

THE MYTHOLOGY OF SANCTUARY CITIES

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ABSTRACT

Sanctuary jurisdictions—be they cities, counties, or states—employ various means of disentangling local law enforcement from federal civil immigration enforcement. Much of the criticism directed at these “sanctuary cities” revolves around a set of myths—such as that these jurisdictions are lawless or dangerous. This Essay identifies nine myths about sanctuary cities and subjects each to a fact-based shakedown.

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INTRODUCTION

Sanctuary cities are more than a hot-button issue in politics today. They are a bogeyman, painted by elected officials, political hopefuls, pundits, and media personalities alike as a substantial threat to law and order, and to the personal safety of American citizens. This Essay challenges that narrative by examining myths surrounding sanctuary cities. By “myths,” I mean to include both “widely held misconception[s]” and “popular conception[s] . . . which exaggerat[e] . . . the truth.”¹ To identify myths for

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1. *Myth*, OXFORD DICTIONARIES, <https://en.oxforddictionaries.com/definition/myth>.

examination in this Essay, I scrutinized numerous anti-sanctuary-city speeches, advertisements, and news reports,² pulled assertions made about sanctuary cities from these sources, and grouped similar comments together. In this way, I was able to compile a list of nine common myths about sanctuary cities. Scrutiny of these myths reveals a fanciful narrative of fear that is consistent with political ends but inconsistent with facts.³

I. MYTH: SANCTUARY CITIES ARE HOMOGENEOUS

One myth about sanctuary cities is that they represent a coherent, singular concept. They are frequently discussed as a homogeneous whole⁴ and so painted with the same brush.⁵

Take for example, this official White House statement: “Sanctuary cities . . . block their jails from turning over criminal aliens to Federal authorities for deportation”⁶ Conservative news outlet Breitbart has used a similar definition, characterizing sanctuary cities as “the counties and cities that refuse to hand over criminal illegal aliens to ICE to be detained and deported from the U.S. Instead, these illegal aliens are released back into American communities.”⁷

The truth, however, is that there is no uniform definition for “sanctuary.”⁸ The description can aptly apply to cities as well as local and state jurisdictions that employ one or more of the following devices:

- (1) barring investigation of civil and criminal immigration violations by local law enforcement, (2) limiting compliance with immigration detainers and immigration warrants, (3) refusing U.S. Immigration and Customs Enforcement (“ICE”) access to local jails, (4) limiting local law enforcement’s disclosure of sensitive information, and (5)

2. I approached this project much like the television show *Mythbusters*, identifying popular beliefs and internet rumors and examining their validity. See *Mythbusters* (Discovery 2003).

3. Rather than proceeding as a traditional law review article, which would begin with a background section providing context before proceeding to an argument, I will proceed directly to the myths, analyzing them one at a time, folding in relevant background material as I go along.

4. See, e.g., Bryan Griffith & Jessica M. Vaughn, *Maps: Sanctuary Cities, Counties, and States*, CTR. IMMIGR. STUD. (July 27, 2017), <https://cis.org/Map-Sanctuary-Cities-Counties-and-States> (“These cities, counties, and states have laws, ordinances, regulations, resolutions, policies, or other practices that obstruct immigration enforcement and shield criminals from ICE”); Denver7 – The Denver Channel, *Stapleton PAC targets Boulder, Denver and Aurora*, YOUTUBE (Mar. 15, 2018), <https://www.youtube.com/watch?v=JV0kcCUPFg4> (discussing a political attack ad from Better Colorado Now in support of gubernatorial hopeful Walker Stapleton that begins: “Aurora, Boulder, and Denver are sanctuary cities”).

5. See Rose Cuisson Villazor, *What Is a “Sanctuary”?*, 61 SMU L. REV. 133, 135 (2008) (“[S]anctuary has acquired a tainted meaning”).

6. WHITE HOUSE, STATEMENT ON SANCTUARY CITIES RULING (Apr. 25, 2017), <https://www.whitehouse.gov/briefings-statements/statement-sanctuary-cities-ruling/>.

7. John Binder, *Illegal Alien Accused of Murdering Mollie Tibbetts Lived in County Among Sanctuary Cities*, BREITBART (Aug. 21, 2018), <https://www.breitbart.com/big-government/2018/08/21/illegal-alien-accused-of-murdering-mollie-tibbetts-lived-in-county-among-sanctuary-cities/>.

8. Christopher N. Lasch et al., *Understanding “Sanctuary Cities”*, 59 B.C. L. REV. 1703, 1709 (2018).

precluding local participation in joint operations with federal immigration enforcement.⁹

Interestingly, a jurisdiction might utilize one or more of these devices without self-identifying as a “sanctuary.”¹⁰

Others have explored sanctuary devices in depth.¹¹ I will not do so here, but I will briefly explain the outlines of each, since these sanctuary-city devices become relevant not only to the myth of homogeneity but also to the other myths discussed further below.

Device one—barring investigation of civil and criminal immigration violations by local law enforcement: Some sanctuary jurisdictions bar local law enforcement¹² from investigating civil immigration violations. Others also bar local law enforcement from investigating some criminal immigration violations. The idea is that state and local law enforcement ought to focus on the violation of state and local criminal law. Determining whether an individual should be permitted to stay in or be deported from the United States is a civil matter,¹³ thus it is seen to be outside the mandate of state and local law enforcement. To be sure, there are immigration crimes, but those are exclusively federal in nature¹⁴ and so they fall outside the

9. Lasch et al., *supra* note 8, at 1707. The authors note that this categorization is exemplary and not exhaustive. *See, e.g., id.* at 1736 n.169 (explaining that the authors do not consider, for example, “policies that reduce sentences for low-level misdemeanors to less than 365 days in an attempt to alleviate immigration consequences of convictions”); *id.* at 1737 n.175 (“[W]e acknowledge that there are other important types of policies that also serve to disentangle the immigration system from local law enforcement” including “policies to limit courthouse immigration arrests”).

10. Consider the cities identified in the political attack ad discussed in Denver7 – The Denver Channel, *supra* note 4. Aurora has affirmatively declared itself to not be a sanctuary city. Dwyer Gunn, *Aurora Declares It’s Not a Sanctuary City*, 5280.COM, (May 22, 2017), <https://www.5280.com/2017/05/aurora-declares-its-not-a-sanctuary-city/>. Boulder passed a city ordinance titling itself as a sanctuary city. BOULDER, COLO., ORDINANCE NO. 8162, § 12-5-1(b)(7) (Jan. 3, 2017). Denver in contrast, “wouldn’t label the city one way or another,” telling a reporter that the city “compl[ies] with federal immigration laws and, when appropriate, work[s] with ICE to address criminal activity.” Denver7 – The Denver Channel, *supra* note 4. Denver has passed a city ordinance with some features common to sanctuary cities but without labeling the city a sanctuary. DENVER, CO., CITY COUNCIL BILL NO. 17-0940 (Aug. 31, 2017). Nonetheless, the city has been identified by the Trump administration as a sanctuary city. Lasch et al., *supra* note 8, at 1710 n.21.

11. *See* Lasch et al., *supra* note 8. And, indeed, others have also developed different rubrics for evaluating sanctuary policies. *See, e.g.,* LENA GRABER & NIKKI MARQUEZ, SEARCHING FOR SANCTUARY: AN ANALYSIS OF AMERICA’S COUNTIES & THEIR VOLUNTARY ASSISTANCE WITH DEPORTATIONS, IMMIGRANT LEGAL RES. CTR. 5 (2016), https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf (identifying seven relevant policy options); Huyen Pham, *A Framework for Understanding Subfederal Enforcement of Immigration Laws*, 13 UNIV. ST. THOMAS L. REV. 508, 511–24 (2017) (identifying and discussing six different immigrant enforcement models).

12. In this essay, I use “law enforcement” as shorthand for “law enforcement officer,” by which I mean any individual with a badge and the legal authority to arrest someone. *Cf.* 28 U.S.C. § 2680(h) (2006) (defining “investigative or law enforcement officer” for purposes of a particular provision of the Federal Torts Claims Act as “any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law”). I do not mean to include, for example, prosecutors, who might be broadly considered part of law enforcement by some authorities for some purposes.

13. *Mahler v. Eby*, 264 U.S. 32, 39 (1924) (“It is well settled that deportation, while it may be burdensome and severe for the alien, is not a punishment.”).

14. *See, e.g.,* 8 U.S.C. §§ 1325, 1326 (1996).

mandate of state and local law enforcement to enforce state and local criminal laws.¹⁵

Device two—limiting compliance with immigration detainers and immigration warrants: Some sanctuary jurisdictions bar local law enforcement from complying with federal immigration detainers or immigration warrants. This issue arises when local law enforcement makes an arrest. When an individual is arrested by local law enforcement, they are taken to a local jail. At the jail, they are fingerprinted. Those fingerprints are routinely sent to the Federal Bureau of Investigation (“FBI”) to determine the arrestee’s identity and criminal history.¹⁶ At this stage, the search might reveal an administrative arrest warrant—a warrant issued by an immigration officer based on probable cause for civil removal from the United States.¹⁷ This administrative warrant can show up as a “hit” in the criminal database, indicating that local law enforcement should follow up with ICE about the individual.¹⁸ Some sanctuary jurisdictions bar local law enforcement from following up on or honoring these civil warrants.¹⁹ Immigration warrants aside, even if the arrestee’s prints trigger no criminal hits (or various non-criminal ICE hits posing as criminal hits), the FBI shares the fingerprints it receives with the Department of Homeland Security (“DHS”). DHS agents then determine whether the arrestee is a noncitizen. If the arrestee is a noncitizen, ICE will typically issue a “detainer.” A detainer asks the jail to provide information to ICE about when the individual will be released from detention and requests that the jail continues to detain the individual until they can be picked up by ICE.²⁰ The detainer, if honored, applies not only to individuals that are arrested and prosecuted but also to individuals that are arrested and never charged with a crime or prosecuted.²¹ Some sanctuary jurisdictions will not honor detainers.

Device three—denying ICE access to local jails: Local jails are run by local law enforcement. Federal authorities occasionally attempt to enter local jails in order to conduct their own evaluation of the incarcerated population to determine if any individuals present are noncitizens subject to civil

15. Some local governments actively seek out opportunities to investigate civil immigration violations. One way in which this can be achieved is through a written memorandum of understanding between local law enforcement and federal immigration enforcement pursuant to INA § 287(g) (1996). See Lasch et al., *supra* note 8, at 1725–27.

