



# Searching for Sanctuary

An Analysis of America's Counties & Their Voluntary Assistance With Deportations



# Acknowledgments

**authors** lena graber

nikki marquez

**contributors** kemi bello

nora castaneda

angie junck

jose magana-salgado

grisel ruiz

**cartographer** victoria beckley

**report design** kemi bello



## About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) is a national nonprofit that works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training & technical assistance, and policy development & advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

To learn more about our work, visit: [www.ilrc.org](http://www.ilrc.org)

## Photo Credit

Cover: Young member of the Georgia Latino Alliance for Human Rights (GLAHR) advocates for no more deportations at a rally in Georgia.

All photographs within this report obtained with permission from photographer & anthropologist Steve Pavey: [www.stevepavey.com](http://www.stevepavey.com)

# contents

december 2016



01

## INTRODUCTION

Amidst looming threats of mass deportation from the incoming administration, what is the role of local governments and local law enforcement?

03

## MEASURING LOCAL LAW ENFORCEMENT'S ASSISTANCE WITH DEPORTATIONS

Our findings indicate that the majority of localities across the country spend their own resources assisting with federal immigration enforcement.

23

## THE PROMISE OF SANCTUARY

There are many ways that cities and counties can lawfully provide sanctuary for immigrants. At the root, they must work to keep families together and safe.

# section i.

## introduction:

The Immigrant Legal Resource Center (ILRC) supports local campaigns across the country to fight back against unfair detention and deportations and to protect immigrant rights. Our evaluation of the involvement of local law enforcement in deportations focuses on policies that allow immigrants to be safe, protect their right to remain here in their communities, and mitigate against the harsh immigration consequences of any interaction with the criminal legal system.

We are on the cusp of a new administration, led by a President-elect that has campaigned on a promise to banish millions of our country's residents from their homes and communities. The 2.5 million deportations under the Obama administration have made immigrant communities already intimately aware of the pain and loss of permanent family separation. Yet the President-elect's threatening campaign and troubling allusions to historical periods of ethnic cleansing, both in the United States and abroad, urge us to take his promises very seriously.

The Trump administration will be inheriting a well-oiled deportation and detention machine. The Department of Homeland Security (DHS) operates the largest police force in the nation and has a budget that is \$4 billion more than all of the other federal law enforcement agencies combined.

Over the past ten years, the increased involvement of city and county law enforcement in the deportation business – at the urging of DHS and particularly Immigration and Customs Enforcement (ICE) – has played a central role in the record-breaking volume of deportations we see today.

It is because of this assistance from local law enforcement that the Obama administration gained the capacity to detain and deport so many people. That massive infrastructure will now be led by an administration with an even more ambitious nativist agenda.

In light of this imminent danger, numerous city leaders have stepped up to the plate, pledging their commitment to keep the immigrant residents of their jurisdictions safe. Some cities have done so through declaring themselves “sanctuaries,” while others have cited the need to focus their resources on local priorities.

In response to these common-sense pledges by city leaders to support public safety for all, regardless of immigration status, there have been threats to take away funding from cities that decline to take on the federal government's job and seek to separate their local functions from civil immigration enforcement.

Yet the provisions of these sanctuary policies lie in line with, not in defiance of, our federal system.

Local jurisdictions have no legal obligation to assist with civil immigration enforcement, which is the responsibility of the federal government. A local decision to offer resources to federal immigration enforcement authorities is completely voluntary. The President-elect's threat to cut city funding is purely retaliatory in motivation.

City leaders can and must continue to enact policies that prevent unnecessary deportations.

It is important to note that city-level “sanctuary policies” are not the focus of this report.

The jail-to-deportation pipeline is mostly grounded at the county level, where the civil immigration and criminal legal systems have become increasingly intertwined. Although there are many problems with biased policing against immigrants, ICE regularly operates out of county jails across the country, interrogating inmates in local custody, asking sheriffs to deliver information on immigrants, and requesting that jails hold people at ICE's convenience.

Thus it is primarily the county's policy regarding assistance with deportations that governs how immigrants may be profiled and funneled into the deportation pipeline.



Given the significance of these county-level policies, this is where we shall focus the bulk of our analysis. Our findings indicate that there are ample and urgent opportunities for counties to take proactive action to preserve their local resources and keep families and communities intact.

Currently, an overwhelming majority of counties are involved in assisting ICE with deportations to varying degrees, all voluntarily. Without enacting stronger county-level policies limiting assistance with deportations, county elected officials and sheriffs knowingly continue to put their residents at risk by keeping their localities enmeshed with the deportation pipeline.

When local police and sheriffs participate in deportations, immigrants need not be convicted of an offense to find themselves trapped in this system. Every encounter with local law enforcement provides ample opportunity for immigrants to be racially profiled and flagged for deportation, regardless of their immigration status. After fully satisfying their sentencing or rehabilitation terms in the criminal legal system, unlike U.S. citizens, immigrants with convictions are being forced to pay double punishment for their actions by then being turned over to ICE for detention and deportation. On top of this, our immigration system is considered civil law, and offers none of the due process protections afforded in our criminal legal system. Immigrants have no right to a public defender to fight their deportation, and many do not even get a hearing in court or the chance to have a judge use discretion to consider the full merits of their case. Many immigrants facing deportation are imprisoned, without access to counsel or even a right to a bond hearing, in for-profit detention centers, devastating their families.

When communities view local law enforcement as a direct gateway to permanent separation from their families, the already-fragile relationship of community trust with police becomes completely severed.

As a result, victims of domestic and other violence choose to suffer in silence rather than seek assistance; key witnesses of crime refuse to come forward out of fear that they themselves will become a target; a climate of fear grips entire neighborhoods; and anxiety-ridden children struggle in school. The public safety of all of the county's residents becomes endangered – a safety that rests solidly on the premise that police are there to protect and to serve all residents equally.

Counties hold tremendous power in making a real difference in keeping families together by providing clear, policy-based distinctions between their local responsibility to enforce criminal law and the federal government's responsibility to enforce civil immigration law. The continuous blurring of those lines puts millions at risk of being unjustly targeted for deportations and destabilizes entire communities.

**We strongly urge county and state officials to take immediate steps to adopt or strengthen the policies outlined within this report.**

**Though sanctuary cities will continue to play an important role, we need more county and states to delineate themselves from federal immigration enforcement and protect their communities.**



## section ii.

# measuring law enforcement assistance with deportations

**COUNTIES, not cities, are the most important policy-makers in terms of establishing sanctuary policies.**

The ILRC has been tracking local policies regarding assistance with deportations through city and county use of ICE detainees since 2013. In November 2016, we received data from a Freedom of Information Act (FOIA) request that provided details on how local jails across the country have met with ICE and what levels of assistance they said they were willing to provide.

Based on this data, as well as our own collected data from existing written policies and ordinances, we analyzed the extent of local assistance in civil immigration enforcement across the country.

We identified seven different types of policies to consider in assessing the extent of local assistance with immigration enforcement in different jurisdictions. We used these factors to evaluate the extent to which local law enforcement agencies offer voluntary assistance to ICE. Without enacting policies to preserve local resources and safety for the entire community, regardless of immigration status, local law enforcement will continue to be extensively involved in deportations.

All of the factors in the rubric below involve a choice of whether to offer voluntary assistance to ICE or to decline to offer such assistance. As our map reveals, most jurisdictions, including some that might call themselves “sanctuary cities,” voluntarily offer substantial assistance to federal immigration enforcement.



## **a. rubric for evaluating county policies across the country:**

We focus on county sheriffs and county jails because that is the primary jurisdiction where decisions about engagement with ICE are made. The role and authority of sheriffs and county jails varies from state to state, but in the majority of the U.S., the county-level government manages the jails and the legal system, and that is where the greatest entanglement with immigration enforcement occurs.

Local participation or assistance with immigration enforcement is completely voluntary. No local government or agency has any legal obligation to use any of its resources to help ICE or Customs and Border Protection (CBP). Rather, localities may face liability for enforcing civil immigration laws.

ICE has spent the last decade pushing for greater access into local jails and demanding more information and assistance from local sheriffs. The result is that any immigrant (lawful permanent residents and undocumented immigrants alike) who is arrested or detained in local custody is at risk of being placed in deportation proceedings.

