles County Sheriff’s Office	No	Officers have allowed ICE into jails despite public statements about ending cooperation with the agency.

Sources: *Colorado Public Radio*,<sup>52</sup> Mecklenburg County Sheriff’s Office,<sup>53</sup> *Los Angeles Times*,<sup>54</sup> and *The Washington Post*.<sup>55</sup>

The motivation for adopting policies that promote or limit cooperation with ICE and other immigration enforcement agencies varies as well. In the case of Mecklenburg County, the Sheriff's Office stated that it joined the 287(g) program to protect its citizens by identifying undocumented immigrants who commit crimes.<sup>56</sup> Conversely, the Travis County Sheriff's Office cut ties with ICE as a measure to generate more support from the area's immigrant community.<sup>57</sup> However, other counties have passed on this program for more pragmatic reasons: the Fulton County Sheriff's Office did not join<sup>58</sup> the Trump administration's revived 287(g) program largely because it did not interact with enough undocumented immigrants to justify participating in the program.

Sheriff's offices and agencies can also contract with ICE to hold the agency's detainees in their facilities. A 2014 Government Accountability Office report found that 90 percent of ICE-affiliated facilities operated through agreements with state and local governments that housed approximately half of ICE's total detention population in 2013.<sup>59</sup> This figure includes non-dedicated intergovernmental service agreements where state and local governments house ICE detainees in their own facilities alongside with other detained individuals.<sup>60</sup> Among the areas listed above, only the Mecklenburg County Sheriff's Office maintains an agreement with ICE to house detainees in its Jail North facility.<sup>61</sup>

In addition to 287(g) agreements and formal contracts to house ICE detainees, ICE started using a government procurement tool known as Basic Ordering Agreements (BOA) in January 2018 to circumvent legal issues related to ICE detainers. Under an ICE BOA agreement, ICE would issue a BOA to sheriffs to hold individuals in their jails for 48 hours for a \$50 fee per detainer along with a notice of action and a warrant for arrest or removal. Given that the BOA is simply a service procurement agreement rather than an enforceable contract, sheriffs and their county jails do not have to honor these requests.<sup>62</sup> Currently, 17 sheriff's offices in Florida have started implementing these agreements, with ICE planning on expanding the agreements to other localities in the future.<sup>63</sup>

As these examples show, sheriff's offices largely serve as the local law enforcement agencies that operate the jails and receive the majority of detainer requests from ICE. These agencies can have a variety of policies that promote or limit the capacity of ICE to access non-citizens in their facilities, including participating in the 287(g) program, and these policies can be independent of the local police departments who do the majority of arrests and bookings. The actual operation of the nation's jails—and the immigration enforcement policies of the agencies that operate them—provides a clearer picture about the intersection between local jails and ICE than the broader sanctuary cities debate, which often conflates the policies of local police departments with the operation of detainer requests that largely go to different agencies.



# Conclusion

The organization and operation of local law enforcement agencies presents several challenges to frequent misconceptions underlying the debate over sanctuary cities. First, the multilateral jurisdictional system that governs policing at the local level contradicts the frequent conflation of different agencies under the term of “local law enforcement” or efforts of the federal government to encourage or coerce compliance. The very term “sanctuary cities” belies the fact that there are many law enforcement agencies that may operate within cities, and that the police can also operate at county or state levels. Furthermore, the debate overlooks how local law enforcement agencies that operate in the same region can adopt conflicting policies over cooperating with ICE. As a result, policy makers should carefully analyze the practices of different levels of law enforcement across each state to develop policies based on a better understanding of cooperation between ICE and local law enforcement agencies.

Second, the debate over sanctuary cities—especially discussions related to honoring detainer requests—should acknowledge that county sheriff’s offices, not cities, largely control these facilities. Furthermore, a range of political and enforcement motivations can lead these sheriff’s offices to adopt diverse policies that promote or limit cooperation with ICE, especially in honoring detainer requests and giving ICE agents access to individuals in their facilities. While cities and municipal police departments can play a role in cooperation with ICE, sheriff’s offices are the key actors in controlling jails, and responding to ICE detainer requests, and should be the key players in this part of the sanctuary debate.

In short, the complexities of each state’s local law enforcement system should prompt legislators and other policy-makers to better understand these factors and create policies that better address the proper role of cooperation between local and federal law enforcement agencies in enforcing the nation’s immigration laws.

# Endnotes

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