16. FED. BUREAU OF INVESTIGATION, PRIVACY IMPACT ASSESSMENT INTEGRATED AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM NATIONAL SECURITY ENHANCEMENTS, available at <https://www.fbi.gov/services/information-management/foipa/privacy-impact-assessments/iafis> (last visited June 2, 2019).

17. We can contrast this administrative warrant with a criminal warrant, which can only be issued by a judge upon a finding of probable cause that a crime has been committed. Lasch et al., *supra* note 8, at 1728–29.

18. Lasch et al., *supra* note 8, at 1728–29.

19. See, e.g., S.F. POLICE DEP’T, GENERAL ORDER 5.15: ENFORCEMENT OF IMMIGRATION LAWS 2 (Feb. 8, 2018), available at [https://sanfranciscopolice.org/sites/default/files/Documents/Police Commission/sfpd-draft-DGO-515-Enforcement-of-Immigration-Laws-dated-020818.pdf](https://sanfranciscopolice.org/sites/default/files/Documents/Police%20Commission/sfpd-draft-DGO-515-Enforcement-of-Immigration-Laws-dated-020818.pdf).

20. See, e.g., KATE M. MANUEL, CONG. RESEARCH SERV., R42690, IMMIGRATION DETAINERS: LEGAL ISSUES (2015).

21. See, e.g., Kit Johnson, *Part of the Obama Plan: The End of Secure Communities*, IMMIGRATIONPROF BLOG (Nov. 22, 2014), <http://lawprofessors.typepad.com/immigration/2014/11/part-of-the-obama-plan-the-end-of-secure-communities.html>.

deportation or prosecution for federal immigration crimes.²² Denying this request for access is one sort of sanctuary-city device.²³

Device four—limiting local law enforcement’s disclosure of sensitive information: Some sanctuary communities restrict local officials from sharing a wide swath of sensitive information—from immigration status to tax history—with federal law enforcement. The goal is “to encourage residents to feel safer when accessing local services or interacting with local government authorities.”²⁴ Other sanctuary communities specifically narrow the information-sharing restriction to immigration enforcement by preventing local law enforcement from notifying federal immigration authorities about any noncitizen’s release from custody.²⁵

Device five—precluding local participation in joint operations with federal immigration enforcement: The final tactic utilized by sanctuary jurisdictions is to prevent local law enforcement from participating in joint operations with federal immigration authorities. For example, if federal authorities are planning to conduct a series of immigration arrests in a particular community, they might seek out local law enforcement to supplement those efforts.²⁶ One sanctuary policy is to prohibit that sort of cooperation.

All of these devices seek to inhibit local criminal law enforcement from participating in federal enforcement of civil immigration laws.²⁷ That is, the devices are mechanisms by which localities declare that they will not “be an arm of federal immigration authorities.”²⁸

Sanctuary jurisdictions elect to separate themselves from federal immigration enforcement for various reasons. Common rationales include:

- (1) the conviction that localities (and not the federal government) should control their own criminal justice priorities and resources;
- (2) a desire to avoid unlawful arrests and detentions;
- (3) the concern that entangling police with immigration enforcement erodes trust among minority community members;
- (4) a commitment to preventing improper discrimination in policing based on race, ethnicity or

22. Lasch et al., *supra* note 8, at 1724–25 (discussing the Criminal Alien Program, CAP, which is the federal program that embeds ICE agents in local jails).

23. Lasch et al., *supra* note 8, at 1707.

24. *Id.* at 1745.

25. *Id.* at 1746.

26. See, e.g., Kris W. Kobach, *The Quintessential Force Multiplier: The Inherent Authority of Local Police to Make Immigration Arrests*, 69 ALB. L. REV. 179, 181 (2005) (characterizing local law enforcement as a “force multiplier” that could “mean the difference between success and failure in enforcing the nation’s immigration laws”); Jeff Sessions, U.S. Att’y Gen., U.S. Dep’t of Justice, Remarks on Efforts to Combat Violent Crime (Aug. 10, 2018), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-efforts-combat-violent-crime> (“85 percent of the law enforcement officers in this country serve at the state and local levels. It is simple arithmetic that we cannot succeed without you.”).

27. Barbara E. Armacost, “Sanctuary” Laws: *The New Immigration Federalism*, 2016 MICH. ST. L. REV. 1197 (2016) (describing sanctuary laws as aimed “to address certain pathologies of a system in which local policing and immigration enforcement has become destructively intertwined.”).

28. Erwin Chemerinsky, *The Constitutionality of Withholding Federal Funds from Sanctuary Cities*, L.A. LAWYER, Apr. 2017, at 60.

national origin; (5) a desire to further diversity and inclusion; and (6) a wish to express disagreement with federal immigration policy.²⁹

The heterogeneity of sanctuary jurisdictions becomes even more clear when we compare two very different sanctuary cities. First, consider Wichita, Kansas. In 2006, the city's Police Department instituted a policy which stated that "[o]fficers shall not seek or stop a person suspected of being an alien just because he/she is suspected of being in this country illegally."³⁰ Yet the Wichita Police Department policy also directed officers to advise ICE of noncitizens in custody³¹ and to determine whether ICE would like the individual held on their behalf.³² This policy was not accompanied by any policy statement explaining its origin.

Now, consider San Francisco, California. In contrast to Wichita, San Francisco currently prohibits its departments, agencies, commissions, officers, and employees from using city funds or resources to "assist in the enforcement of Federal immigration law or to gather or disseminate information regarding the release status of individual or any other such personal information," except in limited circumstances.³³ The city's administrative code provides numerous reasons for this prohibition, including, among others: "protect[ion of] limited local resources," concerns about the constitutionality of detainers, equal protection and equal treatment for all of its residents, "open communication between City employees and City residents," "the City's core mission of . . . serving the needs of everyone in the community," and "respect and trust between law enforcement and residents."³⁴

In sum, the devices used by sanctuary jurisdictions vary, as do the rationales. The myth that sanctuary jurisdictions are homogeneous is false.

II. MYTH: SANCTUARY CITIES ARE UBIQUITOUS

Another myth about sanctuary cities is that they exist "across the county"³⁵ and are "spreading"³⁶ because activists are pushing for them everywhere.³⁷ The natural corollary is that every U.S. voter should be deeply

29. Lasch et al., *supra* note 8, at 1753 (noting that these rationales are exemplary and not exhaustive). *Id.* at 1753 n.257 ("A desire to avoid family separation and economic disruption are examples of rationales that occur in some policies but are not developed in this Article.").

30. WICHITA POLICE DEP'T, WICHITA POLICE DEPARTMENT POLICY MANUAL § 514.02 (Dec. 4, 2006), available at http://libguides.law.du.edu/ld.php?content_id=41572633.

31. *Id.* § 514.05.

32. *Id.* §§ 514.06–07.

33. S.F. ADMIN. CODE § 12H.2 (2016).

34. *Id.* § 12I.1.

35. See Brendan Kirby, *How Pervasive Is 'Sanctuary City' Problem? Cooperation Is News*, LIFEZETTE (Jan. 31, 2018), <https://www.lifezette.com/2018/01/news-release-shows-how-pervasive-sanctuary-problem-has-become/> (noting a locality's cooperation with federal immigration became news precisely because of "the rise of 'sanctuary' policies across the country, [in] scores of cities and counties.").

36. See Barbara Simpson, *Lies and Illegal Lies: 'Sanctuary' Cities Explode Across U.S.*, WND (Apr. 2, 2017), <https://www.wnd.com/2017/04/lies-and-illegal-lies-sanctuary-cities-explode-across-u-s/>.

37. See David Jaroslav, *The Open-Borders Crowd's "Imaginary Constitution" Says Everywhere Must Be a Sanctuary City*, IMMIGRATIONREFORM.COM (Aug. 24, 2018), <https://immigrationreform.com/>

concerned about the issue of sanctuary cities because, being everywhere, these cities affect the U.S. population as a whole.

In some ways, this myth is perpetuated obliquely. For example, President Donald Trump campaigned nationally on the issue of sanctuary cities.³⁸ Since his election, Trump has continued to bring national attention to the issue through his rally-style speeches,³⁹ press releases,⁴⁰ weekly addresses to the nation,⁴¹ and, of course, tweets.⁴² He has also hosted a roundtable specifically regarding sanctuary cities.⁴³ Other politicians have similarly characterized sanctuary cities as a “national problem.”⁴⁴

The mythical ubiquity of sanctuary cities can impact local politics. In the fall of 2018, U.S. Senator Heidi Heitkamp of North Dakota engaged in a hotly contested reelection campaign.⁴⁵ Heitkamp, a Democrat in a state that voted decisively for President Donald Trump in 2016,⁴⁶ was targeted by the conservative organization Federation for American Immigration Reform (“FAIR”). FAIR ran an attack ad against Heitkamp, criticizing her support for “continued funding for dangerous sanctuary cities,” which the ad described as allowing “safe haven for law breakers and criminals.”⁴⁷ Heitkamp’s opponent, Kevin Cramer, also ran an attack ad focused on

2018/08/24/the-open-borders-crowds-imaginary-constitution-says-everywhere-must-be-a-sanctuary-city/.

38. See, e.g., *Donald Trump: We Will End ‘Sanctuary Cities’*, CNN (Sept. 11, 2016), <https://www.cnn.com/videos/politics/2016/09/01/donald-trump-immigration-block-funding-executive-order-visa-tracking-speech-bts-02.cnn>; *Immigration Reform That Will Make America Great Again*, DONALD J. TRUMP FOR PRESIDENT, INC. (Aug. 16, 2015), <https://assets.donaldjtrump.com/Immigration-Reform-Trump.pdf>.

39. See, e.g., Ian Schwartz, *Full Replay: President Trump Holds ‘MAGA’ Rally in Council Bluffs, Iowa*, REAL CLEAR POL. (Oct. 9, 2018), https://www.realclearpolitics.com/video/2018/10/09/president_trump_holds_maga_rally_in_council_bluffs_iowa.html.

40. See, e.g., WHITE HOUSE, *SANCTUARY CITIES UNDERMINE LAW ENFORCEMENT AND ENDANGER OUR COMMUNITIES* (Mar. 20, 2018), <https://www.whitehouse.gov/briefings-statements/sanctuary-cities-undermine-law-enforcement-endanger-communities/>.