As a result, the chief focus of our analysis is on how much county jails currently offer ICE their resources and assistance or how much they push back against participating in the massive deportation machine. A different rubric for evaluating policy choices at the city level is explained below in part C of section II.

There are thousands of different jurisdictions and law enforcement agencies across the country and this rubric is not exhaustive of all the possible policy choices. These are the most common types of policies that we are aware of and that we have data on. Within the criminal legal system there are many more agencies and actors that can also play a positive or negative role in immigrant safety. For example, criminal and other courts, prosecutors and probation departments engage with immigrants and ICE in many ways that should be carefully monitored.

**Sanctuary policies are about preserving local resources for local priorities, rather than volunteering assistance in immigration enforcement.**



# County Policy Rubric

Policy Option	Description	Reasons for Policy
<b>No ICE Holds</b>	An ICE hold, also called an ICE detainer, is a request from ICE to a local jail or law enforcement agency to hold a person, after they should be released, for additional time to allow ICE to come take custody.	Several federal courts have found that holding people for ICE pursuant to ICE detainers is illegal. Any law enforcement agency that prolongs detention on the basis of an ICE detainer may be liable for unlawful detention.
<b>No 287(g)</b>	The 287(g) program is a program that specifically deputizes certain local law enforcement agents to enforce immigration laws.	287(g) turns local police into immigration agents, meaning that contact with local public safety officials could be a direct route to deportation. Furthermore, all the costs of this work fall on the city or county, so the locality is paying to do the federal government's job.
<b>No ICE Detention Contract</b>	An ICE detention contract is a contract between ICE and a local jail where ICE pays the jail to hold immigrants in detention during their deportation proceedings.	Contract detention uses local jail space to detain people for the federal government, and muddies the lines between local law enforcement officers and immigration authorities.
<b>No ICE alerts</b>	An ICE alert, also called an ICE detainer or an ICE notification request, is a request from ICE to be alerted when a particular person will be released from custody, so that ICE can come get them.	ICE alerts are a type of immigration detainer, which have been heavily criticized by federal courts. ICE alerts put an additional burden on local resources to respond to ICE inquiries or help transfer people to ICE, and further the perception the local police are not safe for immigrants to come to.
<b>Limits on ICE in Local Jails</b>	Some communities do not allow ICE in the secured area of the jail without a warrant, or enact procedural protections for immigrants in the jail so that they can refuse to be interrogated by ICE agents.	When ICE agents are given open access to interrogate inmates in local jails, police and sheriffs are enabling racial profiling and further undermining trust with immigrants. Immigration interviews when in local custody make immigrants see all local officials as a threat.
<b>Prohibitions on inquiries into immigration status and/or place of birth</b>	Some jails prohibit their officers or employees from inquiring into immigration status or place of birth.	Prohibitions on asking about immigration status are meant discourage profiling and discrimination, and to remind local law enforcement officers that immigration enforcement is not their business or responsibility.
<b>General prohibitions on use of resources to assist immigration enforcement.</b>	Some jurisdictions enact more general policies to prohibit the use of local resources in assisting with immigration enforcement. Often they specifically prohibit local officers from participating in joint patrols with ICE.	These prohibitions often focus on preserving local resources for local priorities and drawing a clear line between local agencies and federal immigration authorities.



# EXPLAINER:

## County Policies Relating to Immigration Enforcement

Communities of color are disproportionately targeted by law enforcement. As poor and brown communities are funneled from an unjust criminal justice system into an immigration deportation system that lacks even the most basic due process protections, ICE's local enforcement efforts continue to intensify this dynamic. Immigrant communities of color are targeted two-fold; based on race and immigration status.

Over and over, the government's first response to dealing with people of color is through incarceration. It is thus crucial to draw a distinct and clear line between local law enforcement and ICE. During a time where trust between communities of color and local enforcement is fragile at best, a policy making clear that local government is not complicit in deportations is crucial to show that law enforcement aims to protect immigrant communities.

Thus the ILRC chose these seven common policy factors to assess the ways that localities can separate themselves from immigration enforcement.

### 1. Why are ICE detainers important?

In recent years, ICE holds (aka ICE detainers) have fueled the highest numbers of deportations in American history. ICE used detainers to ask local jails to hold immigrants after they are supposed to be released, so that ICE can come get them. ICE does not reimburse jails for the cost of this detention. In spite of this, thousands of jails across the country accept ICE detainers and provide free holding cells for ICE simply on the basis of a detainer request.

In addition to having been found unconstitutional, ICE holds are entirely voluntary and are not enforceable warrants. And when community members see their loved ones being funneled to ICE by their local law enforcement, cooperation with law enforcement deteriorates further.

### 2. Why is 287(g) important?

Under a 287(g) agreement, a local jurisdiction enters a contract with ICE to deputize and train select local law enforcement agents to enforce civil immigration laws. This means that the same local officials responsible for protecting public safety are also those identifying and funneling immigrant community members into the deportation system.

A 287(g) agreement means that it is not safe for immigrants to interact with law enforcement. The 287(g) program has been rife with issues of racial profiling and abuse of authority. 287(g) contacts are totally voluntary and do not come with any reimbursement for the staff, time, or other resources the county spends doing ICE's work.

# EXPLAINER:

## County Policies Relating to Immigration Enforcement

### 3. Why is an ICE detention contract relevant to sanctuary?

An ICE detention contract, also called IGSA (Intergovernmental Service Agreement), is a contract between a local government and the federal government that allows ICE to rent bed space from local jails to detain immigrants in deportation proceedings. When immigration detention is intermingled with local criminal jail, the line between local police and immigration agents is blurred.

When a jail has contracted to enter into this type of business with ICE, ICE agents regularly enter the jail, there may be increased information-sharing with ICE regarding inmates not in ICE custody, and these contracts mean that local jails are literally profiting from the business of deportation. These issues are not lost on the immigrant community, who see that their local officers work closely with ICE and that immigrants who come into contact with local police may be at risk.

### 4. What is an ICE alert?

An ICE alert is a kind of ICE detainer that ICE uses if the local jail will not agree to hold people extra time for ICE. Although the jail does not prolong detention to wait for ICE, they alert ICE when immigrants will be released from custody so that ICE can be there to apprehend them. The result of ICE alerts, just like other ICE detainers, is to transfer someone directly from local law enforcement to ICE.

Transferring immigrants directly to ICE makes the local jurisdiction an active accomplice to deportations. Like most other ways that county jails facilitate deportations, ICE alerts contribute to immigrants' perception that any encounter with local law enforcement is a direct threat to them or their family and loved ones.

### 5. What is ICE doing in jails?

ICE agents physically work in many local jails. Jails may voluntarily provide them free office space or a dedicated work station, access to the local jail databases, booking lists of all the individuals in custody, access to inmates for interrogations about their immigration status, and more. Depending on local practice, ICE agents may come to a jail on a regular schedule (daily or weekly or even multiple times per day).

This is among the more harmful forms of assistance, as jails hand over immigrants and their information to ICE without any of the protections in the criminal justice system, such as Miranda warnings or representation by a lawyer. This kind of operational entanglement further blurs the lines between local law enforcement and ICE for immigrant communities and undermines their access to equal treatment in the criminal legal system. Local law enforcement should stay out of the business of deportation by limiting the way that ICE agents operate civil immigration enforcement directly out of local jails.

**Transferring immigrants directly to ICE makes the local jurisdiction an active accomplice to deportations.**

## EXPLAINER:

# County Policies Relating to Immigration Enforcement

**Over and over, the government's first response to dealing with people of color is through incarceration.**

### 6. What is a prohibition on asking about immigration status or place of birth?

Immigration status is not a criminal matter and is generally beyond the purview of local law enforcement. Nevertheless, police and sheriffs often ask people, particularly non-white people, about their immigration status or place of birth. This is deeply problematic for a number of reasons. To start, immigration status is extremely complex and only a legal expert should attempt to make such a determination.

Further, such information is often thereafter shared with ICE, who use it to try to deport that individual. Finally, such practices are frequently a result of illegal racial and ethnic profiling, and are the first step for local agents with animosity against immigrants to abuse their authority and detain the person for ICE.

