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Abstract

On July 1, 2015, Kathryn Steinle was fatally shot on San Francisco’s Embarcadero. The killing was by the hands of Juan Francisco Lopez- Sanchez, an illegal alien convicted of multiple felonies, who had already been deported from the United States on five different occasions.
A VIOLATION OF THE ANTI-COMMANDEERING PRINCIPLE AND SPENDING POWERS JURISPRUDENCE OR A VALID EXERCISE OF FEDERAL POWERS? EXECUTIVE ORDER 13768 AND ITS EFFECTS ON FLORIDA LOCALITIES

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I. INTRODUCTION

On July 1, 2015, Kathryn Steinle was fatally shot on San Francisco’s Embarcadero.¹ The killing was by the hands of Juan Francisco Lopez-Sanchez, an illegal alien convicted of multiple felonies, who had already been deported from the United States on five different occasions.² The murder only added fuel to the fire of the immigration debate, shifting the general public’s attention to immigration policies and enforcement.³ The main object of discussion has since been sanctuary jurisdictions—and sanctuary policies in general.⁴ An obscure object to most, sanctuary policies define the relationship between states and local jurisdictions and the federal government with regards to immigrant residents.⁵ Specifically, sanctuary policies often limit cooperation with federal immigration enforcement actions and are implemented by many of the largest cities in the country.⁶ However, perception of sanctuary policies varies among different sides of the political spectrum.⁷ While some believe sanctuary policies foster criminal
activities and hot-beds for gang violence and drug-trafficking, others affirm the exact opposite, claiming sanctuary jurisdictions to be safer and more cooperative with law enforcement. The Executive Branch of the federal government interprets the issue in agreement with the former position.

On January 25, 2017, the newly elected President of the United States, Donald J. Trump, signed Executive Order 13768 titled “Enhancing Public Safety in the Interior of the United States” (“Executive Order”). The Executive Order targets sanctuary jurisdictions in an attempt to foster cooperation between federal and state law enforcement agencies in the fight against illegal immigration. Sanctuary jurisdictions have in fact been accused by the White House of defying United States Immigration and Customs Enforcement (“ICE”) orders. The Executive Order specifically targets violations of 8 U.S.C. § 1373, which forbids restrictions on the sharing of information regarding citizenship or immigration status of individuals with ICE.

Advocates of the Executive Order argue that implementation of its policies would improve the safety of citizens throughout the United States and further allow a more efficient execution of federal laws and statutes regarding immigration. Critics, on the other hand, argue that the Executive Order infringes upon constitutional rights of state and local jurisdictions by exercising powers—not constitutionally granted to the Executive Branch of government—in violation of the fundamental principle of separation of experience-an-increase-in-crime/; William Lajeunesse, Sessions Says When Cities Protect Illegal Immigrants, ‘Criminals Take Notice’, FOX NEWS: POL. (July 12, 2017), http://www.foxnews.com/politics/2017/07/12/sessions-says-when-cities-protect-illegal-immigrants-criminals-take-notice.html.

8. See Michelangelo Landgrave & Alex Nowrasteh, Criminal Immigrants: Their Numbers, Demographics, and Countries of Origin, 2017 CATO INST.: IMMIGR. RES. & POL. BRIEF 1–2; Lajeunesse, supra note 7.


11. See id. at 8799.


powers. Critics, in fact, affirm that ordering Congress to withhold federal funding, one aspect of the Executive Order, as punishment for the failure to comply with federal immigration laws, is an unconstitutional form of coercion in violation of the Tenth Amendment—which prohibits the federal government from forcing states and local governments to enforce federal laws.

Jurisdictions across the country have responded differently to President Trump’s Executive Order: Cities like Los Angeles and New York promised to stand behind their sanctuary policies, while Miami-Dade County retracted its sanctuary policy.

Part II of this Comment will illustrate the historical development of sanctuary jurisdictions from their biblical origin to the most recent application in the western legal system, specifically in the United States. Part III introduces the language of the Executive Order and its connections to the statute that it is designed to enforce. Part IV analyzes, in depth, the possible constitutional challenges to the Executive Order, and the arguments both in favor and against its constitutionality. Finally, Part V of this Comment will consider the possible repercussions of the provisions within the Executive Order in Florida, with particular attention paid to the South Florida region, historically home to thousands of immigrants.

II. SANCTUARY JURISDICTIONS


The concept of a sanctuary dates back to at least biblical times, and was originally rooted in the power of religious authorities to grant protection within an inviolable religious area or structure to persons fearing for their

18. See infra Part II.
19. See infra Part III.
20. See infra Part IV.
21. See infra Part V.
lives or liberty. Sanctuary practices existed in many Western societies, and were extensively used by ancient Hebrews after being freed from slavery in Egypt. Sanctuary practices were further used in both ancient Greece and Rome, with characteristics similar to the concept of asylum.