41. The White House, *Weekly Address: 3/10/18*, YOUTUBE (Mar. 10, 2018), https://www.youtube.com/watch?v=cezI_IN0YI0.

42. See, e.g., Donald J. Trump (@realDonaldTrump), TWITTER (April 18, 2018, 2:59 AM), <https://twitter.com/realDonaldTrump/status/986544648477868032>.

43. Donald Trump, U.S. President, White House, *Remarks at Law Enforcement Roundtable on Sanctuary Cities* (Mar. 20, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-law-enforcement-roundtable-sanctuary-cities/>.

44. Michael McCaul, *California Is Building the Wrong Wall*, NAT’L REV. (Oct. 25, 2017), <https://www.nationalreview.com/2017/10/california-sanctuary-state-law-restricts-local-federal-law-enforcement-partnership/> (McCaul is a U.S. Representative for Texas’s 10th congressional district).

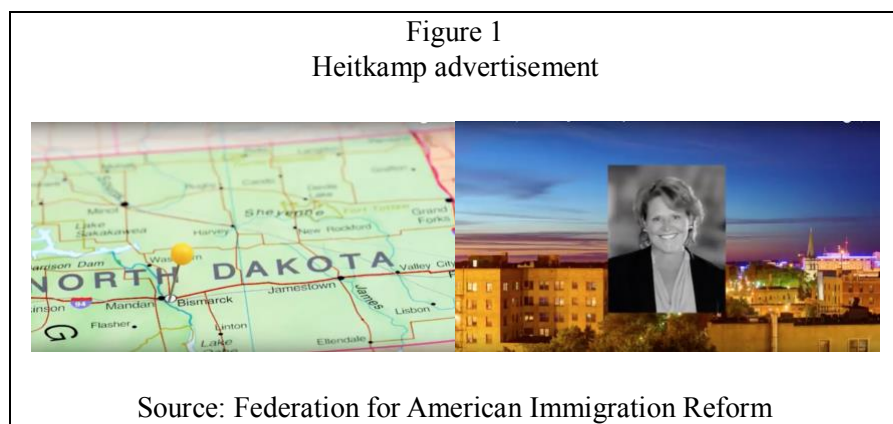
45. See, e.g., Matt Viser et al., *Senate Races Move Right, House Races Move Left in Political Fallout from Kavanaugh Confirmation Fight*, WASH. POST (Oct. 6, 2018), https://www.washingtonpost.com/politics/senate-races-move-right-house-races-move-left-in-political-fallout-from-kavanaugh-confirmation-fight/2018/10/05/74372af2-c811-11e8-b1ed-1d2d65b86d0c_story.html?noredirect=on&utm_term=.e2d7cdf1f202.

46. See *North Dakota Presidential Race Results: Donald J. Trump Wins*, N.Y. TIMES (Aug. 1, 2017), <https://www.nytimes.com/elections/results/north-dakota-president-clinton-trump>.

47. Federation for American Immigration Reform, *Heidi Heitkamp: No Funding for Sanctuary Cities*, YOUTUBE (Sept. 20, 2017), <https://www.youtube.com/watch?v=TCpO9O6JO-s>.

Heitkamp's record regarding sanctuary cities,⁴⁸ as did the super PAC Senate Leadership Fund.⁴⁹

These ads focused on Heitkamp's votes regarding the funding of sanctuary cities, or, rather, her votes against bills that would defund sanctuary cities. But the FAIR ad implied that there were sanctuary cities in or near North Dakota. As shown in Figure 1 below, the advertisement opened on a map of the state with a pin stuck in the state capital of Bismarck and continued on to show a photo of Heitkamp superimposed on a cityscape of Fargo, North Dakota.⁵⁰ The implication was that Heitkamp's voting record would be particularly relevant to North Dakota voters because of the sanctuary cities in their state. Yet according to another conservative immigration organization, the Center for Immigration Studies (CIS), there are not nor were sanctuary cities anywhere in the state of North Dakota.⁵¹



This is not an isolated example. FAIR created a duplicate advertisement about Senator Claire McCaskill,⁵² the incumbent Democrat in a hotly-

48. Kevin Cramer for Senate, *Sanctuary Cities*, YOUTUBE (Aug. 19, 2018), <https://youtu.be/2B94KcSuk5Q>.

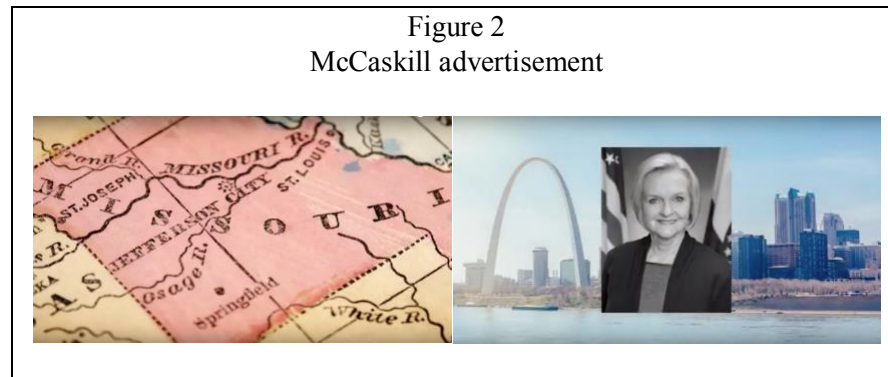
49. Senate Leadership Fund, *Senate Leadership Fund "Which Heidi" ND 15s*, YOUTUBE (Oct. 11, 2018), <https://www.youtube.com/watch?v=HvTAqfl4QvU> (Politifact rated this ad "mostly false"); see Manuela Tobias, *Senate Leadership Fund Distorts Heidi Heitkamp's Record on Immigration*, POLITIFACT (Oct. 19, 2018), <https://www.politifact.com/truth-o-meter/statements/2018/oct/19/senate-leadership-fund/heidi-heitkamps-record-immigration-sanctuary-city/>.

50. I owe particular thanks to Denitsa Mavrova Heinrich, Stephanie Haarsager, Amber Steiner, Hillary Feltman, and Stacey Borboa-Petersen for their efforts to identify the photo used in this ad. I also owe thanks to Stephen Holloway for definitively answering the question by finding the stock photo of Fargo used.

51. See Griffith, *supra* note 4; see also John Hageman Forum News Service, *Heitkamp Calls Barrage of Attacks on 'Sanctuary City' Votes a 'Scare Tactic,' While Cramer Calls the Issue 'Common Sense'*, BISMARCK TRIB. (Aug. 22, 2018) https://bismarcktribune.com/news/state-and-regional/heitkamp-calls-barrage-of-attacks-on-sanctuary-city-votes-a/article_80dc3a5e-df62-5197-8d5d-62fdb6433e64.html ("Republicans acknowledge North Dakota doesn't have those immigration policies. . . North Dakota is not a sanctuary state.").

52. Federation for American Immigration Reform, *Claire McCaskill: No Funding for Sanctuary Cities*, YOUTUBE (Sept. 20, 2017), <https://www.youtube.com/watch?v=z6lgOKWcGkY>.

contested Missouri Senate race.⁵³ As with the Heitkamp advertisement, McCaskill was attacked for her support of “continued funding for dangerous sanctuary cities,” allowing “safe haven for law breakers and criminals.” As with the Heitkamp advertisement, the FAIR ad implied that there were sanctuary cities in or near Missouri. As shown in Figure 2, the ad opened on a map of the state and then showed a photo of McCaskill superimposed on a cityscape of St. Louis, Missouri. Again, the implication was that McCaskill’s voting record would be particularly relevant to Missouri voters because of the sanctuary cities in their state despite the fact that CIS does not report the existence of any sanctuary jurisdictions in Missouri.⁵⁴



FAIR ran identical ads against Senators Sherrod Brown of Ohio,⁵⁵ Joe Manchin of West Virginia,⁵⁶ Debbie Stabenow of Michigan,⁵⁷ and Tammy Baldwin of Wisconsin.⁵⁸ The same words were used. And, as seen in Figures 3, 4, 5, and 6, similar imagery was used, tailored to each state. However, there were not and are not sanctuary jurisdictions in any of these states.

53. Joe Perticone & Skye Gould, *Senate Battleground Map: The Race for Control of the Senate Is as Tight as It Can Be*, BUS. INSIDER (Oct. 28, 2018, 5:30 PM), <https://www.businessinsider.com/senate-elections-map-control-republicans-democrats-states-2018-9>.

54. Griffith, *supra* note 4.

55. Federation for American Immigration Reform, *Sherrod Brown: No Funding for Sanctuary Cities*, YOUTUBE (Sep. 20, 2017), <https://www.youtube.com/watch?v=UZrT062jUps>.

56. Federation for American Immigration Reform, *Joe Manchin: No Funding for Sanctuary Cities*, YOUTUBE (Sep. 20, 2017), https://www.youtube.com/watch?v=Ezvkj_TOreo.

57. Federation for American Immigration Reform, *Debbie Stabenow: No Funding for Sanctuary Cities*, YOUTUBE (Sep. 20, 2017), <https://www.youtube.com/watch?v=DDz7O9vAeBs>.

58. Federation for American Immigration Reform, *Tammy Baldwin: No Funding for Sanctuary Cities*, YOUTUBE (Sep. 20, 2017), <https://www.youtube.com/watch?v=eEVMGyNyzJE>; see Federation for American Immigration Reform, *Bob Casey: No Funding for Sanctuary Cities*, YOUTUBE (Sep. 20, 2017), <https://www.youtube.com/watch?v=JHd4cuqF2Sg> (this state does have some sanctuary jurisdictions).