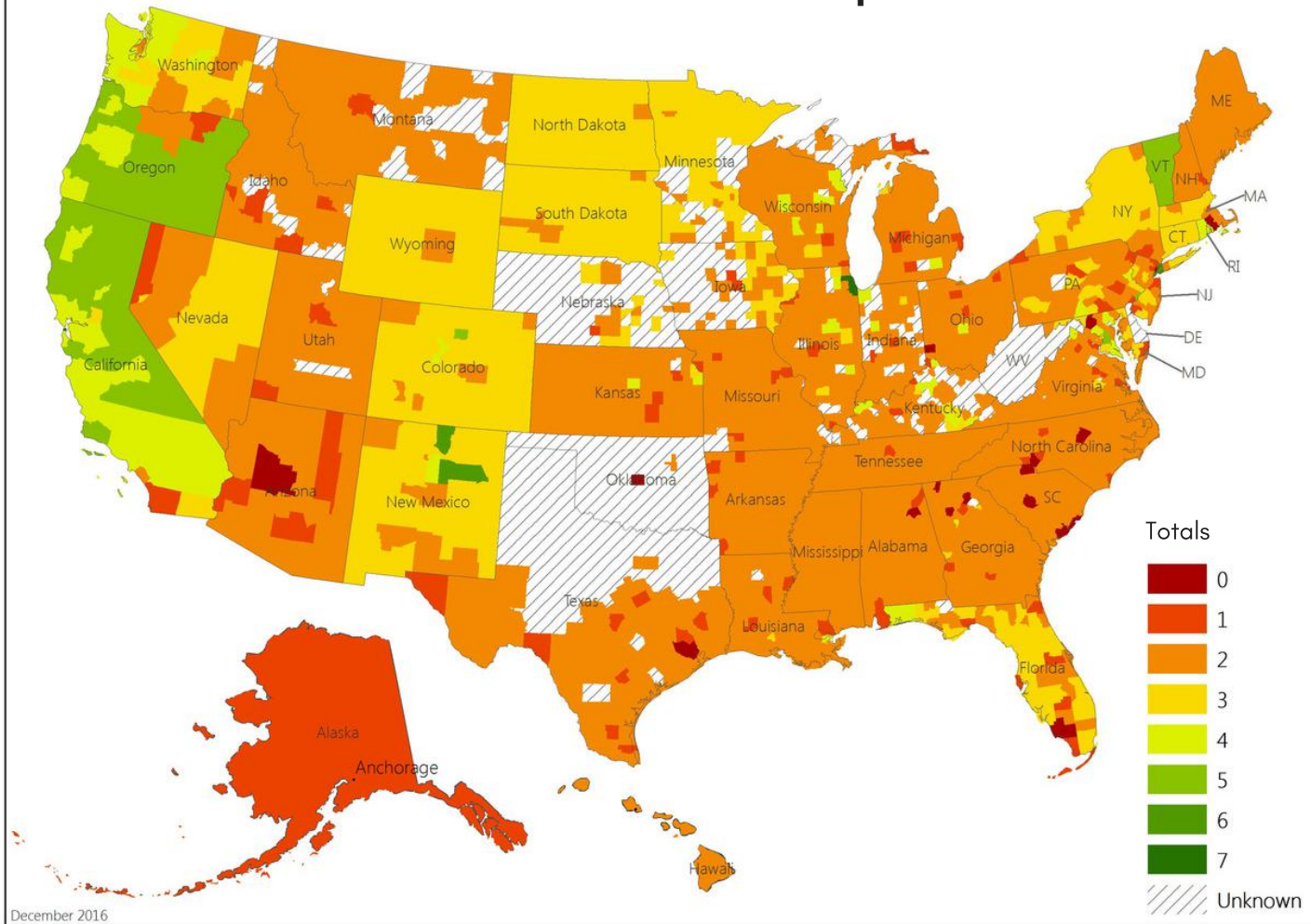
### 7. What is prohibition on assistance in immigration enforcement?

Communities of color are disproportionately targeted by law enforcement. ICE's local enforcement efforts continue to intensify this dynamic, as poor and brown communities are funneled from an unjust criminal justice system into an immigration deportation system that lacks even the most basic due process protections. Immigrant communities of color are targeted two-fold; based on race and immigration status.

Over and over, the government's first response to dealing with people of color is through incarceration. It is thus crucial to draw a distinct and clear line between local law enforcement and ICE. During a time where trust between communities of color and local law enforcement is fragile at best, a policy making clear that local government is not complicit in deportations is crucial to show that law enforcement aims to protect immigrant communities.



# Local Police Assistance with Deportations



## b. our findings:

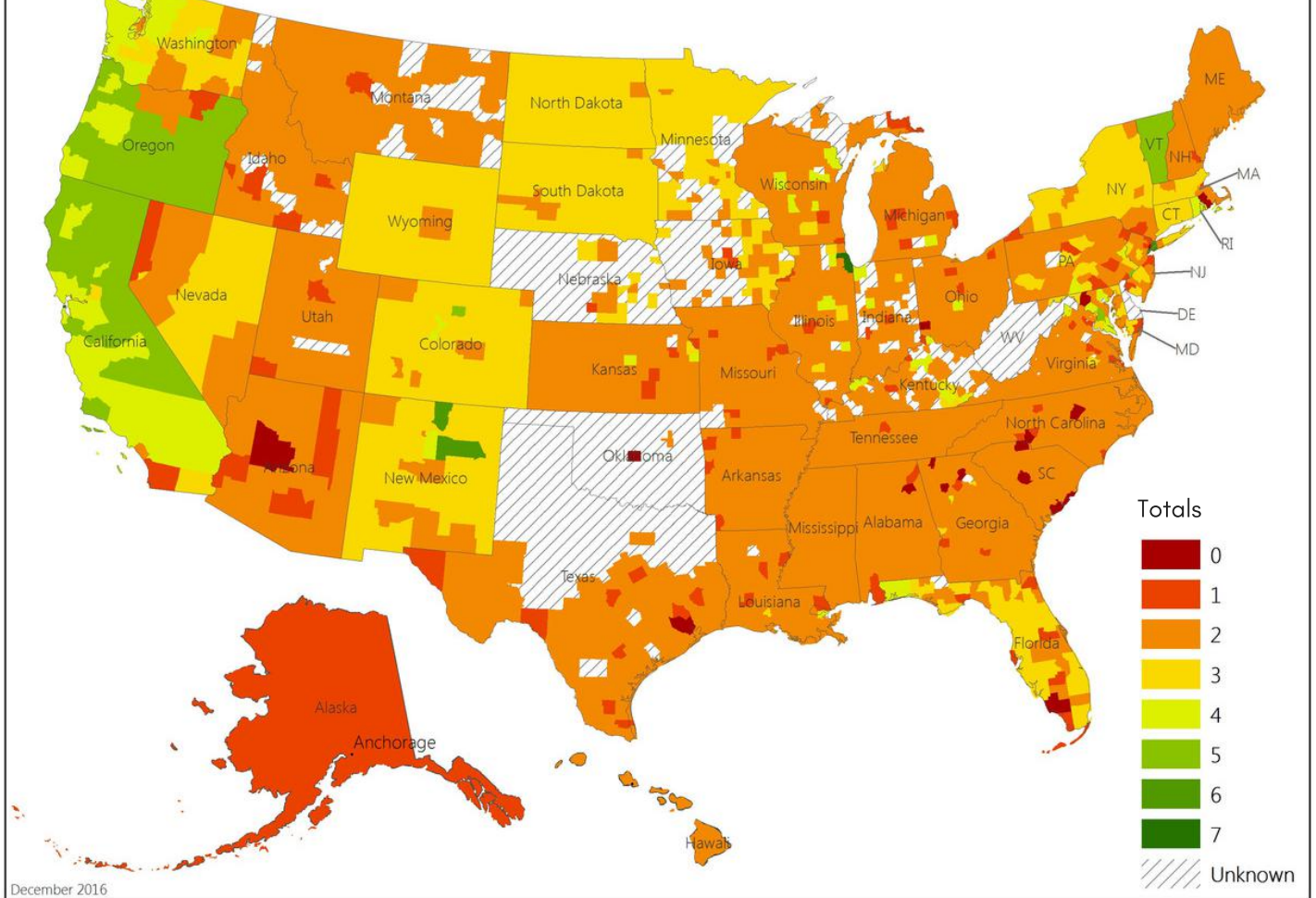
In evaluating the data, we created a 7-point rubric that covers the types of policies that most affect local involvement in immigration enforcement. Specifically, we looked to see if each county had the following policies and/or practices in place:

- The county does not have a 287(g) agreement with ICE
- The county does not have a contract with ICE to detain immigrants in county detention facilities (called an Intergovernmental Service Agreement or IGSA)
- The county does not honor I-247(D) requests and does not hold individuals for any additional amount of time
- The county does not honor I-247(N) or other requests for notification of release dates and times or other information about inmate status
- The county does not allow ICE in the jail or the county requires consent from detainees before ICE agents are allowed to interview
- The county has an affirmative prohibition on asking about inmate immigration status
- The county has a general prohibition on providing assistance and resources to ICE for the purposes of enforcing civil immigration laws

**Even the strongest policies to disentangle local law enforcement from ICE are undermined by the Secure Communities program (S-Comm), now called the Priority Enforcement Program (PEP), which sends the fingerprints of everyone taken into custody across the country to be checked against federal immigration databases.**

**The existence of PEP continues to ensure that deportations will continue and degrades relationships between immigrants and local law enforcement.**

# Local Police Assistance with Deportations



## b. our findings:

Based on their policies and practices, each county was assigned a total:

- **Total 0 and 1:** The darkest red jurisdictions spend substantial local time and resources on civil immigration enforcement, whether under a 287(g) agreement, by contracting with ICE to detain immigrants, or both.
- **Total 2:** The remaining red jurisdictions do not have formal MOUs or contracts with ICE, but nonetheless are willing to hold immigrants on detainers, provide extensive information about individuals in county custody to ICE, and generally grant requests that ICE makes of them. We are concerned that most of the red shaded counties may be regularly violating the Fourth Amendment by detaining immigrants without probable cause or legal authority.
- **Total 3:** The orange counties, by and large, offer slightly more limited assistance to ICE, and are largely defined by their non-compliance with ICE detainers. Because multiple federal courts have found ICE detainers to be illegal, these jurisdictions are willing to provide ICE information and notice of when someone in custody will be released, but will not hold anyone for transfer to ICE.
- **Total 4 and 5:** The yellow and light green counties go further in disentangling the local criminal legal system from immigration enforcement, by declining all forms of ICE detainers, by limiting ICE's ability to interrogate individuals while in local custody, by refraining from asking about immigration status or place of birth, or by otherwise enacting policies that they will not assist in any civil immigration enforcement.
- **Total 6 and 7:** The brightest green jurisdictions have the most comprehensive sanctuary protections to prevent local resources from going to civil immigration enforcement.

These totals were then converted into the map you see above. This map shows how much assistance local law enforcement offer to federal immigration authorities, and where localities have decided to limit what they will do regarding immigration enforcement. Even where localities have passed strong policies against being involved in deportations, the federal government has imposed S-Comm, now called PEP, which means that the fingerprints of every single person arrested in the country are sent to check against immigration databases.

This map reflects laws and statements of policy. It does not measure compliance with those laws and policies. What actually occurs in any jurisdiction may differ from the official policy or statements provided by ICE and is beyond the scope of our analysis. Because the total of factors is cumulative, counties of the same color do not necessarily have the same policies, but rather offer the same number of types of assistance to ICE.

This map is also available online in interactive form, with live county-by-county data on local policies and what local jails have told ICE they are willing to assist on.

[ILRC.ORG/DETAINDER-MAP](http://ILRC.ORG/DETAINDER-MAP)

# Summary of County Policy Findings

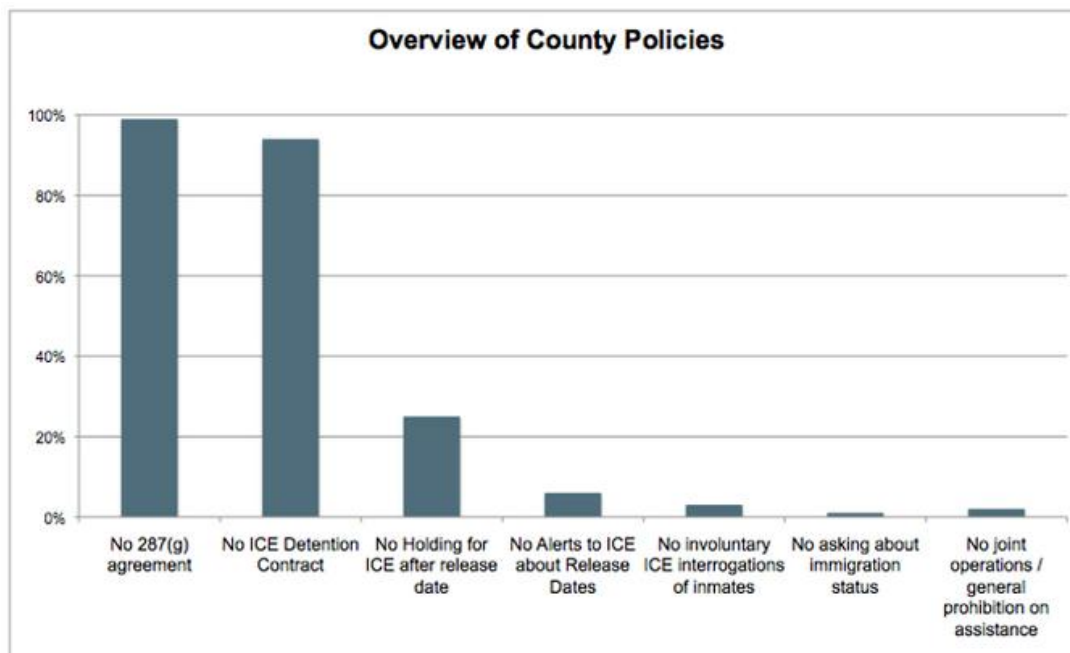
In looking at each county's policies, **we found that the overwhelming majority of counties provide some level of voluntary assistance to ICE.**

- Of the 2,556 counties looked at, only 25 had 287(g) agreements and 147 had ICE detention contracts (also called Intergovernmental Service Agreements or IGSA's). These numbers show that only a small proportion of counties have a formal or contractual relationship with ICE. However, when we looked at the data for policies and stated practices in other forms of assistance, the numbers paint a very different and concerning picture.
- 1,922 counties, or 75% of counties, will hold immigrants on detainers, willingly violating these individuals' 4th Amendment rights. Only 635 counties, or 25% of counties, do not hold on detainers.
- Even more counties, 2,414 in total, take it upon themselves to notify ICE when immigrants will be released from custody, while 142 counties have a policy against that practice.
- In 2,484 counties, there are no limitations on what ICE can do in the jails, whereas just 72 counties place some sort of restriction or procedural protections on ICE's access to detainees.
- 2,331 counties allow local law enforcement to inquire into an individual's immigration status, with only 25 counties banning that inquiry.
- And finally in 2,503 counties, county employees are able to use local resources to assist ICE in their federal immigration enforcement responsibilities. Only 53 counties prohibit that practice.

The table below summarizes these findings.

Policy	Total Number of Counties	Percentage of Counties
No 287(g) agreement	2,527 counties	99%
No ICE Detention Contract	2,409 counties	94%
No Holding for ICE after release date	635 counties	25%
No Alerts to ICE about Release Dates	142 counties	6%
No involuntary ICE interrogations of inmates	72 counties	3%
No asking about immigration status	25 counties	1%
No joint operations / general prohibition on assistance	53 counties	2%

NOTE: We did not receive data for and therefore did not analyze or grade any of the counties in West Virginia or Delaware. For the following states, we only received state level information, because the legal system is run by the state, not counties: Alaska, Connecticut, and Rhode Island.