While originally granting asylum for all crimes, with many temples extending what was considered as divine protection, Greeks later reduced the use of asylum to individuals who had committed unpremeditated crimes. Contrarily, sacred edifices in Rome were not sanctuaries. In fact, Romans only extended asylum to give immunity and protection from violence throughout the inquisition process. Once judgment on the evidence was rendered, the asylum would be revoked and punishment would be inflicted on the defendant found guilty of a crime. With the emergence of Christianity, the concept of sanctuary extended to a wider range of individuals. In 303 A.D., Constantine’s Edict of Toleration granted Christian churches permission to extend protection to fugitives. Sanctuary was later recognized as a legal right through the promulgation of the Theodosian Code by the emperor Theodosius in 392 A.D. Extensively used in medieval times—enjoying recognition in both Canon law and Saxon law—sanctuaries suffered as centralized governments increased throughout Europe, and Church and State clashed over its control. Resulting from the
schism between the English Crown and the Catholic Church, the privilege of sanctuary came to an end in England in 1624.  

B. . . . To Its Modern American Application . . .

In the United States, sanctuaries by religious authorities against civil authorities were not invoked for almost 200 years. Prior to the American Civil War, clergymen and members of religious communities offered aid to slaves escaping bondage through an intricate system of routes known as the Underground Railroad. Although activism in the Underground Railroad was spread across religious figures and churches, no record exists of any church invoking the right to sanctuary. The first instance of the modern application of sanctuaries was during the Vietnam War, a military action that was strongly opposed by the religious community, which offered safe havens to draftees conscientiously resisting the draft. Although participants to the movement made no claim asserting legal recognition, the renewed concept of sanctuary was empowered by its characteristics of civil disobedience.

The current sanctuary movement in the United States developed in the 1980s when, after the enactment of the Refugee Act, “thousands of immigrants from El Salvador and Guatemala” applied for asylum. As a consequence of asylum applications being routinely rejected by federal
agencies, many churches across the country declared themselves sanctuaries to offer refuge to immigrants and protest against the policies of the federal government. In March of 1982, the Southside Presbyterian Church of Tucson, Arizona, was the first to publicly announce itself as a sanctuary for Central American immigrants fleeing war. In addition to offering protection, the churches and religious communities involved in the movement provided food, clothing, and legal services.

Following the wave of sanctuary initiatives ignited by churches and religious groups around the country, many local governments established sanctuary policies. Sanctuary laws passed by cities and states generally declared public places as sanctuaries. Jurisdictions that passed sanctuary laws during the 1980s included cities—Seattle, Los Angeles, Minneapolis, Chicago, Rochester—and states, including New Mexico, New York, and Massachusetts.

C. ... And Its Contemporary Version

Dissipating at the same pace as the political turmoil in Central America, the sanctuary movement regained momentum in the wake of the attack on the World Trade Center on September 11, 2001. A few months

40. Villarruel, supra note 35, at 1433; see also Feeley, supra note 22, at 820.
41. Davidson, supra note 22, at 603.
42. Villazor, supra note 39, at 141.
44. Villazor, supra note 39, at 142 (affirming that laws were indicative of political stands against federal immigration policies regarding the Central American crisis); Huyen Pham, The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power, 74 U. CIN. L. REV. 1373, 1383 (2006) (stating that local governments passed sanctuary laws allowing asylum-seekers to remain within their jurisdictions’ boundaries without threat of arrest for violation of federal immigration laws by local law enforcement).
45. Pham, supra note 44, at 1383; see also Jorge L. Carro, Municipal and State Sanctuary Declarations: Innocuous Symbolism or Improper Dictates?, 16 PEPP. L. REV. 297, 311–12 n.88–97 (1989) (describing the extended implementation of sanctuary policies across the country and listing, among others, Oakland, San Francisco, San Jose, and Sacramento, California; Rochester and Ithaca, New York; and Cambridge, Massachusetts as municipalities which also passed resolutions or city ordinances in favor of sanctuaries); Daniel D. McMillan, Note, City Sanctuary Resolutions and the Preemption Doctrine: Much Ado About Nothing, 20 LOY. L.A. L. REV. 513, 516–17 (1987) (affirming that the cities of Berkeley, California, and Madison, Wisconsin, also passed resolutions establishing themselves as “cities of refuge for Central American refugees”).
after the attack, answering concerns of the general public regarding national security and immigration, the Department of Justice (“DOJ”) released a memorandum announcing the inherent authority of local officials to arrest and detain illegal immigrants for both civil immigration and criminal violations. 47 Disapproving the policies set forth by the memorandum, local enforcement authorities adopted new sanctuary policies. 48 The trend of implementing favorable sanctuary policies has grown steadily since then, albeit the heinous crime committed against innocent civilians in New York on September 11, 2001 would have warranted otherwise. 49 By 2008, many states throughout the country counted sanctuary jurisdictions within their territorial boundaries. 50

The Department of Homeland Security (“DHS”) responded to local jurisdictions’ implementation of sanctuary policies by creating “Secure Communities, [a program requiring] local law enforcement agencies to run fingerprints through the DHS illegal immigrant database upon booking.” 51 When a match occurred, ICE would be alerted and a detainer would be issued. 52 DHS discontinued the program in 2014 due to complications in its administration arising out of lawsuits for violation of arrestees’ Fourth Amendment rights. 53 DHS substituted Secure Communities with the Priority Enforcement Program (“PEP”), a program designed to limit the applicability


53.  See Stubblefield, supra note 51, at 543.
of detainers merely to illegal immigrants convicted of a civil immigration priority offense].