Figure 3
Brown advertisement

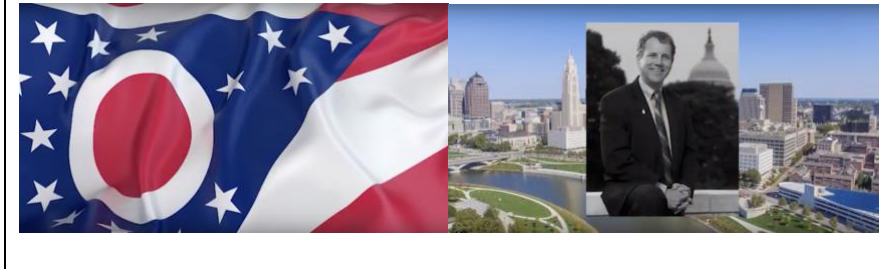


Figure 4
Manchin advertisement

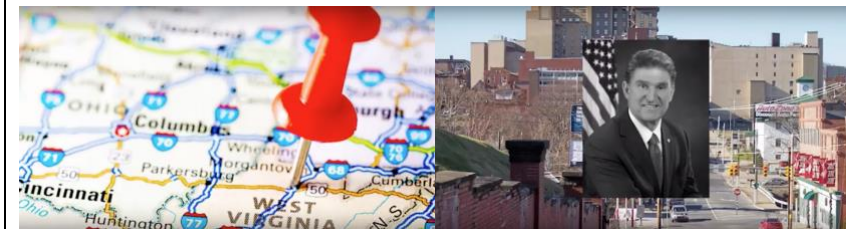
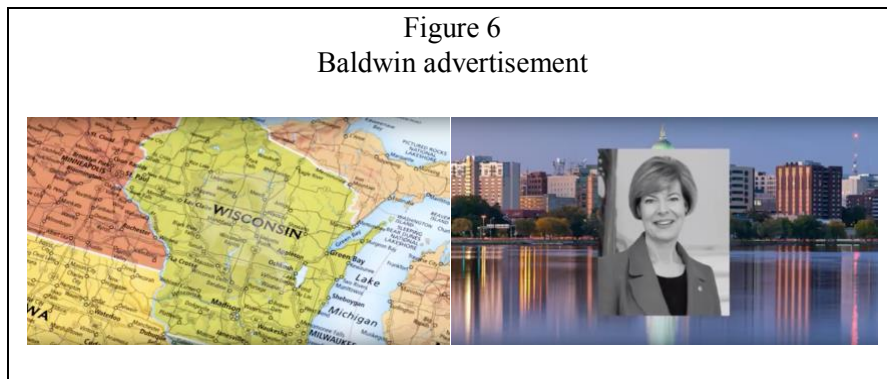


Figure 5
Stabenow advertisement

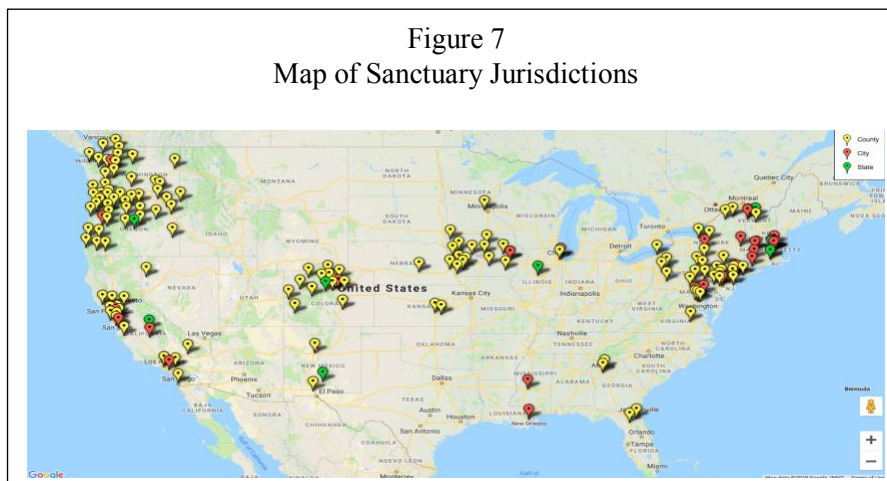


Figure 6
Baldwin advertisement



In contrast to the suggestion of these FAIR ads, Figure 7 below indicates that large swaths of the United States do not identify as sanctuaries of any sort.⁵⁹

Figure 7
Map of Sanctuary Jurisdictions



The myth that sanctuary cities are everywhere is false.

59. Griffith, *supra* note 4. The Immigrant Legal Resource Center maps similar information in a different way – identifying which jurisdictions nationwide offer the most or least cooperation with deportations. See Graber, *supra* note 11 at 9–10. It is important to note that just because a community does not identify as a sanctuary, nor employs any of the devices identified in Part I, that does not mean it is an anti-immigrant jurisdiction. Indeed, communities around the United States are discussing how to become more welcoming to immigrants of all stripes. See, e.g., Kit Johnson, *Grand Forks, ND: Welcoming New Americans*, IMMIGRATIONPROF BLOG (April 10 2018), <http://lawprofessors.typepad.com/immigration/2018/04/grand-forks-nd-welcoming-new-americans.html>; *Local Action: New Strategies to Build United Communities*, IMMIGRANT LEARNING CTR. (Oct. 17, 2018), <https://www.ilctr.org/promoting-immigrants/ilc-workshops/research/>

III. MYTH: SANCTUARY CITIES ARE LAWLESS

One of the most pervasive myths about sanctuary cities is that they are lawless. President Trump has called out “lawless sanctuary jurisdictions.”⁶⁰ His administration has characterized the issue of sanctuary cities as “a fight . . . between the rule of law and lawlessness.”⁶¹ Former U.S. Department of Homeland Security Secretary Kirstjen Nielsen similarly declared that sanctuary jurisdictions “fl[y] right in the face of rule of law.”⁶² And former U.S. Attorney General Jeff Sessions frequently referred to sanctuary cities as showing “disregard for the law,”⁶³ “undermin[ing] the moral authority of law,”⁶⁴ “contrary to the rule of law,”⁶⁵ and “believ[ing] that they are above the law.”⁶⁶

Other politicians and officials echo this language. As a U.S. Congressman running for Senate, Kevin Cramer argued that sanctuary cities “ignore the rule of law.”⁶⁷ The Attorney General of Arkansas, Leslie Rutledge, has said that sanctuary jurisdictions are guilty of “defying the rule of law.”⁶⁸ And when a federal court upheld anti-sanctuary legislation passed by Texas, the state’s attorney general, Ken Paxton, saluted the decision as “a huge victory for the rule of law.”⁶⁹

Despite this rhetoric, the cities, counties, and states that have undertaken sanctuary policies have often done so in order to further the rule of law. They argue that involvement of local law enforcement in federal immigration efforts negatively affects the relationship between local police and the communities they serve.⁷⁰ These jurisdictions see disentangling from federal civil immigration enforcement as necessary to ensure consistent,

60. WHITE HOUSE, *supra* note 40; *see also* The White House, *supra* note 41 (“The State of California is sheltering dangerous criminals in a brazen and lawless attack on our constitutional system of government.”).

61. WHITE HOUSE, *supra* note 6.

62. Trump, *supra* note 42.

63. Jeff Sessions, U.S. Att’y Gen., Remarks on Sanctuary Jurisdictions (Mar. 27, 2017), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-sanctuary-jurisdictions>.

64. Jeff Sessions, U.S. Att’y Gen., Remarks to Federal Law Enforcement Authorities About Sanctuary Cities (Sept. 19, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-federal-law-enforcement-authorities-about>.

65. *Id.*

66. Jeff Sessions, U.S. Att’y Gen., Delivers Remarks on Sanctuary Policies (Aug. 16, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-sanctuary-policies>.

67. Cramer, *supra* note 48.

68. Trump, *supra* note 43.

69. *Texas Attorney General: Sanctuary City Ban a Win for Safety*, FOX NEWS (Mar. 16, 2018), <http://video.foxnews.com/v/5752842260001/?#sp=show-clips>; *see* Ken Paxton, *Providing Sanctuary to the Rule of Law: Sanctuary Policies, Lawlessness, and Texas’s Senate Bill 4*, 55 HARV. J. ON LEGIS. 237, 238 (2018) (“Despite the headlines, the fight over so-called ‘sanctuary jurisdictions’ in America at its core is not about immigration policy. The issue is far more critical and urgent: restoring the rule of law.”).

70. *See* Cara Cunningham Warren, *Sanctuary Lost? Exposing the Reality of the “Sanctuary-City” Debate & Liberal States-Rights’ Litigation*, 63 WAYNE L. REV. 155, 158–59 (2018).

nondiscriminatory, and transparent local law enforcement.⁷¹ In this way, sanctuary devices aim to promote effective policing,⁷² not lawlessness.

In addition to the fact that jurisdictions seek to promote effective policing through their sanctuary policies, these jurisdictions have the authority to make their own decisions about how to pursue effective policing. That authority comes from the Tenth Amendment, which indicates that powers not specifically delegated to the federal government are “reserved to the States.”⁷³ The Supreme Court has consistently held that one of the most significant powers “reserved” by the amendment is the police power, the state’s power to fight crime.⁷⁴

Even if we take a step back from the issue of what goals sanctuary jurisdictions hope to achieve and the constitutional power they have to set those goals, the tendency of sanctuary devices to further the rule of law become even more pronounced when considering the specific issue of honoring immigration detainees. Several courts have concluded that jails can be liable for federal constitutional violations if they hold a noncitizen in jail pursuant to an immigration detainer after the time that noncitizen would otherwise be released on bail because charges have been dropped or time served.⁷⁵ Liability in this vein rests on the fact that holding an individual after this point amounts to a new arrest. And in these circumstances, detention pursuant to an immigration detainer would be unlawful as it would rest not on a judge’s finding of probable cause that a crime had been committed but rather on a federal agent’s assertion that there has been a civil violation. Beyond the question of whether local jurisdictions violate federal law in honoring detainees, there is also the question of liability under state law: Some state courts have found that immigration detainees create violations of state law.⁷⁶ When local law enforcement acts contrary to the U.S. constitution or state law, they open themselves up to not only lawsuits, expensive enough standing alone, but damages as well.⁷⁷ Thus, the choice not to honor

71. See, e.g., *What Would Happen If We #AbolishICE*, CROOKED MEDIA (July 25, 2018), <https://crooked.com/podcast/what-would-happen-if-we-abolishice/> (comments of immigration law professor Hiroshi Motomura starting at 27:06).

72. Warren, *supra* note 70, at 160.

73. U.S. CONST. amend. X.

74. See *United States v. Morrison*, 529 U.S. 598, 618 (2000) (“We can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.”).