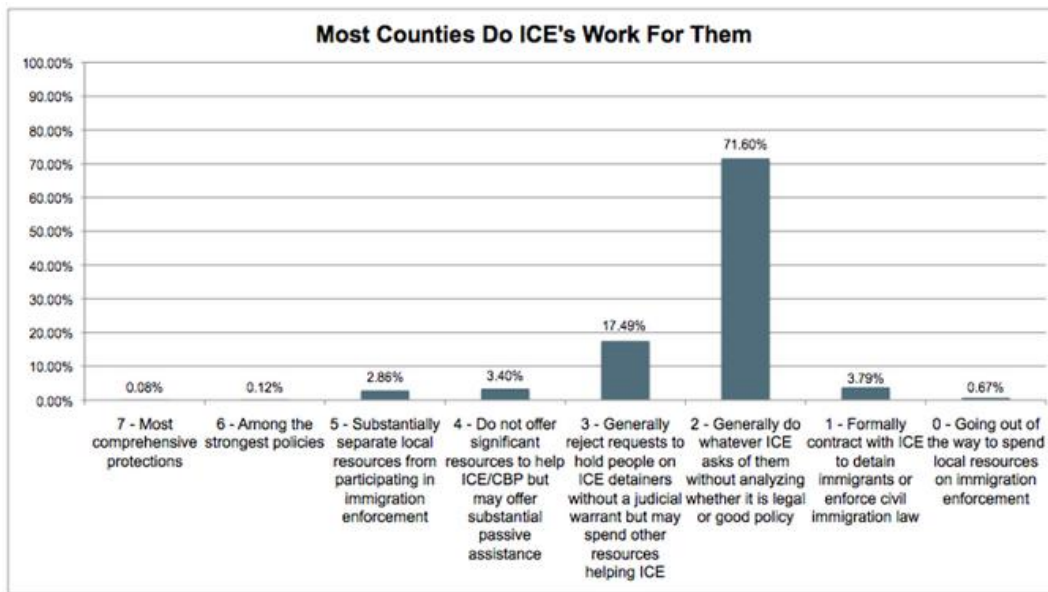




# Totals per County Analysis

Once we compiled the raw data regarding the specific policies in each county, we then aggregated the totals per county based on their policies. For each policy choice, counties got a 1 if they regulated the issue, and zero if there was no known policy limitation. Counties with a total of 0 are the most heavily involved in civil immigration enforcement, while a total of 7 identified the counties that had disentangled themselves the most from ICE. A breakdown of totals is provided in the table below.

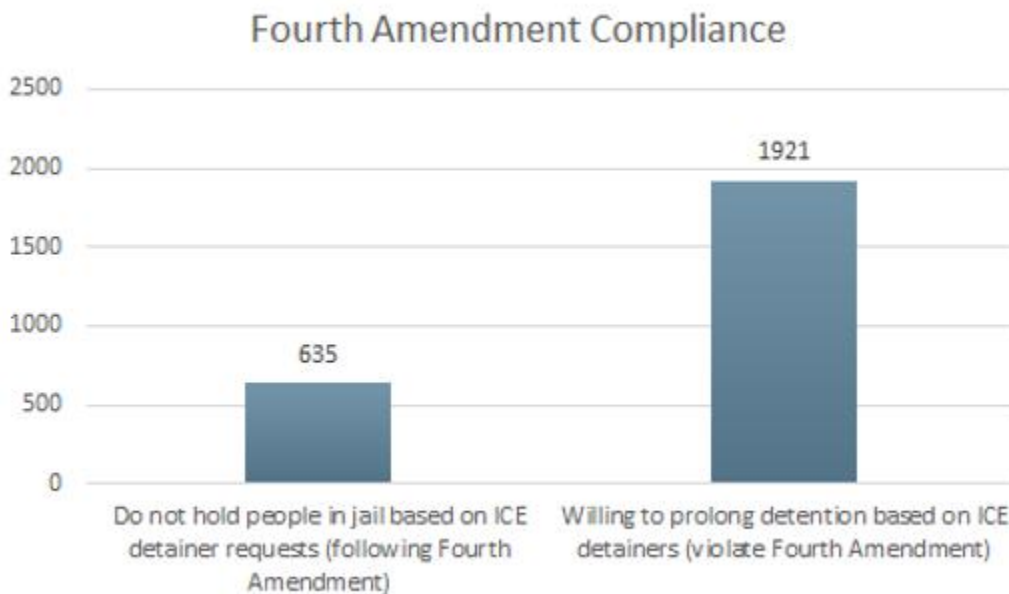
Number of Counties in Each Bracket	
7 - Most comprehensive protections	2 jurisdictions
6 - Among the strongest policies	3 jurisdictions
5 - Substantially separate local resources from participating in immigration enforcement	73 jurisdictions
4 - Do not offer significant resources to help ICE/CBP but may offer substantial passive assistance	87 jurisdictions
3 - Generally reject requests to hold people on ICE detainees without a judicial warrant but may spend other resources helping ICE	447 jurisdictions
2 - Generally do whatever ICE asks of them without analyzing whether it is legal or good policy	1,830 jurisdictions
1 - Formally contract with ICE to detain immigrants or enforce civil immigration law	97 jurisdictions
0 - Going out of the way to spend local resources on immigration enforcement	17 jurisdictions



While the map demonstrates the widespread entanglement between ICE and county law enforcement, there are exceptions. Several counties do limit ICE's influence and reduce interference with local law enforcement. As we can see in the chart above, there are several counties that have policies covering 5 or more aspects of immigration enforcement. These policies reflect an affirmative effort to save local resources for local priorities and disconnect those functions from civil immigration enforcement. Two counties, Cook County in Illinois and San Francisco County in California, have local laws that cover all 7 policy issues in our rubric. This broad coverage reflects their community's commitment to public safety and maintaining separation between county law enforcement and ICE. However, only 3 percent of counties have total of 5 or more, and even in these counties, ICE may have significant access to local aid. The vast majority of counties, 72 percent, offer ICE whatever help they ask for, often without even analyzing whether it is legal to do so.

One of the policies we looked for was whether a county prohibited inquiries into a person's immigration status by local agents, to discourage discrimination and avoid the complexity of immigration issues. While this is a common city-level policy, most counties have not adopted a similar practice. In fact, of the 2,556 counties looked at, we were only able to identify 25 counties with this type of practice in place.

# Constitutional Concerns: Illegal Detention & the 4th Amendment



Most of the choices that counties make about engaging with ICE or assisting in deportations is voluntary. But some of it is actually illegal. Specifically, multiple federal courts have ruled that holding someone on an ICE detainer request is an illegal arrest in violation of the Fourth Amendment.

ICE detainers have been a central mechanism of immigration enforcement over the last 10 years. They were the linchpin of the Secure Communities program and the key tool that the Obama Administration used to deport more than 2 million people.

However, the federal courts found that it was illegal to hold people on ICE detainers. ICE detainers are not warrants and do not meet basic Fourth Amendment requirements. Consequently, counties that hold a person in custody on an ICE detainer may be liable for unlawful detention. Moreover, the Northern District of Illinois recently ruled all detainers issued out of the Chicago field office (covering six states) are invalid, because they exceed ICE's own arrest authority (see: <https://www.ilrc.org/immigration-detainers-legal-update-october-2016>).

Many counties have responded to the legal rulings on detainers, but they remain the minority of jurisdictions in the country. The chart above compares those jurisdictions who hold people in jail based on ICE detainers, with those who have agreed that this practice has serious constitutional flaws and decided not to accept such detainer requests. We are concerned that thousands of counties are regularly violating the Fourth Amendment by detaining immigrants without probable cause or legal authority.

# Constitutional Concerns: Racial Profiling & the 14th Amendment

Many sanctuary policies are enacted in order to promote public safety, encourage immigrants to feel safe talking to local law enforcement, and to ensure equal access of immigrants to local services. In many cases, however, the issue of how law enforcement engage with immigrants and immigration authorities is more squarely a question of how to discourage and prohibit racial profiling and discrimination.

Immigrants in Vermont are quite familiar with racial profiling by law enforcement, who use any stop as an excuse to call Border Patrol for help “translating” or “identifying” them. In 2014, Vermont passed a law to address biased policing issues throughout the state. The legislation called for data collection by local sheriffs and police and directed the Criminal Justice Training Council to draft a model policy that would be adopted by all municipal and county law enforcement agencies. This model policy was finalized and promulgated in the summer of 2016. Under this policy, VT law enforcement agents will not inquire into immigration status except where such information is necessary to the investigation of a criminal offense. Officers will accept broader forms of identification and must offer proper interpretation services, which means not contacting federal law enforcement.