The implementation of federal immigration detention mandated by ICE did not produce the results hoped for, leading cities across the country to once again implement counter-policies in opposition to the federal immigration regulations. Currently, approximately 400 local jurisdictions—with New York, San Francisco, and Los Angeles once again at the forefront of the movement—refuse to comply with federal immigration mandates and, either officially or unofficially, refuse to apply sanctuary regulations within their territories.

Modern sanctuaries do not conceal undocumented aliens nor shelter them from detection. “[W]hen a city says that it is being a sanctuary, it means that the city will not be an arm of federal immigration authorities.” The lack of intent to physically protect individuals from law enforcement is what specifically separates modern sanctuaries from the original movement. In an interview released to Politico, the director of special projects at the New York Immigration Coalition contended that “the term sanctuary cities is a misnomer.” Shifting substantially from their historical meaning, nowadays sanctuary jurisdictions are considered to be cities, counties, or states, which limit government employees—specifically local law enforcement—from inquiring about the immigration status of immigrants they encounter; with an exception recognized for cases of serious criminal offense[s].

54. Id.
55. See id. at 542–43.
57. Chemerinsky, supra note 56, at 60.
58. Id.
59. See id.; Villazor, supra note 39, at 148–49.
61. Corrie Bilke, Note, Divided We Stand, United We Fall: A Public Policy Analysis of Sanctuary Cities’ Role in the ‘Illegal Immigration’ Debate, 42 IND. L. REV. 165,
Although scholars and local policymakers have traditionally divided modern sanctuary policies into three major categories, such categories are often times combined by jurisdictions within one regulation. The first category, the so-called don’t ask policies, limits inquiries as to the nationality or immigration status of an individual by local law enforcement. The second category, don’t enforce policies, creates limitations on the power of local law enforcement to arrest or detain violators of immigration laws. Don’t tell regulations, the third category, establishes limitations on the authority by local enforcement agents to report immigration status information to federal agencies.

States and municipalities, as well as individual police departments, have adopted diverse mechanisms to ensure that unauthorized aliens in their jurisdictions are not turned over to federal immigration authorities. For instance, Cook County, Illinois, home to Chicago, instructs its county jail system to deny compliance with ICE detainer requests; Los Angeles’ Special Order 40, the oldest city sanctuary ordinance, refrains police action for the mere purpose of determining a person’s immigration status; and San

180 (2009) (discussing the historical development of sanctuary cities in the United States and the potential hazards that nonfederal enforcement of immigration law that sanctuary cities seek to avert); Villazor, supra note 39, at 147–48 (examining the narrower scope of the definition of sanctuary cities compared to its original meaning).
62. Kittrie, supra note 49, at 1455; see also Sullivan, supra note 46, at 574.
64. Id.; see also Pham, supra note 44, at 1390 (dividing don’t enforce provisions between “[n]o [e]nforcement of [i]mmigration [l]aws”—often reducing the resources available to officers to enforce federal immigration laws—and “[n]o [e]nforcement of [c]ivil [i]mmigration [l]aws”—barring cooperation in immigration law enforcement when the alleged violation is exclusively a civil violation).
68. OFFICE OF THE CHIEF OF POLICE, SPECIAL ORDER NO. 40, UNDOCUMENTED ALIENS (1979); Kittrie, supra note 49, at 1469. Los Angeles was one of the first cities in the United States to promote sanctuary policies. Kittrie, supra note 49, at 1455. The Office of the Los Angeles Chief of Police promulgated Special Order 40 to stop local enforcement agents from initiating police action with the sole purpose of discovering the immigration status of a person. OFFICE OF THE CHIEF OF POLICE, supra. The Order, however, allowed officers to communicate to federal agencies arrest records when the person arrested had been previously convicted of a felony. Id.
Francisco Sheriff’s Department’s policy is that, absent a court issued warrant or signed order, contact with ICE representatives should be limited.69

III. PRESIDENTIAL PROMISE

Since officially entering the presidential race in June of 2015, President Trump focused his campaign leitmotif on issues of public safety and threats presented by illegal immigration.70 On several occasions during his campaign, President Trump vowed to crack down on sanctuary jurisdictions in an attempt to lower criminal rates and defeat criminal organizations operating in the United States.71 Highly critical of the federal immigration policies implemented by former President Barack H. Obama—his predecessor at the presidential helm—President Trump identified sanctuary policies as one of the main causes of the proliferation of criminal organizations.72 Since his election, as the forty-fifth President of the United States on November 8, 2016, President Trump’s position on immigration has not changed.73 Faithful to his campaign promises to the electorate, on January 25, 2017, exactly five days after taking the Oath of Office, President Trump signed the Executive Order.74

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69. Letter from Ross Mirkarimi, Sheriff, S.F. Sheriff’s Dep’t, to All Personnel, S.F. Sheriff’s Dep’t (Mar. 13, 2015) (on file with San Francisco Sheriff’s Department).


74. Alvarez, supra note 73.
A. Enhancing Public Safety in the Interior of the United States

Composed of eighteen sections, the Executive Order lays out the presidential plan against illegal immigration. Specified in section one, “[t]he purpose of [the Executive Order] is to direct executive departments and agencies . . . to employ all lawful means to enforce immigration laws of the United States.” Further, affirming that aliens illegally entering the United States—and those aliens overstaying their visas—are a significant threat to both public safety and national security, the Executive Order asserts that faithful execution of federal immigration laws is impossible when exemptions apply to different classes and categories of removable aliens. In a direct attack on sanctuary jurisdictions, section one also stresses that “[s]anctuary jurisdictions across the United States willfully violate [f]ederal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.”