75. See, e.g., Ming H. Chen, *Trust in Immigration Enforcement: State Noncooperation and Sanctuary Cities After Secure Communities*, 91 CHI.-KENT L. REV. 13, 29–30 (2016) (discussing the legality of immigration detainees); Kevin Johnson, *Federal Judge Rules That Immigration Detainers Are Unconstitutional*, IMMIGRATIONPROF BLOG (June 9, 2017), <http://lawprofessors.typepad.com/immigration/2017/06/federal-judge-rules-that-immigration-detainers-are-unconstitutional.html> (discussing the Texas lawsuit *Santoyo v. United States*).

76. See, e.g., Kevin Johnson, *State Immigration Detainer Enforcement Is Unlawful, Says Massachusetts Supreme Judicial Court*, IMMIGRATIONPROF BLOG (July 24, 2017), <http://lawprofessors.typepad.com/immigration/2017/07/state-immigration-detainer-enforcement-is-unlawful-supreme-judicial-court.html> (discussing the Massachusetts lawsuit *Lunn v. Commonwealth*).

77. See, e.g., *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 U.S. Dist. LEXIS 50340 at *36 (D. Or. Apr. 11, 2014) (finding the 14th Amendment rights of a noncitizen had been violated when held pursuant to an immigration detainer, leaving open the issue of damages).

immigration detainees should be understood to be an act carefully designed to follow the law.⁷⁸

The myth that sanctuary cities are lawless is false.

IV. MYTH: SANCTUARY CITIES SHIELD CRIMINALS

President Trump has denounced sanctuary cities as “shield[ing] criminal aliens from federal law enforcement.”⁷⁹ Sanctuary cities are, in the president’s words, the “best friends of gangs and cartels like MS-13”⁸⁰ as well as “smugglers . . . drug dealers, human traffickers, killers and other violent offenders.”⁸¹ Such cities, he contends, are “safe havens for criminals.”⁸²

Other politicians echo these talking points. U.S. Congressman Michael McCaul says sanctuary cities are “helping individual criminals evade federal law enforcement.”⁸³ Casey Cagle, a candidate for governor of Georgia, has told voters that “Criminal illegal aliens are spreading across the country. Liberal politicians and sanctuary cities are shielding them.”⁸⁴ A group called Better Colorado Now says sanctuary cities are “havens for criminal illegal immigrants.”⁸⁵ Pennsylvania state representative Martina White denounces sanctuary cities as “protect[ing] illegal immigrants who commit crimes in our city.”⁸⁶ And Texas Attorney General Ken Paxton describes sanctuary cities as “protect[ing] illegals who have committed criminal acts.”⁸⁷

78. Other sanctuary devices may also tie to concerns about the law as much as policy concerns. See, e.g., Graber, *supra* note 11, at 14 (discussing Vermont’s policy to not inquire about immigration status with a lawsuit in the state finding a county sheriff violated state law by inquiring into the immigration status of a passenger during a traffic stop. See generally *Alcudia v. Grand Isle Cty. Sheriff’s Dep’t*, VHRC Complaint No. PA15-0021 (Vt. Human Rts. Comm’n, Oct. 15, 2015), <https://assets.documentcloud.org/documents/2648568/Alcudia-v-Grand-Isle-County-Sheriff-Department.pdf> (investigative report of the VT Human Rights Commission finding a violation of the state’s Fair Housing and Public Accommodations Act).

79. The White House, *Weekly Address: 12/09/2017*, YOUTUBE (Dec. 9, 2017), <https://www.youtube.com/watch?v=pfVIIMtcDWw>.

80. Fox Business, *Trump Calls Out ‘Sanctuary City’ Mayors*, YOUTUBE (Jan. 24, 2018), <https://www.youtube.com/watch?v=YnHeYZ7ecuc>.

81. The White House, *supra* note 41.

82. *Id.* (describing sanctuary cities as “releasing thousands of criminal aliens into U.S. communities.”); see also Charlie Spiering, *Donald Trump: Democrats Want America To Be ‘One Big Fat Sanctuary City for Criminal Aliens’*, BREITBART (Aug. 21, 2018), <https://www.breitbart.com/big-government/2018/08/21/donald-trump-democrats-want-america-to-be-one-big-fat-sanctuary-city-for-criminal-aliens/> (“[T]hey are more protective of the criminal aliens than they are of the people[.]”); CBS News, *Trump Talks ‘Sanctuary Cities’ with Law Enforcement*, YOUTUBE (Mar. 20, 2018), https://youtu.be/_P-m9up3pVY (sanctuary cities “protect criminals”); Criminal Aliens Set Free By Sanctuary Cities, WHITE HOUSE (Feb. 13, 2018), <https://www.whitehouse.gov/articles/criminal-aliens-set-free-sanctuary-cities/> (“[S]anctuary cities . . . defy federal immigration authorities to protect criminal aliens[.]”); Donald Trump, U.S. President, Remarks by President Trump at Law Enforcement Roundtable on Sanctuary Cities (Mar. 20, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-law-enforcement-roundtable-sanctuary-cities/> (transcript of same).

83. McCaul, *supra* note 44.

84. Casey Cagle, *Sanctuary Cities*, YOUTUBE (May 3, 2018), <https://youtu.be/zbwE4JrrRpQ>.

85. Denver7 – The Denver Channel, *supra* note 4.

86. John Roberts, *White House Slams Philadelphia Mayor For ‘Disgusting’ Victory Dance Over Sanctuary City Ruling*, FOX NEWS (June 7, 2018), <http://www.foxnews.com/politics/2018/06/07/white-house-slams-philadelphia-mayor-for-disgusting-victory-dance-over-sanctuary-city-ruling.html>.

87. FOX NEWS, *supra* note 69.

As discussed above, sanctuary policies are varied. Many policies specifically aim to promote the arrest of criminals. For example, by preventing local law enforcement from asking individuals about their citizenship status and from disclosing that status to federal immigration authorities, sanctuary jurisdictions hope to prevent crime by creating an environment in which it is safe for witnesses and crime victims to come forward and interact with local law enforcement without fear of negative immigration consequences.⁸⁸ The goal of such an arrangement is to catch criminals, regardless of their immigration status.⁸⁹

The “shielding criminals” myth, however, seems to have less to do with restricting information about immigration status and more to do with denying ICE access to local jails and limiting local compliance with federal immigration detainers and warrants. Here, the distinction between arrest and conviction is critical. Individuals arrested on suspicion of committing a crime are not considered criminals under our judicial system. Only those who plead guilty or who are found guilty at trial can be accurately described as “criminals.” As such, when local law enforcement fails to honor an immigration warrant⁹⁰ or detainer⁹¹ pertaining to an arrestee, that is not something that can be squared with the rhetoric of shielding criminals. Moreover, the vast majority of the population in local jails are individuals awaiting trial, not serving sentences pursuant to a criminal conviction. Denying ICE access to the pre-trial jail population similarly is not consonant with the rhetoric of shielding criminals. And notably, some sanctuary jurisdictions require compliance with ICE warrants and detainers even for

88. The fear of reporting crime to local law enforcement while undocumented is real. *See, e.g.*, Interview with Ken Chase, Journalist, WDAZ, titled *Undocumented Immigrants Fear Calling 911* (Feb. 21, 2018) (on file with author) (discussing fears that arise when local law enforcement checks “everybody” when responding to a call for help, including those who called for help, and “handing [individuals] over to translators and border patrol agents if the person can’t speak English”); Samantha Schmidt, *An Immigrant Called 911 to Report a Crime. Police Took Him to ICE in Handcuffs*, WASH. POST (Feb. 14, 2018), https://www.washingtonpost.com/news/morning-mix/wp/2018/02/14/an-immigrant-called-9-1-1-to-report-a-crime-police-took-him-to-ice-in-handcuffs/?utm_term=.ecebe7652a5e; US: Immigrants ‘Afraid to Call 911’: States Should Reject Corrosive ‘Secure Communities’ Program, Human Rights Watch (May 14, 2014, 11:55 PM), <https://www.hrw.org/news/2014/05/14/us-immigrants-afraid-call-911#>; *see also* Chemerinsky, *supra* note 28 (“Victims of crime and witnesses to crime will not come forward to the police if they fear deportation.”); Tobias, *supra* note 49 (citing Professor Hiroshi Motomura for the proposition that sanctuary policies “encourage crime reporting and witnesses from the immigrant community to come forward”).

89. This policing model is not solely a creation of sanctuary jurisdictions. For example, San Francisco has a policy that sex workers cannot be arrested for prostitution or petty drug crimes if they come forward as victims of assault, rape, robbery, or extortion. Evan Sernoffsky, *New SF Policies Bar Arrest of Sex Workers Who Come Forward to Report Violence*, S.F. CHRON. (Jan. 11, 2018), <https://www.sfchronicle.com/crime/article/New-SF-policies-bar-arrest-of-sex-workers-who-12492173.php#photo-14219909>. The policy was enacted out of concern that “unreported crimes and criminals pose a threat to everyone’s public safety.” *Id.*

90. An immigration warrant is issued only on the basis of one official’s belief that someone is probably subject to civil removal from the United States.

91. An immigration detainer a request to hold an individual until picked up for civil removal.

arrestees against whom no charges are brought, if that arrestee has a significant criminal history.⁹²

The myth that sanctuary cities shield criminal aliens is false.

V. MYTH: SANCTUARY CITIES SHIELD ILLEGAL ALIENS (WHO ARE CRIMINALS BY DEFINITION)

One of President Trump's first actions upon taking office was to issue an executive order titled "Enhancing Public Safety in the Interior of the United States,"⁹³ which states "Sanctuary jurisdictions across the United States . . . attempt to shield aliens from removal from the United States."⁹⁴ Federal legislators and others have echoed the president's language, arguing that sanctuary cities "hide illegal immigrants,"⁹⁵ "shield illegal aliens,"⁹⁶ and "serve as a magnet for illegal aliens to reside in."⁹⁷

The phrase "illegal alien" or "illegal immigrant" rests on the idea that by living in the United States without authorization, these noncitizens are criminals.⁹⁸ Former Attorney General Jeff Sessions made this point in a speech where he stated: "the Mayor of Oakland called illegal aliens 'law-abiding Oaklanders.' By definition of course, that is not true."⁹⁹

There are multiple problems with this myth. First and foremost, the primary consequence that all undocumented migrants face is civil deportation, not criminal punishment. Equating lack of immigration status with criminality is, therefore, false. Moreover, it is not a crime to be present in the United States without authorization; presence is not a criminally-punishable offense.¹⁰⁰ From this standpoint alone, it is inaccurate to call

92. See, e.g., S.F. ADMIN. CODE §121.3 (2017) (authorizing compliance with an immigration detainer if the individual "has been Convicted of a Violent Felony in the seven years immediately prior to the date of the immigration detainer" when other conditions are also met); see also Lasch et al., *supra* note 8, at 1753 n.255 (discussing criminal-history "carve outs" in Cook County, Illinois and New York City); *Id.* at 1708 n.311 (discussing similar carve outs in Boston).

