




LGLC Immigration Webinar Part 2

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PRESIDENTIAL ACTIONS

PROTECTING THE AMERICAN PEOPLE AGAINST INVASION

EXECUTIVE ORDER
January 20, 2025

States Sued

Illinois
New York
Colorado

Localities Sued

Chicago
Cook County
Rochester
Denver

States and Localities Suing

CA v. DOT, FEMA

California
Colorado
Connecticut
Delaware
Hawaii
Illinois
Maine
Maryland
Mass.
Michigan
Minnesota
Nevada
New Jersey
New Mexico
New York
Oregon
Rhode Island
Vermont
Washington
Wisconsin

SF v. Trump

San Francisco
Santa Clara
San José
San Diego
Oakland
Sacramento
Santa Cruz
Emeryville
Monterey
Portland
New Haven
King County
Seattle
Minneapolis
St. Paul
Santa Fe
Denver
Chicago
Pima County

Federal

Supremacy Clause
Federal Government
Sets Immigration Policy

Anti-Commandeering
Cannot Coerce States to
Enforce Federal Law

State / Local

San Francisco v. Trump, 3:25-cv-01350

- 16 cities/counties moved for a preliminary injunction to block the “Protecting American People from Invasion” EO, “Ending Taxpayer Subsidization of Open Borders” EO, and the 2/5 Bondi Directive to the extent that they mandate the withholding of the Cities and Counties’ federal funding because they are sanctuary jurisdictions.
- Court entered a preliminary injunction on 4/24 enjoining the enforcement of the EOs and Bondi Directive.
- Found localities were likely to be successful on the merits as to their separation of powers, Spending Clause, Fifth and Tenth Amendment claims.

Detainer Requests

Federal Law

- DHS **may request, but not require**, that custody be extended by a period not to exceed 48 hours
- DHS **“shall issue a detainer for an alien”** arrested for certain crimes.
- But there is no federal law on state and local compliance with detainer requests.

Administration Argument

States and localities cannot prohibit compliance with detainers

Federal policy requires state and local cooperation with detainers

States and localities **must comply with detainers?**

ICE Detainers – It's Complicated

- Local governments face liability concerns related to complying with detainers.
 - See, e.g., *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014); *Miranda-Olivares v. Clackamas Co.*, No. 3:12-cv-02317 (D.Or. April 11, 2014); *Roy v. City of L.A.*, No. CV 12-09012-AB (C.D. Cal. Feb. 7, 2018).
- A federal judge in New York held that Suffolk County might be liable for up to \$60 Million for complying with ICE detainers.
- This is because of Fourth Amendment concerns – do you have probable cause to continue to detain this individual under the Fourth Amendment?

ICE Detainers – It's Complicated

States, however, can mandate compliance with ICE Detainers and at least one court has held that the localities must then comply with detainer requests and doing so does not violate the Fourth Amendment. See *City of El Cenizo v. Texas*, 890 F.3d 164 (5th Cir. 2018).

State law can also dictate whether localities have authority under state law to comply with detainer requests.

Some courts have hinted that having a 287G agreement *could* help with the probable cause / liability issue. But this is not clear.

ICE Uploads Warrants into NCIC

- ICE allegedly put half a million immigration cases into NCIC
- What should police officers do when they encounter an individual with an administrative warrant from ICE uploaded into NCIC during a routine encounter?
- Is there criminal probable cause to continue to hold the individual? *Compare Santos v. Frederick Cnty. Bd. of Comm'rs*, 725 F.3d 451, 464 (4th Cir. 2013) with *United States v. Santiago-Francisco*, 819 F. App'x 157, 162 (4th Cir. 2020).