In an additional effort to equalize the categories of removable aliens, section five of the Executive Order lists multiple classes of aliens that fulfill the federal requirements for removal. In its language, the Executive Order allows the Secretary of Homeland Security to prioritize for removal, in addition to those recognized by congressional acts, aliens who:

a) Have been convicted of any criminal offense;
b) Have been charged with any criminal offense, where such charge has not been resolved;
c) Have committed acts that constitute a chargeable criminal offense;
d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
e) Have abused any program related to receipt of public benefits;
f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or

g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

76. Id. at 8799.
77. Id.
78. Id.
79. Id. at 8800.
In order to implement the policies laid out in the Executive Order, in section eight, President Trump states that it is the intent of the Executive Branch to empower law enforcement agencies at both the state and local level to perform those functions generally employed by federal immigration officers.\(^{81}\) Attempting to foster cooperation between federal, state, and local agencies, the Executive Order further provides that the Secretary of State has the authority to enter into statutorily regulated agreements with state governors and local officials to permit local agencies to enforce federal laws.\(^{82}\) However, in opposition to the constructive language of section eight, the Executive Order provides punitive language in section nine for those jurisdictions that fail to enforce federal immigration policies.\(^{83}\)

B. **Section Nine—The Source of Discord**

Section nine of the Executive Order is titled *Sanctuary Jurisdictions*, and affirms that “it is the policy of the Executive Branch to ensure, to the fullest extent of the law, that a state, or a political subdivision of a state, shall comply with 8 U.S.C. § 1373.”\(^{84}\) Specifically, subsection 9(a) establishes that:

In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. § 1373—sanctuary jurisdictions—are not eligible to receive federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. § 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of federal law.\(^{85}\)

The stated goal of section 9(a) of the Executive Order is to take enforcement actions against any entity or jurisdiction that fails to comply

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81. *Id.*
82. *Id.; see also 8 U.S.C. § 1357(g) (2012). In 8 U.S.C § 1357(g), this section allows agreements between federal agencies and state or local agencies within the scope to permit local law enforcement to enforce federal laws and regulations. 8 U.S.C. § 1357(g)(1–(2).
84. *Id.*
85. *Id.*
with federal law, specifically 8 U.S.C. § 1373. Stated within the language of section 9(a), and also confirmed by the language of section two, President Trump’s objective is to ensure that jurisdictions not in compliance with federal law do not receive federal funds and grants, with exceptions made for disbursements mandated by law.

C. 8 U.S.C. § 1373

Signed into law by President Bill Clinton in September of 1996—just a few months after another statute with similar language, the Personal Responsibility and Work Opportunity Reconciliation Act (“PRWORA”), was signed into law—the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”) contained the provision which was later codified at Title 8 § 1373 of the United States Code. 8 U.S.C. § 1373 regulates communications between government agencies, including federal, state, and local agencies, and the Immigration and Naturalization Service (“INS”). Specifically, the statute prohibits any federal, state, or local government entity or official from restricting “any government entity or official[s] from sending to, or receiving from, the [INS] information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” The statutory language further prohibits any person or agency

86. See id.
87. See id. at 8799, 8801.

Notwithstanding any other provision of [f]ederal, [s]tate, or local law, no [s]tate 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. 8 U.S.C. § 1644 (2012).

90. Id. § 1373(a). The Senate version of the bill noted in its report that the section:

Prohibits any restriction on the exchange of information between the [INS] and any [f]ederal, [s]tate, or local agency regarding a person’s immigration status. . . . The acquisition, maintenance, and exchange of immigration-related information by [s]tate and local agencies is consistent with, and potentially of considerable assistance to, the [f]ederal regulation of immigration and the achieving of the purposes and objectives of the Immigration and Nationality Act.
to “prohibit, or in any way restrict a [f]ederal, [s]tate, or local government entity from” sending, requesting, or receiving information regarding the immigration status, lawful or unlawful, of any individual from the INS; maintaining such information; and exchanging information with other government agencies.\footnote{8 U.S.C. § 1373(b) (1996)}. Although prohibiting restrictions on information-sharing between state and federal agencies, neither of these anti-sanctuary statutes renders cooperation with federal immigration authorities—or sharing of information—mandatory.\footnote{See McCormick, supra note 90, at 169.} As some scholars have noted, the characteristic of 8 U.S.C. § 1373 is to encourage cooperation among different levels of law enforcement by prohibiting certain conduct instead of directly requiring local cooperation.\footnote{Rick Su, Police Discretion and Local Immigration Policymaking, 79 UMKC L. REV. 901, 911 (2011). The statute is enforceable exclusively against so-called don’t tell policies, while it is silent on the other two major categories of sanctuary policies, don’t enforce and don’t ask. Id.; see also 8 U.S.C. § 1373.}