93. Enhancing Public Safety in the Interior of the United States, 82 C.F.R. § 8799 (2017).

94. *Id.*

95. Cramer, *supra* note 48.

96. Binder, *supra* note 7.

97. *Id.* (statement by Center for Immigration Studies Director of Policy Jessica Vaughan).

98. In some contexts, the words "unlawful" and "illegal" don't necessarily equate with "criminal." Based on my reviews of anti-sanctuary speeches and advertisements, however, the takeaway message is that "illegal" means "criminal." This is the same message behind t-shirts and bumper stickers emblazoned with the phrase "What part of ILLEGAL don't you understand?" See e.g., *What Part of Illegal Don't You Understand T-Shirt*, ZAZZLE, https://www.zazzle.com/what_part_of_illegal_dont_you_understand_t_shirt-235253651402353731 (last visited June 3, 2019); *Illegal Immigration Bumper Stickers & Decals*, ZAZZLE, <https://www.zazzle.com/illegal+immigration+bumper+stickers> (last visited June 3, 2019).

99. Jeff Sessions, Att'y Gen., U.S. Dep't of Justice, Remarks to the Criminal Justice Legal Foundation, (June 26, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-criminal-justice-legal-foundation>; see Simpson, *supra* note 36 (discussing sanctuary proposals "to protect people who are, on the face of it, lawbreakers"). Along the same lines as the discussion in the prior footnote, saying someone is not "law-abiding" or that they are a "lawbreaker" might only mean that they are not complying with the law. See *Lawbreaker*, OXFORD DICTIONARIES, <https://en.oxforddictionaries.com/definition/lawbreaker> ("lawbreaker: a person who violates the law"). But my review of anti-sanctuary speech reveals that these words are not employed as a short form of "one who is breaking our nation's civil laws concerning immigration" but rather as a synonym for "criminal."

100. *Arizona v. United States*, 567 U.S. 387, 407 (2012) ("As a general rule, it is not a crime for a removable alien to remain present in the United States.")

those living in the United States without authorization “illegal” or “criminal.”¹⁰¹

It is a crime to cross the U.S. border into this country without authorization, although doing so is often charged as a misdemeanor.¹⁰² But in any other context we tend not to refer to people who have committed a singular crime as being “illegal,” and certainly not indefinitely.¹⁰³

More to the point, and contrary to the prevailing narrative, the number of such unlawful entrants has been greatly outpaced by the number of individuals who have entered the United States lawfully.¹⁰⁴ That is to say, most individuals living in the U.S. without authorization initially arrived in this country with permission, but overstayed their authorized stay.¹⁰⁵ An example would be an international student who remained in the country after the conclusion of their studies instead of returning to their country of origin. Any such person who has entered with permission but has overstayed their visa is undocumented but has committed no crime whatsoever. Under no circumstances could such a person be considered “illegal.”

That addresses half of the myth—the criminality of noncitizens. But what about the “shielding” of those without authorization? As previously stated, the goal for sanctuary jurisdiction is not to hide those without authorization to be in the United States.¹⁰⁶ The goal is to disentangle local criminal law enforcement from federal civil immigration enforcement.¹⁰⁷ Jurisdictions that opt not to collect data on immigration status aim to create effective and trusted local law enforcement, not to hide the undocumented members of their communities.

The myth that sanctuary cities shield illegal (criminal) aliens is false.

101. Professor Kari Hong argues that a “more accurate term” is “pre-legal immigrant” given that “legal status is fluid and subject to change” with myriad ways of immigrants to “gain or regain status.” Kari Hong, *The Ten Parts of “Illegal” in “Illegal Immigration” That I Do Not Understand*, 50 U.C. DAVIS L. REV. ONLINE 43, 44–45 (2017), <https://lawreview.law.ucdavis.edu/online/vol50/50-online-Hong.pdf>.

102. The two most significant immigration crimes are 8 U.S.C. § 1325 (unlawful entry, a misdemeanor) and 8 U.S.C. § 1326 (unauthorized reentry after deportation, a felony). According to the Transactional Records Access Clearinghouse, § 1325 was the lead charge for more than 8,300 cases brought before U.S. magistrate judges in August 2018 while § 1326 was the lead charge in over 2,300 prosecutions in U.S. district courts. See *Immigration Prosecutions for August 2018*, TRAC IMMIGRATION (Oct. 2018), <http://trac.syr.edu/tracreports/bulletins/immigration/monthlyaug18/fil/>.

103. See Jorge Ramos, *People Are Not Illegal*, DALL. MORNING NEWS (Mar. 23, 2018), <https://www.dallasnews.com/opinion/commentary/2018/03/23/jorge-ramos-people-not-illegal> (“As Holocaust survivor and Nobel Peace Prize laureate Elie Wiesel once said, ‘No human being is illegal.’ A person may commit an illegal act, but nobody can be illegal in and of himself.”); see also Hong, *supra* note 101, at 54–55.

104. See, e.g., Christopher Ingraham, *Most Immigrants Who Enter the Country Do So Legally, Federal Data Shows*, WASH. POST (June 25, 2018), https://www.washingtonpost.com/news/wonk/wp/2018/06/25/most-immigrants-who-enter-the-country-do-so-legally-federal-data-show/?utm_term=.00a409d6340a.

105. *Id.*

106. See *supra* Part IV & V.

107. *Id.*

VI. MYTH: SANCTUARY CITIES ENDANGER U.S. CITIZENS

Another widespread myth about sanctuary cities is that they, in the words of President Trump, “put innocent Americans at the mercy of hardened criminals, hardened murderers, [in] many cases”¹⁰⁸ who “prey on innocent victims.”¹⁰⁹ Other politicians echo that view, chastising sanctuary cities for failing to “keep their families safe,”¹¹⁰ “put[ting] our citizens ... at risk,”¹¹¹ and letting “convicted criminals end up on our streets”¹¹² to “terrorize us on our streets.”¹¹³ Sanctuary cities, as this myth goes, pose a “security risk,”¹¹⁴ where U.S. citizens can wind up dead.¹¹⁵

This myth is typically propped up by stories of individuals who have died at the hands of undocumented migrants.¹¹⁶ President Trump has promoted these narratives by calling those who have lost family members to such crimes “angel families,”¹¹⁷ campaigning with them,¹¹⁸ and, post-inauguration, having them appear with him and speak at events.¹¹⁹ In addition, President Trump has directed the Secretary of Homeland Security to “make public a comprehensive list of criminal actions committed by aliens.”¹²⁰

These stories are recognizable to people who have followed the news in recent years. In July 2015, Kate Steinle was shot while walking on San

108. CBS News, *supra* note 82 (noting that sanctuary cities are not “safe”).

109. The White House, *supra* note 41.

110. Roberts, *supra* note 86 (comments of Pennsylvania State Representative Martina White).

111. Cramer, *supra* note 48.

112. Denver7 – The Denver Channel, *supra* note 4 (Better Colorado Now ad).

113. Cagle, *supra* note 84.

114. FOX NEWS, *Putting a Stop to ‘Sanctuary Cities’*, YOUTUBE (Aug. 10, 2016), <https://www.youtube.com/watch?v=eCHMa0gl0K0&feature=youtu.be> (comments of Senator Pat Toomey).

115. *Corcoran Attacks ‘Sanctuary Cities’ in New Ad*, LOCAL 10 (Jan. 30, 2018), <https://www.local10.com/video/corcoran-attacks-sanctuary-cities-in-new-ad> (advertisement for Richard Corcoran, Florida House of Representatives, discussing the death of Kate Steinle in San Francisco).

116. The conservative group FAIR offers a variety of these anecdotes. See *Examples of Serious Crimes by Illegal Aliens*, FAIR, <http://www.fairus.org/issue/illegal-immigration/examples-serious-crimes-illegal-aliens>; see also Deroy Murdock, *Fugitive Cities Have Harbored 10,000 Criminal-Alien Recidivists*, NAT’L REV. (Mar. 9, 2018, 3:58 PM), <https://www.nationalreview.com/2018/03/fugitive-cities-have-harbored-10000-criminal-alien-recidivists/> (also offering anecdotes).

117. See, e.g., Kenneth P. Vogel & Katie Rogers, *For Trump and ‘Angel Families,’ a Mutually Beneficial Bond*, N.Y. TIMES (July 4, 2018), <https://www.nytimes.com/2018/07/04/us/politics/trump-angel-families-bond-backlash.html>.

118. Tara Golshan, *Donald Trump Introduced Us to “Angel Moms.” Here’s Why They Matter*, VOX (Sept. 1, 2016, 4:30 PM), <https://www.vox.com/2016/9/1/12751434/donald-trump-angel-moms-explained>.

119. Trump, *supra* note 43 (comments of “angel mom” Mary Ann Mendoza); see Donald Trump, U.S. President, White House, Remarks on Immigration (June 22, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-members-angel-families-immigration/>.

120. Enhancing Public Safety in the Interior of the United States, *supra* note 93 at § 9(b). This order led to the creation of the Victims of Immigration Crime Engagement (VOICE) Office within ICE “to acknowledge and serve the needs of crime victims and their families who have been affected by crimes committed by individuals with a nexus to immigration.”