PRESIDENTIAL ACTIONS

PROTECTING AMERICAN COMMUNITIES FROM CRIMINAL ALIENS

Executive Orders

April 28, 2025

- Directs that the AG and Secretary of Homeland Security will publish a list of sanctuary jurisdictions within 30 days of the order.
- Immediately following that publication, the AG and Secretary will notify each sanctuary jurisdiction about “defiance of Federal immigration law enforcement and any potential violations of Federal criminal law.”
- Directs that the head of each agency to identify appropriate Federal funds, including grants & contracts, for suspension or termination.
- Directs Secretary and AG to develop guidance and rules to ensure appropriate eligibility verification is conducted for individuals receiving public benefits

PROTECTING AMERICAN COMMUNITIES FROM CRIMINAL ALIENS

Executive Orders | April 28, 2025

Executive
Order
Implications

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graph TD; A[Executive Order Implications] --> B[Criminal Liability]; A --> C[Funding]
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Criminal
Liability

Funding



What is a Sanctuary Jurisdiction?

Undefined term, but we do have some clues from lawsuits and agency actions.

DHS and AG were asked to come up with the list.

DHS has provided immigration conditions in its standard terms and conditions.

Example from DHS Standard Terms and Conditions

- Must comply with **8 USC 1373** & 1644
- Must comply with **8 USC 1324**
- Must agree they will honor requests for cooperation “such as participation in joint operations, sharing of information, or requests for short term detention of an alien pursuant to a **valid detainer**. A jurisdiction does not fail to comply with this requirement merely because it lacks the necessary resources to assist in a particular instance”
- Agree to provide **access** to detainees.
- Agree they will **not leak** or publicize immigration operations.
- Recipient must agree that compliance with this term is material to the government’s decision to make the grant.



PRESIDENTIAL ACTIONS

PROTECTING AMERICAN COMMUNITIES FROM CRIMINAL ALIENS

Executive Orders | April 28, 2025

“[Sanctuary Jurisdictions] are lawless insurrection[s] against the supremacy of Federal law.

Beyond the intolerable national security risks, such nullification efforts often violate **Federal criminal laws**, including . . .”

- **Obstruction Of Justice** (18 U.S.C. 1501)
 - **Unlawfully Harboring Illegal Aliens** (8 U.S.C. 1324)
 - **Conspiracy Against The United States** (18 U.S.C. 371)
 - **Conspiracy To Impede Federal Law Enforcement** (18 U.S.C. 372)
 - **Racketeer Influenced And Corrupt Organizations Act** (18 U.S.C. 1961)
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Funding Ramifications – Two Scenarios

Wholesale

Targeted

Constitutional Issues with Wholesale Defunding

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- **Separation of Powers** – Congress has the power of the purse, not the Executive
 - **Spending Clause** – Even Congress' power to put conditions on state funding is not unlimited (cannot be unduly coercive (such that it turns to compulsion), must be germane, and conditions cannot be illegal / unconstitutional.
 - **Tenth Amendment** – Cannot command the states / local government to enforce federal immigration law and do the job of the federal government.

Targeted Defunding Ramifications

- Case law from first Trump administration generally supports local autonomy and arguments that even these targeted actions violate the separation of powers, Spending Clause, and Tenth Amendment. But the decisions were not uniform and it will depend what grant is targeted.
- See *City of Philadelphia v. Attorney General*, 916 F.3d 276 (3d Cir. 2019); *City of Chicago v. Barr*, 961 F.3d 882 (7th Cir. 2020); *City of Los Angeles v. Barr*, 941 F.3d 931 (9th Cir. 2019); *City & Cnty. of San Francisco v. Barr*, 965 F.3d 753 (9th Cir. 2020); *City of Providence v. Barr*, 954 F.3d 23 (1st Cir. 2020); But see *City of New York v. U.S. Dep't of Justice*, 951 F.3d 84 (2d Cir. 2020).

What Should Localities Do?

- For the 16 localities involved in the first Invasion EO litigation, they may be able to relate this EO to the first EO and enjoin enforcement of the EO as to their jurisdiction
- Localities will need to consider options including preemptive litigation to enjoin the enforcement of the EO, defensive litigation if the government seeks to withhold funding under the EO, or reviewing / updating policies
 - ICE detainers present the classic rock and a hard place scenario
 - 287G agreements?