IV. CONSTITUTIONALITY ISSUES

The reaction from states and municipalities, to the signing of the Executive Order, was strong and immediate.\footnote{See Michelle Mark, ‘Sanctuary Cities’ Are Ready to Fight Trump’s Potentially ‘Unconstitutional’ Executive Order, BUS. INSIDER: POLITICS (Jan. 27, 2017, 10:09 AM), http://www.businessinsider.com/sanctuary-cities-brace-for-trumps-executive-order-on-immigration-2017-1.} On January 31, 2017, the City and County of San Francisco filed a suit in the United States District Court for the Northern District of California challenging the constitutionality of the Executive Order.\footnote{Complaint for Declaratory & Injunctive Relief, supra note 56, at 1–2.} The County of Santa Clara, California filed suit shortly thereafter on February 3, 2017, on similar grounds, seeking declaratory and injunctive relief against all named defendants, which included President Trump himself.\footnote{Complaint for Declaratory & Injunctive Relief at 1–4, 40–41, Cty. of Santa Clara v. Trump, No. 3:17-cv-00574-WHO (N.D. Cal. filed Feb. 3, 2017).} The City of Richmond, California also filed suit challenging the Executive Order on March 21, 2017, and on March 23, 2017, moved to relate its case to the suits brought by the Counties of Santa Clara and San Francisco.\footnote{Administrative Motion of City of Richmond to Consider Whether Cases Should Be Related Pursuant to Civil L.R. 3-12(B) & Notice of Related Case Pursuant to Civil Litigation Act, supra note 56, at 1–4, 40–41, Cty. of Santa Clara v. Trump, No. 3:17-cv-00574-WHO (N.D. Cal. filed Feb. 3, 2017).} An additional action seeking declaratory and injunctive
Relief was filed on February 8, 2017, by the City of Lawrence, Massachusetts, and the City of Chelsea, Massachusetts, in the United States District Court for the District of Massachusetts. The counties and cities specifically challenged section 9(a), the enforcement provision within the language of the Executive Order, on several grounds.

In general, the cities and counties each argue that section 9(a) of the Executive Order violates the Separation of Powers Doctrine by improperly seeking to exercise congressional spending powers. In addition, even if President Trump could exercise such spending powers, the cities and counties contend that the Executive Order would be in violation of those powers—and thereby unconstitutional under the Tenth Amendment—and, lastly, that section 9(a) violates the anti-commandeering clause of the Tenth Amendment.

On the other hand, support for the Executive Order—and the policies and objectives stated therein—has come from Patrick Morrisey, the Attorney General of West Virginia, and Jeff Landry, the Attorney General of Louisiana. In their amici curiae brief—filed in the action brought by the


102. See Proposed Brief of Amici Curiae States of West Virginia, Louisiana, Alabama, Arkansas, Michigan, Nevada, Ohio, Oklahoma, South Carolina, & Texas at 1, 12, Cty. of Santa Clara v. Trump, No. 3:17-cv-00574-WHO (N.D. Cal. filed Feb. 3, 2017) [hereinafter Proposed Brief of Amici Curiae]. The Amici states supporting the Executive Order also include the states of “Alabama, Arkansas, Michigan, Nevada, Ohio, Oklahoma, South Carolina, and Texas.” Id. at 1 n.1.
City and County of San Francisco and the County of Santa Clara—both maintain that the Executive Order is constitutional and challenges the validity of the action taken by these cities and counties based upon justiciability grounds. Without going into the specific merits of whether any of the plaintiffs have standing to bring the action, the following analysis will focus on the constitutionality of the Executive Order, including possible arguments in favor or against it.

A. Spending Clause

Article I, section 8 of the United States Constitution establishes what has been defined as the Taxing and Spending Clause. The Taxing and Spending Clause textually affirms that “Congress shall have the Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.”

Vast jurisprudence has interpreted the language of the Taxing and Spending Clause, starting with United States v. Butler, which defines the federal spending power broadly to promote the general welfare. The

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103. Proposed Brief of Amici Curiae, supra note 102, at 2. The first argument presented by the brief is the lack of standing to bring suit due to the absence of any injury to the jurisdictions. Id.

104. See Exec. Order No. 13768, 82 Fed. Reg. at 8799; Proposed Brief of Amici Curiae, supra note 102, at 3; State of California’s Administrative Motion for Leave to File an Amicus Curiae Brief in Support of Plaintiff’s Motion for Preliminary Injunction at 2, City & Cty. of S.F. v. Trump, No. 3:17-cv-00485-WHO (N.D. Cal. filed Jan. 31, 2017) [hereinafter State of California’s Administrative Motion].


108. Id. at 65–66. “[T]he power of Congress to authorize expenditure of public money[] for public purposes is not limited by the direct grants of legislative power found in the Constitution.” Id. at 66 (adopting Alexander Hamilton’s interpretation of the General Welfare Clause); see also The Federalist No. 34, supra note 106, at 177–78 (Alexander Hamilton); Jeffrey T. Renz, What Spending Clause? (or the President’s Paramour): An
Supreme Court of the United States further affirmed in *South Dakota v. Dole*\(^{109}\) that “Congress may attach conditions on the receipt of federal funds, and has repeatedly employed the power ‘to further broad policy objectives by conditioning receipt of federal moneys upon compliance by the recipient with federal statutory and administrative directives.’”\(^{110}\) Articulating limitations to the applicable conditions, Chief Justice Rehnquist announced in *Dole* a four-part test stemming from previous, singular rulings of the Court.\(^{111}\) First, the use of spending power by Congress must be in furtherance of the general welfare.\(^{112}\) Reaffirming the principle established in *Helvering v. Davis*,\(^{113}\) the Chief Justice recognized that courts should observe some degree of deference to Congress in determining “whether a particular expenditure is intended to serve general public purposes.”\(^{114}\) Second, conditions imposed by Congress on grants must be unambiguous.\(^{115}\) Third, there must be a relation between the conditions imposed by Congress

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\(^{109}\) *Id.* at 206 (quoting Fullilove v. Klutznick, 448 U.S. 448, 474 (1980)).