In 2015, while this model policy was being developed at the state level, an immigrant dairy worker was held for Border Patrol during a traffic stop in the town of Alburgh, VT. Alburgh is a tiny town on the Canadian border, surrounded by Lake Champlain. Alburgh is too small a town to have its own police department; like many small and rural towns, law enforcement is managed by the county sheriff.

Therefore, when Lorenzo Alcudia was interrogated about his immigration status despite merely being a passenger in a vehicle, the offending officer was a deputy of Grand Isle County Sheriff’s Department.

Although Grand Isle Sheriff’s Department had a policy about when it was appropriate to inquire into immigration status, the policy language had broad exceptions that allowed for rampant discrimination.

The deputy asked Lorenzo about his status multiple times, called Border Patrol, and held him on the side of the road for over an hour. Lorenzo was arrested by Border Patrol and put in removal proceedings.

Lorenzo brought a complaint to the Vermont Human Rights Commission, which found that the Sheriff’s Department had violated his rights under Vermont law, and called the existing Grand Isle policy on immigration status “window dressing.” Lorenzo and advocates from Migrant Justice worked with the Vermont Criminal Justice Training Center to ensure that the state model policy would address the rampant problems of local law enforcement interrogating immigrants and unlawfully detaining them to transfer to Border Patrol agents. And specifically in Lorenzo’s case, the Vermont Human Rights commission ordered the Grand Isle Sheriff’s Department to attend training on fair and impartial policing, to adopt the forthcoming model policing policy from the state, and to certify that all officers had read and understood it. Vermont advocates continue to work to ensure that all police and sheriffs departments in the state have complied with the law and adopted the anti-biased policing policy.



## Findings in Context – Number of Individuals Impacted

This analysis is useful for evaluating what practices are common across the U.S. in various states and counties, but it is important to recognize that the immigrant population in the U.S. is not evenly dispersed across states and counties. The total immigrant population in the U.S. is approximately 41,056,000 people, with more than one-third (32%) of this population living in one of the 12 counties listed below.

County	State	Immigrant Population <sup>1</sup>	ILRC Totals
Los Angeles County	CA	3,484,300	4
Miami-Dade County	FL	1,339,800	3
Cook County	IL	1,101,800	7
Queens County <sup>2</sup>	NY	1,090,400	6
Harris County	TX	1,078,300	0
Kings County <sup>3</sup>	NY	964,200	6
Orange County	CA	936,500	2
San Diego County	CA	743,500	1
Santa Clara County	CA	688,400	5
Maricopa County	AZ	586,900	2
Broward County	FL	577,800	2
Dallas County	TX	566,800	2

As we can see from the chart above, very different local policies impact the lives of many people. Local entanglement with ICE impacts not only immigrants, but their families and the communities they are a part of. In the U.S., almost 17.5 million children (including U.S. citizens) have at least one parent who is foreign-born. The threat of losing a parent looms over these children on a daily basis.

Our analysis is based on the different types of policies a county may have adopted. Actual practices, and the nuances within each type of policy, are beyond the scope of this report. Some laws include exceptions and loopholes that law enforcement exploit in order to funnel immigrants to ICE. All of these laws and policies continue to struggle against endemic racial and ethnic profiling against communities of color.

Policies in this arena are constantly changing, and local advocates and community members have better insights into the strength of their own policies, and where improvements can be made. As this issue continues to develop, please update us as we will strive to keep our map as up to date as possible.

<sup>1</sup> Demographic data came from the Migration Policy Institute's Data Hub. For more information, please visit: <http://www.migrationpolicy.org/programs/data-hub/charts/us-immigrant-population-state-and-county>.

<sup>2</sup> Queens County is a part of New York City.

<sup>3</sup> Kings County is a part of New York City.



### **c. comparing city- and state-level policies:**

“Sanctuary cities” have received enormous attention in the last year, as local elected officials have opposed threats of mass deportation and staunchly defended their immigrant residents, while federal officials on both sides of the aisle and Donald Trump have called for them to be denied federal grants. As our map shows, counties, not cities, are the most significant local bodies that may be actively helping with immigration enforcement. The vast majority of counties provide ICE with all of the information and resources they ask for. Generally, city ordinances do not govern county level agencies or officials, and sanctuary city laws can be undermined by county policy and practice.

Nonetheless, cities that do not wish to expend local resources on immigration enforcement and seek to separate their police from ICE can also enact sanctuary policies, and they do so quite frequently. Cities have their own functions and enact their own rules governing how city officials will handle immigration issues in their own capacity. In particular, cities can direct their local police not to contact ICE or CBP in the course of basic patrols and criminal law enforcement operations, and can adopt expansive policies on forms of identification that are accepted by city agencies.

**Generally, city ordinances do not govern county level agencies or officials, and sanctuary city laws can be undermined by county policy and practice.**



**"We are not going to sacrifice a half million people who live among us, who are part of our community. We are not going to tear families apart."**

**- Mayor Bill de Blasio, New York**

**"It is important that every resident can live their lives without fear of being persecuted."**

**-Mayor Jorge Elorza, Providence**

# **City Leaders Speak Out in Support of Sanctuary**

## City Policy Rubric

Policy Option	Description	Reasons
<b>Declaration of Sanctuary</b>	Statement by city officials, or resolution by elected board, declaring the town or city to be a sanctuary city.	These declarations set a general tone for the city and expectations for residents. Without specific policies attached, such declarations are just political statements, but nonetheless they are an important part of the dialogue and a message to the immigrant community that they are welcome.
<b>Prohibitions on inquiries into immigration status and/or place of birth</b>	Cities can prohibit their officers and employees from inquiring into immigration status or place of birth, in the context of access to city services or during law enforcement action.	Prohibitions on asking about immigration status are meant discourage profiling and discrimination, and to ensure access to local government services regardless of immigration status. This kind of policy is very common in cities across the country.
<b>General prohibitions on use of resources to assist immigration enforcement.</b>	Some jurisdictions enact more general policies to prohibit the use of local resources in assisting with immigration enforcement.	These prohibitions often focus on preserving local resources for local priorities and drawing a clear line between local agencies and federal immigration authorities.
<b>Limits on immigration based detentions, including ICE holds.</b>	Cities can direct their officials and employees not to contact ICE or CBP during traffic stops or other encounters, nor to detain individuals on ICE holds.	Local law enforcement officers do not generally have authority to stop or arrest people for civil immigration violations. Nonetheless, more explicit instructions from city government can mitigate racial profiling or illegal detentions based on immigration status.
<b>Acceptance of various forms of Identification</b>	Cities can instruct their agencies and law enforcement officials to accept non-governmental forms of ID, and in many cases develop their own municipal ID forms.	In many states, immigrants cannot obtain drivers' licenses, which are the most common form of ID in America. To accommodate this, cities establish policies to offer other municipal ID or instruct their agencies and law enforcement officials to accept foreign or non-governmental ID, and prohibit discrimination on that basis.
<b>No 287(g)</b>	The 287(g) program is a program that specifically deputizes certain local law enforcement agents to enforce immigration laws.	287(g) is the exact opposite of protecting immigrant safety. It turns local police into immigration agents, meaning that contact with local public safety officials could be a direct route to deportation. Furthermore, all the costs of this work fall on the city or county, so the locality is paying to do the federal government's job.



# CASE STUDIES:

## City vs. County Policies Relating to Immigration Enforcement

The ILRC has identified and collected a variety of city-level policies; no such list can be exhaustive of the tens of thousands of municipalities across the country. Depending on the scope of the policies you count, there are dozens or hundreds of such local laws and policies.