Francisco's Pier 14.¹²¹ The shooter was an undocumented immigrant named Jose Ines Garcia Zarate, who had previously been deported from the U.S. five times and who had a criminal history of nonviolent drug crimes.¹²² In March 2015, after serving time for felony illegal reentry, Garcia Zarate was sent to San Francisco to face the consequences of an outstanding drug warrant dating back to 1995. ICE issued a detainer requesting that Garcia Zarate be kept in custody until he could be picked up by immigration authorities. When the drug charges against Garcia Zarate were dropped in April 2015, he was released from custody without notifying ICE. Less than two months later, Garcia Zarate shot Steinle. Garcia Zarate was ultimately acquitted of intentionally shooting Steinle,¹²³ a verdict President Trump called "disgraceful."¹²⁴

Another well-publicized story is that of Juan Ramon Vasquez.¹²⁵ In 2014, Vasquez was arrested on charges of domestic violence. Vasquez was undocumented and he had been previously deported. ICE issued a detainer on Vasquez, but when the charges against Vasquez were dropped in 2015, he was released without notification to ICE. In 2016, he was re-arrested, this time on charges of rape of a child. He has since been convicted of that crime and is serving eight to 20 years in prison.

These are serious offenses with tragic outcomes. Yet it must be borne in mind that these are anecdotes, and concentrating on anecdotes risks disregarding contrary empirical or scientific evidence.¹²⁶

Consider this data on immigrant criminality: A recent report based on Texas' 2015 conviction and arrest data concluded that undocumented migrants were 50% less likely to be convicted of a crime than native-born Americans in Texas and that legal immigrants were 66% less likely to be convicted of a crime than native-born Americans.¹²⁷ Another recent empirical study, looking at data from 1990 to 2014, found that

121. Michelle Mark, *Kate Steinle's Death at the Hands of a Mexican National Became a Flashpoint in the Immigration Debate — Here's the Story Behind Her Killing*, BUS. INSIDER (Dec. 1, 2017, 4:24 PM), <https://www.businessinsider.com/who-is-kate-steinle-murder-immigration-2017-12>.

122. *Id.*

123. Holly Yan & Dan Simon, *Undocumented Immigrant Acquitted in Kate Steinle Death*, CNN (Dec. 1, 2017, 2:21 AM), <https://www.cnn.com/2017/11/30/us/kate-steinle-murder-trial-verdict/index.html>.

124. Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 30, 2017, 7:30 PM), <https://twitter.com/realDonaldTrump/status/936437372706836480>.

125. Travis Fedschun, *Previously Deported Illegal Immigrant Who Raped Child After Philadelphia Release, Pleads Guilty to Reentry*, FOX NEWS (Aug. 8, 2018), <https://www.foxnews.com/us/previously-deported-illegal-immigrant-who-raped-child-after-philadelphia-release-pleads-guilty-to-reentry>.

Vasquez' photo is utilized by the PAC Senate Leadership Fund in its advertising against N.D. Senator Heidi Heitkamp. See Senate Leadership Fund, *supra* note 49.

126. See Michael Shermer, *How Anecdotal Evidence Can Undermine Scientific Results: Why Subjective Anecdotes Often Trump Objective Data*, SCI. AM. (Aug. 1, 2008), <https://www.scientificamerican.com/article/how-anecdotal-evidence-can-undermine-scientific-results/> (noting the answer lies in evolutionary biology: "false positives (believing there is a connection between A and B when there is not) are usually harmless, whereas false negatives (believing there is no connection between A and B when there is) may take you out of the gene pool"). The power of anecdotes is so strong, the FTC regulates the use of anecdotes in advertising as part of its ongoing mission to prevent false advertising. See 16 C.F.R. § 255 (2009).

127. Alex Nowrasteh, *Criminal Immigrants in Texas*, CATO INST. (Feb. 26, 2018), <https://object.cato.org/sites/cato.org/files/pubs/pdf/irpb-4-updated.pdf>.

“undocumented immigration over this period is generally associated with decreasing violent crime.”¹²⁸ A different study looking at the period from 1970 to 2010 found immigration “consistently linked” to reduction of violent crime and property crime.¹²⁹

The research on immigration and crime is compelling. It is, however, data about immigrant criminality generally, and it does not directly address a cause-and-effect relationship between sanctuary city policies and danger to U.S. citizens. A reporter in Philadelphia, motivated by the story of Juan Ramon Vasquez, sought to look specifically at this relationship.¹³⁰ He found that of 134 individuals that had been released from custody despite ICE detainer requests, 20 were re-arrested (a statistic that compares favorably to prison reincarceration rates), and only two of the 20 re-arrested were involved in crimes of violence.¹³¹ More empirical work in this vein would be valuable, but the most plausible account based on current evidence is that sanctuary city policies lead to decreases in crime.

It also bears repeating that sanctuary jurisdictions employ devices like barring local law enforcement from investigating civil and criminal immigration violations with the goal of encouraging undocumented victims to report crime. Thus, sanctuary jurisdictions may be more effective in investigation crime and apprehending criminals than jurisdictions that have a close relationship with federal immigration enforcement, which can deter reporting by undocumented victims.¹³² Because of this, it is accurate to say that ICE-cooperative cities can end up shielding criminals by threatening victims and witnesses with deportation for coming forward.

On the whole, it is very plausible that sanctuary jurisdictions are substantially safer for U.S. citizens than their non-sanctuary counterparts.

It is also important to assess the myth of dangerousness with a view beyond criminality. Consider the sanctuary device of limiting the disclosure of sensitive information. This device is often implemented when sanctuary jurisdictions want individuals to seek medical treatment for communicable diseases without fear of public health officials reporting them to immigration authorities.¹³³ If such a sanctuary device in fact encourages medical

128. Michael T. Light & Ty Miller, *Does Undocumented Immigration Increase Violent Crime?*, 56 CRIMINOLOGY 370, 393 (2018).

129. See Robert Adelman et al., *Urban Crime Rates and the Changing Face of Immigration: Evidence Across Four Decades*, 15 J. ETHNICITY IN CRIM. JUST. 52, 52 (2017); see also Graham C. Ousey & Charis E. Kubrin, *Immigration and Crime: Assessing a Contentious Issue*, ANN. REV. CRIMINOLOGY 63, 63 (2018) (“[T]he immigration-crime association is negative—but very weak.”).

130. Victor Fiorillo, *The Mayor, the Rapist, and the Fear of the Sanctuary City*, PHILADELPHIA MAG. (Aug. 17, 2018, 8:55 AM), <https://www.phillymag.com/news/2018/08/17/juan-ramon-vasquez-sanctuary-city-crime/>.

131. *Id.*

132. See Chuck Wexler, *Police Chiefs Across the Country Support Sanctuary Cities Because They Keep Crime Down*, L.A. TIMES (Mar. 6, 2017, 4:00 AM), <http://www.latimes.com/opinion/op-ed/la-oe-wexler-sanctuary-cities-immigration-crime-20170306-story.html> (“Had these undocumented people, and countless others in cities across America, not stepped forward to report crime and cooperate with the police, we would have more dangerous offenders committing more crime—and more serious crime—against innocent victims”).

133. See Chemerinsky, *supra* note 28; see also Christine Kwon & Marissa Roy, *Local Action, National Impact: Standing Up for Sanctuary Cities*, 127 YALE L.J. FORUM 715, 720 (2018)

treatment—and more data is on this point would be helpful—then sanctuary city policies would decrease public-health dangers.

Another context for the non-disclosure device is primary and secondary education. Many sanctuary jurisdictions make a policy choice of aiming to encourage individuals to send their children (undocumented and citizens alike) to school without fear that school officials will report parents or children to immigration authorities.¹³⁴ If such a sanctuary device does in fact encourage school attendance—which is a reasonable assumption¹³⁵—then sanctuary jurisdictions reap the benefits of increased school attendance. Increased school attendance matters to crime rates because schooling is significantly associated with reduced crime.¹³⁶ Thus increased school attendance is another means by which sanctuary city policies would appear to decrease rather than increase dangers faced by U.S. citizens.

The myth that sanctuary cities endanger U.S. citizens is false.

VII. SANCTUARY CITIES HAVE AN OBLIGATION TO ENFORCE FEDERAL IMMIGRATION LAW

A frequent myth repeated about sanctuary cities is that they have an obligation to enforce federal immigration law. For example, a Fox News reporter posed this question to Texas Attorney General Ken Paxton: “How did we get to this place where cities and states kind of decide selectively which federal laws they want to enforce?”¹³⁷ President Trump has pushed similar talking points, challenging sanctuary cities as being in “open defiance of federal law,”¹³⁸ “defy[ing] federal authority and obstruct[ing] the enforcement of our immigration laws,”¹³⁹ and engaging in a “dangerous and unlawful nullification of Federal law.”¹⁴⁰ Representative Cramer has called out sanctuary jurisdictions as “breaking the law.”¹⁴¹

In making this argument, anti-sanctuary proponents frequently cite this federal statutory provision:

134. Chemerinsky, *supra* note 28.

135. There is evidence that immigration enforcement can directly affect student attendance. *See, e.g.,* Catherine E. Shoichet, *ICE Raided a Meatpacking Plant. More than 500 Kids Missed School the Next Day*, CNN (Apr. 12, 2018), <https://www.cnn.com/2018/04/12/us/tennessee-immigration-raid-schools-impact/index.html> (discussing student absences following a large workplace raid in eastern Tennessee).

136. *See, e.g.,* Lance Lochner & Enrico Moretti, *The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports*, 94 AM. ECON. REV. 155, 155 (2004) (“[S]chooling significantly reduces the probability of incarceration” and “a significant part of the social return to completing high school comes in the form of externalities from crime reduction.”).

137. FOX NEWS, *supra* note 69 (Paxton’s response to the question was as follows: “I honestly think it goes back to President Obama and how he sort of build a culture of not enforcing laws he didn’t want to enforce.”).

138. The White House, *supra* note 41; *see also* Trump, *supra* note 43 (“angel mom” Mary Ann Mendoza commenting that sanctuary cities are “thumping their nose at federal law”).

139. The White House, *supra* note 79; *see also* Sessions, *supra* note 63 (stating sanctuary cities are “designed to frustrate the enforcement of our immigration laws”).

140. WHITE HOUSE, *supra* note 6.

141. Cramer, *supra* note 48.

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.¹⁴²

A plain reading of the statute indicates that it does not purport to require localities to investigate immigration violations, comply with immigration detainers or immigration warrants, to grant ICE access to jails, or to participate in joint operations with federal immigration enforcement – four of the common sanctuary devices.¹⁴³ Even the sanctuary device of limiting local law enforcement’s disclosure of sensitive information complies with the statute, so long as local law enforcement does not withhold information of immigration status. There is no statutory obligation to inform federal immigration authorities about jail release dates for noncitizens, which is what immigration authorities would most covet.