\(^{110}\) *Id.* at 205. The United States District Court for the District of South Dakota dismissed the complaint, and the ruling was later confirmed by the Court of Appeals for the Eighth Circuit. *Id.* The Supreme Court affirmed the ruling of the lower court, finding the statute to be a constitutional exercise of Congress’ spending power. *Id.* at 212. “Congress can trade things within its power—like money, or regulatory authority, or forbearance from preemption—for state assistance that would otherwise lie beyond its reach.” Spencer E. Amdur, *The Right of Refusal: Immigration Enforcement and the New Cooperative Federalism*, 35 YALE L. & POL’Y REV. 87, 120 (2016).


\(^{112}\) *Dole*, 483 U.S. at 207 (quoting *Helvering*, 301 U.S. at 640; *Butler*, 297 U.S. at 65).

\(^{113}\) 301 U.S. 619 (1937).

\(^{114}\) *Dole*, 483 U.S. at 207. Changing the terms of an existing funding agreement would be a breach similar in nature to changing the terms of an existing contract. Andrew Hanson, “Economic Dragooning”: Limiting Trump’s Ability to Punish Sanctuary Cities, HARV. L. & POL’Y REV. (Dec. 1, 2016), http://www.harvardlpr.com/2016/12/01/economic-dragooning-limiting-trumps-ability-to-punish-sanctuary-cities/.

\(^{115}\) *Dole*, 483 U.S. at 207.
and the purpose of the federal program—a limitation of germaneness.\footnote{Craig Eichstadt, Twenty-Year Legacy of South Dakota v. Dole, 52 S.D. L. REV. 458, 458 (2007); accord Dole, 483 U.S. at 207.} Fourth, congressional intent in establishing the program cannot constitute a violation of other specific restrictions imposed on the federal government by the Constitution.\footnote{Dole, 483 U.S. at 208. Language in previous rulings of the Supreme Court of the United States uncontrovertibly affirms the “proposition that the [spending] power may not be used to induce the [s]tates to engage in activities that would themselves be unconstitutional.” Id. at 210.} Chief Justice Rehnquist also interestingly affirmed near the end of the opinion “that in some circumstances the financial inducement offered by Congress might be so coercive as to pass the point at which pressure turns into compulsion.”\footnote{Id. at 211 (quoting Steward Mach. Co. v. Davis, 301 U.S. 548, 590 (1937)).} Although no compulsion was found in \textit{Dole}, the opinion created a new threshold for congressional legislative acts to be deemed constitutional—opening the gates to additional challenges.\footnote{Id. at 211–12; e.g., Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2604 (2012).} Although not all parts of the four-part test are allegedly challenged by the language of the Executive Order, arguments can be made as to at least three parts.\footnote{See Eddie Nasser, President Trump Overstepped His Authority on Sanctuary Cities, HARV. L. & POL’Y REV. (Feb. 28, 2017), http://harvardlpr.com/2017/02/28/president-trump-overstepped-his-authority-on-sanctuary-cities/.}

1. Clarity of Intent

In the specific words of Chief Justice Rehnquist, when “Congress desires to condition the [s]tates’ receipt of federal funds, it ‘must do so unambiguously . . . , enable[ing] the [s]tates to exercise their choice knowingly, cognizant of the consequences of their participation.’”\footnote{Dole, 483 U.S. at 207 (alteration in original) (quoting Pennhurst State Sch. & Hosp. v. Halderman, 451 U.S. 1, 17 (1981), rev’d, 465 U.S. 89 (1984), superseded by statute, 28 U.S.C. § 1367, as recognized in Raygor v. Univ. of Minn., 604 N.W.2d 128 (Minn. Ct. App. 2000)).} The contractual nature of the Taxing and Spending Clause enables jurisdictions to know the requirements and expectations set forth by Congress before accepting their end of the bargain.\footnote{See Nat’l Fed’n of Indep. Bus., 132 S. Ct. at 2602–03; Pennhurst State Sch. & Hosp., 451 U.S. at 17.} Thus, it is counter-intuitive that Congress’ legitimate use of its spending power depend on whether acceptance of conditions on funds by local jurisdictions is made
Voluntary and knowing acceptance of federal funds implies that no implementation of after-the-fact conditions are permitted. In fact, “[t]hough Congress’ power to legislate under the spending power is broad, it does not include surprising participating states with post-acceptance or retroactive conditions.” The Court in National Federation of Independent Business v. Sebelius clearly states that Congress is not free to penalize States for their choice to not participate in new programs by taking away existing funding—a decision that resembles less of a constitutional use of spending powers, and more of an abuse of it.