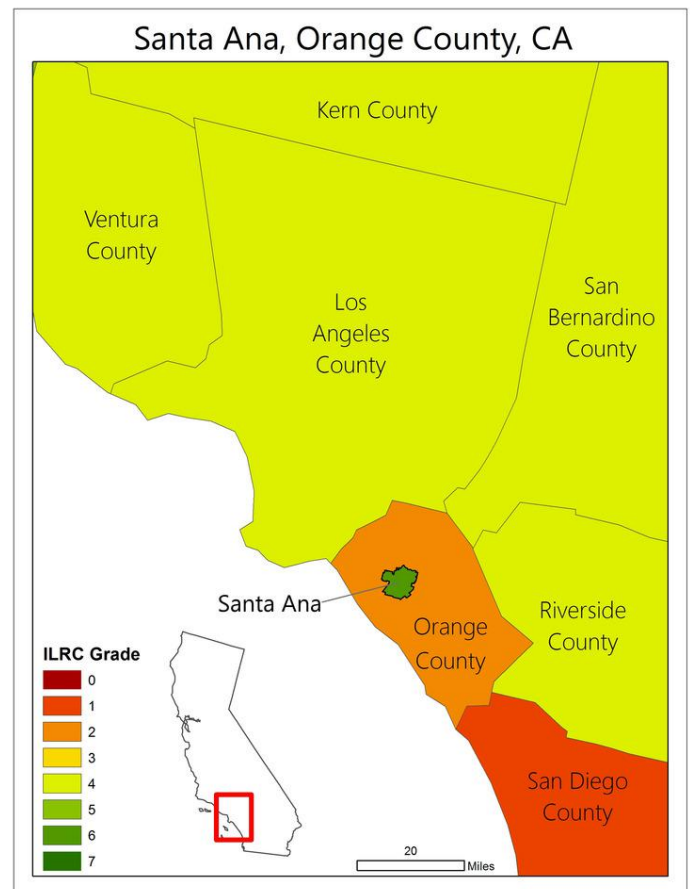
To illustrate how city policies are part of the picture, we offer some examples of how city policies and interactions with federal immigration authorities can differ from counties. One of the most important aspects of city policies are whether local police contact ICE or Border Patrol in the course of traffic stops or other brief detentions.

### Santa Ana, CA / Orange County

In late 2016, following the election of Donald Trump, the Santa Ana city council passed a strong sanctuary resolution restricting the use of any city resources for immigration enforcement, detention on ICE holds, collection or dissemination of immigration status information. However, Santa Ana still has a contract with ICE to detain immigrants during removal proceedings at the Santa Ana City Jail. Local advocates point to the contradiction of a municipality that deems itself a sanctuary but maintains an immigration detention facility for ICE.

Moreover, Santa Ana is a city in Orange County, CA. Orange County has a different political landscape: the county has a 287(g) agreement to have their own officers enforce immigration laws, as well as a contract to hold immigrants in ICE detention at the James Musick Facility and the Theo Lacy Facility. Although Orange County is bound by California state laws placing some limits on the extent of their assistance to ICE, the county law enforcement and criminal justice process is substantially entangled in immigration enforcement. As a result, the Santa Ana resolution can only provide limited protection because anyone taken to county custody could be interrogated or detained for ICE.

Conscious that any immigrant arrested in Santa Ana could be referred for deportation just by going to the Orange County facilities, the city's resolution reminded law enforcement officers to use their discretion and offer tickets and citations whenever appropriate, to prevent at least some individuals from being swept into the deportation machine at the county jails. The city also has made commitments at City Council meetings to turn its sanctuary resolution into an ordinance and eventually end its immigration detention contract with ICE. Local organizers seek to strengthen the ordinance and push onward to reforms from the county.



# CASE STUDIES:

## City vs. County Policies Relating to Immigration Enforcement

### New Orleans, LA / New Orleans Parish

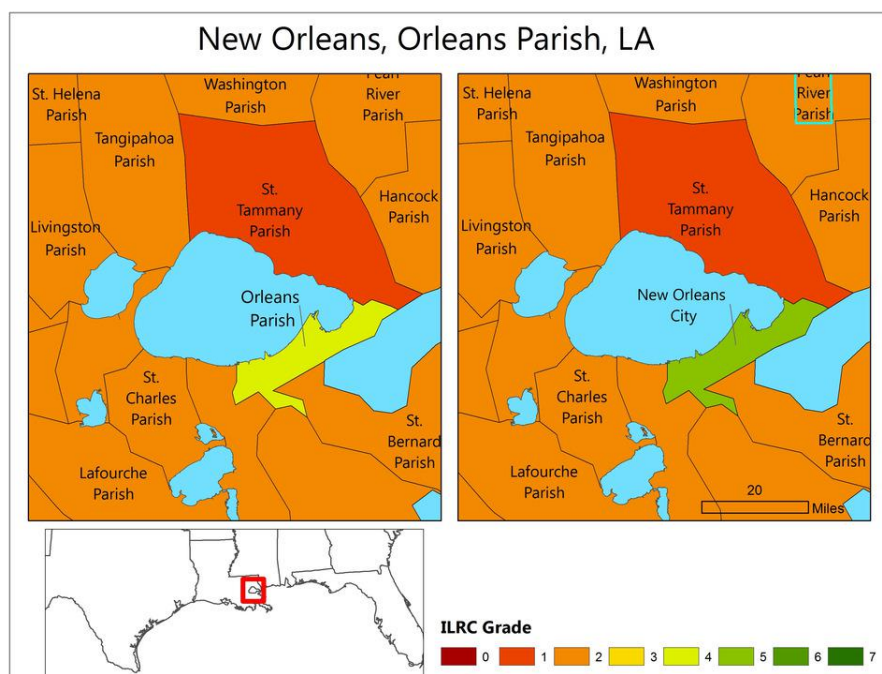
Both the city of New Orleans, and the New Orleans Parish (Louisiana equivalent of a county) have enacted policies limiting the extent that their law enforcement agencies will voluntarily participate in any immigration enforcement activities. These policies were the result of community organizing, advocacy and litigation to expose unconstitutional racial profiling and misconduct by ICE and CBP in the region. The New Orleans Worker Center for Racial Justice led the Right to Remain campaign, with criminal justice reform allies, women’s groups, and faith leaders.

The Sheriff sets policy for the New Orleans Parish Prison. In 2013, as part of the resolution of a civil rights lawsuit based on the unlawful detention of immigrants in the jail on ICE detainees, the New Orleans Sheriff adopted a policy limiting his participation in deportations. Under the policy, the sheriff’s office declines ICE detainees, refuses to investigate immigration status, and, and limits ICE interviews of inmates unless their defense counsel has been informed and given the opportunity to be present.

As part of a federal consent decree process, the New Orleans Police Department adopted a policy governing officers conduct in investigations and arrests.

In 2010, the Department of Justice opened an investigation into a pattern and practice of gross constitutional violations, including excessive force and racial profiling by the New Orleans Police Department. Following the DOJ findings that the city had engaged in widespread patterns of misconduct and abuse, the city entered a consent decree with the DOJ and promulgated a 38-point policy, covering policing issues from use of restraint devices to immigration to body cameras.

Regarding immigration enforcement, NOPD officers are prohibited from inquiring into immigration status, from participating or assisting in immigration enforcement, and from arresting immigrants based on civil immigration warrants. These city and county policies work in tandem to limit discrimination against immigrants across the local law enforcement agencies.



## CASE STUDIES:

# City vs. County Policies Relating to Immigration Enforcement

### Chicago, IL / Cook County

The City of Chicago has a long history as a declared sanctuary city. Its first policies prohibiting city employees from inquiring into immigration status date back to a 1985 mayoral executive order, which was written into city ordinance in 2006. In 2012, the city amended this ordinance to directing that no Chicago agency would stop or detain anyone on the basis of an ICE detainer or an administrative immigration warrant (with certain limited exceptions), nor would the city allow ICE to use city facilities or resources to interrogate people about their immigration status.

Chicago is a large city, but it is only a part of Cook County, Illinois, and people arrested in Chicago are sent to Cook County jail. However, Cook County has matched Chicago on policies to refuse any assistance in immigration enforcement. In 2007, the County passed an ordinance to ensure that County Officials do not investigate immigration status or deny any county services based on immigration status, and which generally prohibited the county's involvement in immigration enforcement.

Furthermore, Cook County Board of Supervisors actively fought the Secure Communities Program, and in 2011 enacted a policy refusing to comply with any ICE detainers, provide information about criminal cases to ICE, or allow ICE to interrogate individuals in local custody without a court order.

As a result, Chicago and Cook County have placed strong limitations on any local assistance in civil immigration enforcement.

**City officials who have declared sanctuary or enacted a city-level policy against immigration enforcement have the power to do more to protect their immigrant residents by also pushing for county-level agencies to adopt complementary policies.**



## Statewide Policies Relating to Immigration Enforcement

Several states have enacted state laws regarding what assistance they may or may not be willing to provide to ICE or CBP:

**California, Connecticut, and Rhode Island** (by Governor's executive order) restrict jails from holding people on ICE detainees.