In addition to the lack of any statutory support for this myth, there is a constitutional problem. Under the Tenth Amendment,¹⁴⁴ the federal government cannot commandeer state and local law authorities to enforce federal law.¹⁴⁵ The seminal case in this area is *U.S. v. Printz*. In an opinion written by Justice Scalia, the Supreme Court held that state and local authorities could not be required by federal law¹⁴⁶ to conduct background checks on individuals before issuing firearms licenses. The Court held that “such commands are fundamentally incompatible with our constitutional system of dual sovereignty.”¹⁴⁷ For the same reasons, local law enforcement cannot be commandeered to enforce federal immigration law.¹⁴⁸

The myth that sanctuary cities have an obligation to enforce federal immigration law is false.

142. 8 U.S.C. § 1373(a). A second statute contains nearly identical language. 8 U.S.C. § 1644 (“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.”).

143. The clear break between the statutory language and the realities of sanctuary jurisdictions calls to mind the famous line of Inigo Montoya (played by Mandy Patinkin) in *The Princess Bride*: “You keep using that word. I do not think it means what you think it means”. *THE PRINCESS BRIDE* (20th Century Fox 1987).

144. U.S. CONST. amend. X (“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.”).

145. *United States v. Printz*, 521 U.S. 898 (1997).

146. The Brady Handgun Violence Prevention Act, Pub.L. 103–159, 107 Stat. 1536 (1993) (codified as 18 U.S.C. §§ 921–22).

147. *Printz*, 521 U.S. at 935.

148. Some have argued that 8 U.S.C. § 1373(a) is itself unconstitutional in following *Printz*. See, e.g., Bernard W. Bell, *Sanctuary Cities, Government Records, and the Anti-Commandeering Doctrine*, 69 RUTGERS U. L. REV. 1553 (2017).

VIII. MYTH: SANCTUARY CITIES ARE NOT ENTITLED TO FEDERAL TAX DOLLARS

One of the cornerstones of Donald Trump's presidential campaign was a pledge to "[c]ut-off federal grants to any city which refuses to cooperate with federal law enforcement."¹⁴⁹ He delivered on this promise with his anti-sanctuary executive order, stating that sanctuary jurisdictions "are not eligible to receive Federal grants."¹⁵⁰ The Department of Justice followed through on this order by announcing it would deny a key source of federal funding to sanctuary jurisdictions.¹⁵¹

Sanctuary jurisdictions immediately filed suit, challenging the right of the federal government to restrict funding. In April 2018, the Seventh Circuit issued a nationwide preliminary injunction directed towards the DOJ's threatened funding cuts.¹⁵² In early August 2018, the Ninth Circuit similarly sided with sanctuary jurisdictions, enjoining the application of the executive order to the litigating localities.¹⁵³ The Ninth Circuit emphasized that the executive order was not congressionally authorized.¹⁵⁴ This lack of authorization was critical given the court's conclusion that only Congress can impose conditions on federal grants.¹⁵⁵ Congress' "power of the purse" comes from the U.S. Constitution's Appropriations Clause and Spending Clause.¹⁵⁶ The court reasoned that such power is essential to the separation of powers that defines the U.S. political system.¹⁵⁷ So, while Congress might be in a position to withhold funds to sanctuary jurisdictions,¹⁵⁸ the president cannot accomplish this by some form of executive order or DOJ directive.

The myth that sanctuary jurisdictions are not entitled to federal tax dollars is false.

IX. MYTH: SANCTUARY CITIES ARE A CALL FOR OPEN BORDERS

The final myth to analyze is that sanctuary cities are part of a movement toward open borders. In an oft-repeated view, former Attorney General Jeff Sessions has said, "At bottom, these policies of these sanctuary jurisdictions call for open borders."¹⁵⁹ In other words, sanctuary jurisdictions are seen to

149. DONALD J. TRUMP FOR PRESIDENT, INC, *supra* note 38; see CNN, *supra* note 38 (campaigning to "block funding for sanctuary cities").

150. Enhancing Public Safety in the Interior of the United States, *supra* note 93.

151. Lasch et al., *supra* note 8, at 1717 (discussing the denial of "their Byrne Justice Assistance Grants ("JAG"), a leading source of federal funding for state and local criminal justice systems").

152. *Chicago v. Sessions*, 888 F.3d 272 (7th Cir. 2018).

153. *San Francisco v. Trump*, 897 F.3d 1225 (9th Cir. 2018).

154. *Id.* at 1231.

155. *Id.*

156. *Id.*

157. *Id.*

158. This is a question for another day and one that will likely implicate the anti-commandeering principles noted in Part VII.

159. Trump, *supra* note 43; see Sessions, *supra* note 64 ("[T]hey are . . . a declaration of open borders"); Sessions, *supra* note 99 ("[T]hese are de facto open borders policies"); Jeff Sessions, U.S. Att'y Gen., Remarks on Efforts to Combat Violent Crime (Aug. 10, 2018),

evidence of an attempt to “erase our borders.”¹⁶⁰ This myth dovetails with President Trump’s refrain that Democrats are the party of open borders.¹⁶¹

In support of these assertions, Sessions points to just one piece of evidence—that Hillary Clinton once said, “My dream is a hemispheric common market, with open trade and open borders.”¹⁶² Clinton delivered those remarks in a paid speech to investors of a Brazilian bank,¹⁶³ and they were revealed by way of Wikileaks.¹⁶⁴ The full quote, however, is this: “My *dream* is a hemispheric common market, with open trade and open borders, *some time in the future* with energy that is as green and sustainable as we can get it, powering growth and opportunity for every person in the hemisphere.”¹⁶⁵ It is hard to see this one-time statement, couched as it is, as a “call for open borders.” Notably, there is no other source to support a statement that Clinton herself truly sought “open borders.” Sessions points to no other statement from any other politician to bolster his argument that sanctuary jurisdictions are a “call for open borders.” To the contrary, lawmakers have spoken out against this charge—denying the sweeping characterization.¹⁶⁶

It makes sense that lawmakers would denounce any association with open borders. Open borders is a purely hypothetical issue, largely discussed in academic circles.¹⁶⁷ While the Wall Street Journal has occasionally proposed an open-borders constitutional amendment—“There shall be open borders”—even that storied institution’s offering “is meant as an ideal, to be sure, rather than an immediate policy prescription.”¹⁶⁸ Those who advocate for open borders typically seek to push discussion about whether liberal democracies can justify impinging on an individual’s inalienable right to

<https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-efforts-combat-violent-crime> (suggesting sanctuary cities are “an extreme open borders policy”).

160. WHITE HOUSE, *supra* note 6.

161. *See, e.g.*, Donald J. Trump (@realDonaldTrump), TWITTER (July 31, 2018), <https://twitter.com/realDonaldTrump/status/1024248479386923009> (“The Democrats want Open Borders.”). A recent attack ad from the PAC Future45 claims “voting for any Democrat gets you . . . undefended open borders.” Future45, “*Any Democrat*”, YOUTUBE (Oct. 16, 2018), <https://www.youtube.com/watch?v=PeVC5Kp5N4A>.

162. Jeff Sessions, U.S. Att’y Gen., Remarks to the Criminal Justice Legal Foundation (June 26, 2018), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-criminal-justice-legal-foundation>.

163. John Kass, *Will Hillary Explain Her Dream of ‘Open Borders’?*, CHI. TRIB. (Oct. 11, 2016), <https://www.chicagotribune.com/news/columnists/kass/ct-hillary-clinton-open-borders-kass-1012-20161011-column.html>.

164. *HRC Paid Speeches*, WIKILEAKS, <https://wikileaks.org/podesta-emails/emailid/927%23efmFhxFke>.

165. *Id.* (emphasis added).

166. *See* Linda Qiu, *No, Democrats Don’t Want ‘Open Borders’*, N.Y. TIMES (June 27, 2018), <https://www.nytimes.com/2018/06/27/us/politics/fast-check-donald-trump-democrats-open-borders.html> (discussing denials to these effect from Senator Chuck Schumer and Representative Nancy Pelosi).

167. *See, e.g.*, Kit Johnson, *A Citizenship Market*, 2018 UNIV. ILL. L. REV. 969, 975 (2018) (discussing the case for open borders, which is supported both by migrant-friendly academics in law and philosophy on the left and pro-free-trade academics, largely economists, on the right).

168. Robert L. Bartley, *Thinking Things Over: Liberty’s Flame Beckons a Bit Brighter*, WALL ST. J., July 3, 2000, at A13.

travel or how a nation might reap the benefits of genuinely free trade.¹⁶⁹ Open borders is a discussion point, not a policy directive.

In contrast to open borders, sanctuary policies are not hypothetical nor a vehicle for discussion. They are a legal reality. Jurisdictions are currently experimenting with various ways to disentangle local law enforcement from federal immigration enforcement.

Even as localities experiment with sanctuary devices, the fact is that sanctuary jurisdictions have no authority over U.S. borders. They cannot make choices about federal border enforcement or national immigration policy. Many are far removed geographically from the border.¹⁷⁰ States and local governments have no power or capacity to “erase our borders.”

The myth that sanctuary cities are a call for open borders is false.

CONCLUSION

This Essay has endeavored to cut through the myths surrounding sanctuary jurisdictions in order to provide a more realistic picture of sanctuary policies: Sanctuary jurisdictions vary in their goals and practices. They do not predominate across the United States. Where sanctuary policies have been adopted, they are intended to further the rule of law, not to hide criminals or undocumented individuals. Claims that sanctuary policies create dangers for U.S. citizens are unsupported and against the weight of the evidence. Like all cities, sanctuary cities have no obligation to enforce federal immigration law and thus should not be financially punished for not doing so. Finally, sanctuary cities are not a call for open borders.

Jurisdictions that have adopted sanctuary devices do so in light of local policy preferences and available local funding. Sanctuary policies are seen as the best way to disentangle local law enforcement from federal immigration enforcement. And that, these jurisdictions conclude, is best for everyone. Sanctuary city devices and the relation of local to federal law enforcement is an area of legitimate policy disagreement. But the current rhetoric opposing sanctuary cities reflects political opportunism and fearmongering rather than reasoned argument about the merits of sanctuary city policies. Dispelling the myths may help clear the way for a more productive discussion about sanctuary city policies.

169. Johnson, *supra* note 167 at 975–79.

170. See *supra* Figure 1.