The jurisdictions challenging the Executive Order affirmed that the main purpose of the Executive Order is to retroactively condition all federal grants to comply with 8 U.S.C. § 1373. Doubting the clarity of the Executive Order, the cities and counties bringing the action claimed that the conditions, being inexistent at the time federal grants were accepted, could not be accepted knowingly and willingly—as is required by the Dole test—thus creating forcible conditions on federal grants in violation of the Constitution. These jurisdictions further contended that the ambiguity of the Executive Order extends to the exact nature of the grants being conditioned. If the Executive Order applies conditions on federal grants, both the nature of the grants and the amount of federal funds being conditioned need to be stated clearly, thus allowing the voluntary choice by States and municipalities to either accept or reject the federal grants.

Additionally, the ambiguity of the Executive Order extends to the conduct being specifically targeted. If no clear directions are given by the federal government on whether a certain conduct would fall under the umbrella of conduct that the Executive Order is trying to limit, then it becomes nearly impossible for jurisdictions to avoid penalties through policy adjustments.

124. Id. at 2606.
125. Id.
127. See id. at 2607.
130. See Complaint for Declaratory & Injunctive Relief, supra note 56, at 12.
131. Cf. Dole, 483 U.S. at 207.
On the other hand, although refraining from discussion about whether any existing grant program meets the *Dole* criteria—compliance strongly denied by those jurisdictions bringing the lawsuit—the states in support of the Executive Order confirm the validity of the Executive Order.\(^\text{134}\) According to the filed Amici Brief, an authorization by Congress allowing the Attorney General and Secretary of State to administer grant programs, conditioning receipt on compliance with specific federal immigration laws, is well within constitutional boundaries.\(^\text{135}\) A memorandum issued by Attorney General Jeff Sessions also helps further clarify the essence of federal grants potentially conditioned on compliance with federal immigration laws, thereby rendering meritless the claims of ambiguity with regard to the nature of the grants.\(^\text{136}\) The memorandum affirms that “section 9(a) of the Executive Order . . . will be applied solely to federal grants administered by the [DOJ] or the [DHS], and not to other sources of federal funding.”\(^\text{137}\) However, the memorandum arguably fails one of its main objectives—specifying the conduct leading to denial of federal funds.\(^\text{138}\) Although limiting the term sanctuary jurisdiction to those jurisdictions that “willfully refuse to comply with 8 U.S.C. § 1373,” the memorandum fails to clarify the characteristics of a willful refusal, leaving states and localities in the dark as to the exactitude of the targeted conduct.\(^\text{139}\)

2. Nexus Requirement

As a third requirement to achieve constitutionality, *Dole* affirmed that a connection must exist between the condition applied to federal grants and the government interest to be achieved.\(^\text{140}\) The *Dole* Court stated that “conditions on federal grants might be illegitimate if they are unrelated ‘to the federal interest in particular national projects or programs.’”\(^\text{141}\) What has
been recognized as the *nexus* requirement under the *Dole* test is only established when a reasonable relationship between the condition applied by Congress and the purpose of the federal program exists.\(^{142}\)

Thus, a connection must exist between the federal funds being conditioned by the Attorney General and the Secretary of State, and the ultimate goal of the Executive Order—compliance with § 1373 of Title 8 of the United States Code.\(^{143}\) The language of the Executive Order, in conjunction with the memorandum released by the Attorney General might, however, frustrate the Executive Order’s intentions.\(^{144}\) In fact, the Attorney General’s clarification on the identity of the federal grants that could potentially be affected in the process sheds some light on, but also clashes with, the express language of the Executive Order.\(^{145}\) The Executive Order alleges specifically the non-applicability of conditions on grants necessary for purposes of law enforcement.\(^{146}\) However, since all grants mentioned by the Attorney General as possible targets are, on different levels, designed for law enforcement purposes, it becomes unclear what other grants could be affected.\(^{147}\) The issue is of major relevance, because conditions on grants unrelated to immigration purposes—thus running afoul of the concept of *germaneness*—would be the exact type of federal activity the *Dole* Court intended to eliminate.\(^{148}\)

3. **Coercion**

While not an integral part of the four-prong test developed in *Dole*, the anti-coercion requirement is not any less important in establishing whether conditions on federal grants are constitutional.\(^{149}\) Nevertheless, although—as noted above—courts recognize that financial inducement

\(^{142}\). *

\(^{143}\). *See id.* at 213. “I agree that there are four separate types of limitations on the spending power: [T]he expenditure must be for the general welfare, . . . the conditions imposed must be unambiguous, . . . they must be reasonably related to the purpose of the expenditure, . . . and the legislation may not violate any independent constitutional prohibition . . . .” *Id.* (O’Conner, J., dissenting) (citations omitted).

\(^{144}\). *See Alvarez, supra* note 138; Frankel, *supra* note 99.

\(^{145}\). *See Alvarez, supra* note 138; Frankel, *supra* note 99.


\(^{148}\). *See Dole*, 483 U.S. at 207–08.

\(^{149}\). *See id.* at 207–08, 211.

https://nsuworks.nova.edu/nlr/vol42/iss1/5
offered by Congress can be over-coercive, congressional threats to withhold money are upheld when they affect a limited amount of funds.  

In *Dole*, the Supreme Court found the threat of losing 5% of highway funds was not impermissibly coercive, and the financial inducement a “relatively mild encouragement to . . . [s]tates” to implement the language of the statute.  