**California's** recently enacted Truth Act further places procedural protections on ICE's access to interrogate immigrants in California custody. **Vermont's** state law against biased policing mandates that all law enforcement agencies adopt, or adapt, the state's model policy, which contains several provisions to discourage any involvement in immigration enforcement or investigations. **Oregon** has a state law generally prohibiting the use of state resources to assist with immigration enforcement. **Alaska and Montana** have state legislative resolutions stating that immigration enforcement is the federal government's responsibility and urging their own local agencies not to be involved in it.

More states should take action against having their state and local resources coopted for civil immigration enforcement. States should be monitoring their own executive agencies and looking out to curb discrimination against immigrants through legislation. Even states that have already taken action have a long ways to go to protect the safety of their immigrant residents and preserve their own resources to suit state priorities.

**Like local policies, it is entirely the state's prerogative to direct the use of state resources and the priorities of state officers. It is not the business of states to regulate or enforce immigration law, which is the federal government's responsibility.**





## section iii. the promise of sanctuary: looking beyond deportations

Sanctuary is  
fundamentally  
about  
**public safety:**  
the need for  
everyone in the  
community to  
**feel safe.**

Policies limiting the time and resources that local jurisdictions expend in assisting federal immigration enforcement fall in line with long-held federal principles that local government have the autonomy to determine their own local priorities.

These policies promote public safety in local communities, discourage disproportionate punishment and drive us towards a future where immigrants are better integrated and welcomed, leading to thriving, healthier, and safer communities for us all. They also honor our nation's long-standing, Constitutionally-rooted tradition of protecting individual rights and freedom.

In today's immigration context, the notion of providing sanctuary has come to mean many things, including but not limited to a broad spectrum of local policy measures. These so-called sanctuary policies may seek to protect immigrants from detention and deportation, offer aid and services to encouraging civic engagement, and build cross-cultural communication. These purposes are not mutually exclusive, and the strongest sanctuary policies will build the most comprehensive inclusion possible.

We view this "spectrum of sanctuary" as it affects three key phases of immigrant inclusion and offer the framework below:

# The Spectrum of Sanctuary

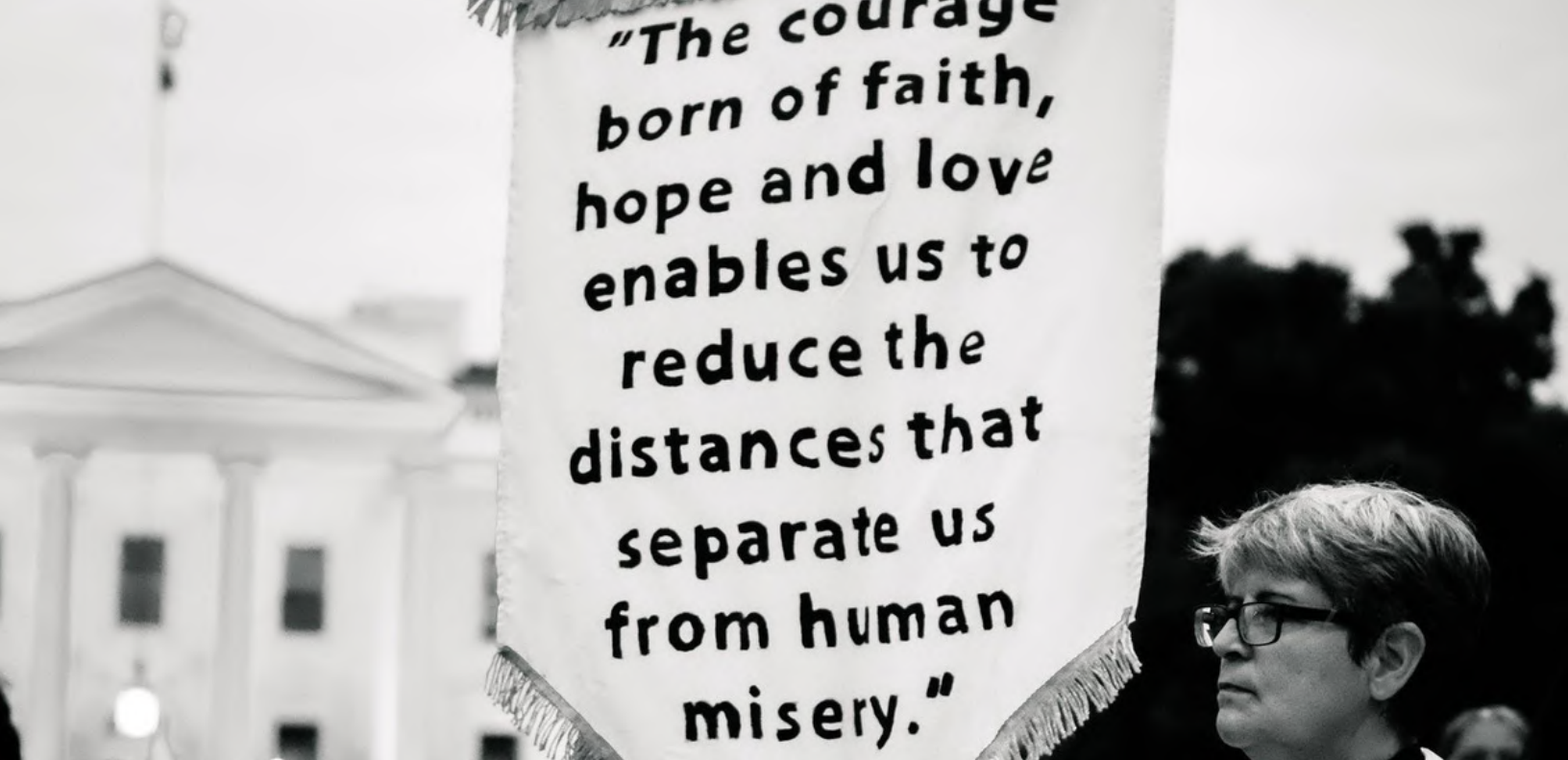


**Phase 1 - STAY & BE SAFE:** Sanctuary policies that focus on public safety are those that seek to separate local policing from immigration enforcement, thereby protecting immigrants from deportation while also strengthening public safety. These policies ensure that local resources are dedicated to community safety and local priorities instead of diverting resources to assist ICE. When local law enforcement are seen as the gateway to deportation, immigrants, their families and their communities are less willing to engage in any manner, resulting in diminished public safety for all. Allowing immigration enforcement to interfere with the local legal system creates a two-tiered system of justice where immigrants are denied equal protections and due process. These policies that limit assistance in immigration enforcement have been the focus of this report.

**Phase 2 - SURVIVE & THRIVE:** Sanctuary policies that make life as a noncitizen less difficult are policies that enable immigrants to not only survive, but thrive. These are proactive, pro-immigrant local and state policies that offer aid and comfort to the immigrant community, striving to provide some level of equality. A few examples of these types of policies include access to driver's licenses and other municipal identification, tuition equity for students, and bilingual education. For more examples of such policies, visit the National Immigration Law Center ([hyperlink](#)).

**Phase 3 - BELONG:** Sanctuary policies to help immigrants belong are those that foster the greatest inclusion, welcoming immigrants as full participants in their local communities and in broader American civic life. These policies fund cross-cultural exchange, provide assistance for eligible immigrants to naturalize, and formally recognize immigrants' contributions to the community. For more examples of such policies, visit Welcoming America ([hyperlink](#)).

Our data and our map focus only on the bottom of this spectrum: policies that protect the safety and security of immigrant communities by limiting local police assistance with immigration enforcement, thus keeping individuals and families together and out of the deportation pipeline. We see these policies in particular as foundational because only when immigrants and their families are safe do they have a meaningful opportunity to survive and begin to thrive.



All of these aspects of sanctuary derive from this country's founding as a nation of immigrants and **a place of refuge for those fleeing persecution.**

We encourage county officials to remember that **providing sanctuary runs through the very fabric of the United States**, and that it is both within their legal powers and the best interest of their communities to **keep their local police out of the business of deportations.**