PRWORA

Personal Responsibility and Work Opportunity
Reconciliation Act of 1996

- Bans Federal and State benefits for unqualified immigrants, which included unauthorized immigrants
 - Exception for certain benefit programs (e.g., medical assistance)
 - Exception for State and Local programs that are explicitly enacted for unauthorized immigrants after 1996 and only use state or local funds
- Verification requirement for covered benefits.



PRESIDENTIAL ACTIONS

ENDING TAXPAYER SUBSIDIZATION OF OPEN BORDERS

The White House | February 19, 2025

Definition of “Benefits”

PRWORA

- “Federal Public Benefits” as designated by Agencies
- “Any grant, contract, loan, professional license, or commercial license”
- “Any . . . benefit for which payments or assistance are provided to an individual, household, or family eligibility unit”

Executive Order

- (i) “[C]ash or non-cash public benefit” to unauthorized immigrants.
- (ii) Federal payments to states and localities that, “subsidizes” illegal immigration or “abet” sanctuary policies.
- (iii) enhance eligibility verification systems, to the maximum extent possible

Example of PRWORA in Grant Agreements - HUD example

The recipient must administer its grant in accordance with all applicable immigration restrictions and requirements, including the eligibility and verification requirements that apply under title IV of [PRWORA] and any applicable requirements that HUD, the Attorney General, or the U.S. Center for Immigration Services [sic] may establish from time to time to comply with PRWORA, Executive Order 14218, or other Executive Orders or immigration laws.

....

Subject to the exceptions provided by PRWORA, the recipient must use [the Systematic Alien Verification for Entitlements (SAVE) system], or an equivalent verification system approved by the Federal government, to prevent any Federal public benefit from being provided to an ineligible alien who entered the United States illegally or is otherwise unlawfully present in the United States.

Example of immigration condition from HUD CoC Grant

- No state or unit of general local government that receives funding under this grant may use that funding in a manner that by design or effect facilitates the subsidization or promotion of illegal immigration or abets policies that seek to shield illegal aliens from deportation

DOT Letter from Secretary Duffy (4/24)

- Announced policy that all DOT funding is contingent on recipients complying with new immigration and DEI conditions.
- “In addition, your legal obligations require cooperation generally with Federal authorities in the enforcement of Federal law, including **cooperating with and not impeding U.S. Immigration and Customs Enforcement (ICE)** ... in the enforcement of Federal immigration law. DOT has noted reported instances where some recipients of Federal financial assistance **have declined to cooperate with ICE investigations**, have issued driver's licenses to individuals present in the United States in violation of Federal immigration law, **or have otherwise acted in a manner that impedes Federal law enforcement.**”

Duffy Letter Continued

- “**Declining to cooperate** with the enforcement of Federal immigration law or otherwise taking action intended to shield illegal aliens from ICE detection contravenes Federal law and may give rise to civil and criminal liability. See 8 U.S.C. § 1324 and 8 U.S.C. § 1373. **Accordingly, DOT expects its recipients to comply with Federal law enforcement directives and to cooperate with Federal officials in the enforcement of Federal immigration law.** The Department also expects its recipients to ensure that the Federal financial assistance they receive from DOT is provided only to subrecipients, businesses, or service providers that are U.S. Citizens or U.S. Nationals and Lawful Permanent Residents (LPRs) or legal entities allowed to do business in the U.S. and which do not employ illegal alien”

Duffy Letter Continued

- “Adherence to your legal obligations is a prerequisite for receipt of DOT financial assistance. Noncompliance with applicable Federal laws, or failure to cooperate generally with Federal authorities in the enforcement of Federal law, will jeopardize your continued receipt of Federal financial assistance from DOT and could lead to a loss of Federal funding from DOT.”

Lawsuits Challenging Conditions in Grants

- *State of California v. United States Department of Transportation* (filed 5/13).
 - Challenges immigration conditions being imposed by the 4/24 Duffy Letter on all DOT Funding
- *Illinois v. FEMA* (filed 5/13)
 - Challenges the immigration conditions being imposed in the DHS Standard Terms and Conditions on all FEMA funding
- *King County v. Turner* (Filed 5/2, TRO granted 5/7)
 - Challenges immigration /DEI conditions on HUD's Continuum of Care grants and FTA grants