In similar scenarios, states have the faculty to decide whether to accept the condition applied by Congress or deny acceptance of the grant. As stated by the Supreme Court of the United States in *National Federation of Independent Business v. Sebelius*, courts “look to the [s]tates to defend [its] prerogatives by adopting ‘the simple expedient of not yielding’ to federal blandishments when they do not want to embrace the federal policies as their own.” When conditions attached to federal funds resemble a *gun to the head*, congressional encouragement to state action is not considered a valid exercise of spending powers.  

The threat of coercion varies based on the jurisdiction and their degree of reliance on federal funding for the daily management of duties and services to the resident population.  

Among the jurisdictions directly involved in opposing the Executive Order, San Francisco’s yearly budget gravitates around $10 billion, with approximately $1.2 billion coming directly from the federal government.  

Santa Clara’s federal funding for the 2015 to 2016 fiscal year was approximately $1 billion, a staggering 15%
of the county’s total budget. Further, Chicago received $1.08 billion in federal funding in 2015, with an estimated increase to $1.25 billion for 2016—roughly 13.5% of the yearly city’s budget.

The outcome of a coercion analysis regarding whether the Executive Order represents a coercive exercise of federal spending powers depends on the exact federal grants that would be withheld in case of non-compliance with the statute by a state or local jurisdiction. Therefore, a coercive effect would likely be an inevitable outcome if more than just federal funds for policing were affected. Contrarily, it is likely that Courts would rule in accordance with Dole and uphold the conditions on federal grants.

B. Tenth Amendment Umbrella

The Tenth Amendment to the Constitution affirms that “[t]he 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.” In an effort to shape the relationship between the federal and state governments, the language of the Tenth Amendment helps define the concept of federalism. The basic principle established by the Tenth Amendment is that if powers are “delegated to Congress [by] the Constitution, [then] the Tenth Amendment . . . [refutes] any reservation of that [specific] power to the [s]tates.” Nevertheless, when a power is “not delegated to [Congress] by the Constitution,” it belongs to the [s]tates.

159. Complaint for Declaratory & Injunctive Relief, supra note 96, at 7.
161. See Cities Under Siege, Economist (London), May 6, 2017, at 36. For example, Chicago would only lose $2 million if “the order would affect only federal funds for policing” as argued by the Attorney General in his memorandum. Id. However, if more federal grants will be affected, Chicago would lose, according to some estimates, up to $3.6 billion for the current year. Id.
163. See id.
164. U.S. CONST. amend. X.
165. See id.
167. United States v. Darby, 312 U.S. 100, 123–24 (1941) (emphasis added). “It is in this sense that the Tenth Amendment ‘states but a truism that all is retained which has not been surrendered.’” New York, 505 U.S. at 156 (quoting Darby, 312 U.S. at 124).
1. Anti-Commandeering

The Supreme Court of the United States’ understanding and interpretation of the Tenth Amendment has been that “[t]he States unquestionably do retai[n] a significant measure of sovereign authority . . . to the extent that the Constitution has not divested them of their original powers and transferred those powers to the federal government.”

[T]he preservation of the [s]tates, and the maintenance of their governments, are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National [G]overnment. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible [s]tates.

*New York v. United States*, solidified the principle of anti-commandeering. The Supreme Court of the United States held that Congress does not have the power to “commande[r] the legislative processes of the [s]tates by directly compelling them to enact and enforce a federal regulatory program.” Upheld in *Printz v. United States*, the prohibition extends to federal directives requiring particular problems to be addressed, and to orders given to states’ officers to administer and enforce any federal regulatory program. Prohibition to compel states to enact and

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171. Id. at 145, 202 (White, J., concurring). The language of the Low-Level Radioactive Waste Policy Amendment Act of 1985 specified that a state or regional compact failing to provide disposal of internally generated waste by a particular date must take title and possession of the waste. Id. at 153–54 (majority opinion). The provision also directed States to assume liability for internally generated waste if they failed to comply. Id. Writing for the majority, Justice O’Connor found the provision impermissibly coercive, and thus, unconstitutional under the Tenth Amendment. Id. at 176, 188.

172. *New York*, 505 U.S. at 161 (quoting Hodel v. Va. Surface Mining & Reclamation Ass’n, 452 U.S. 264, 288 (1981) (affirming that the Surface Mining Control and Reclamation Act of 1977 was constitutional for the exact reason that it did not commandeer the States into regulating mining)).


174. Id. at 935. The Supreme Court held the Brady Handgun Violence Prevention Act of 1968, which required the Attorney General to establish a national system for instant background checking of prospective handgun purchasers and to command the chief law enforcement officers nationwide to conduct checks and related police tasks, unconstitutional. Id. at 933–34.
administer federal programs applies regardless of whether congressional commands to regulate are pointed directly to states, or a state is coerced to implement a federal regulatory system. Notwithstanding the principles enunciated in both New York and Printz, support of state governments and officials is possible when national security is at stake, therefore authorizing an exception to anti-commandeering for reasons beyond the general control of the federal government.

The Executive Order arguably affects states and local jurisdictions in two ways: First, compelling jurisdictions to comply with federal detainer requests in order to avoid being labeled as a sanctuary, thus losing funding; and second, preventing jurisdictions from exercising those police powers assigned to them under the Tenth Amendment.

a. ICE Detainers

The language of section 9(b) of the Executive Order indicates that jurisdictions failing to comply with any ICE detainer request fall within the category of sanctuary jurisdictions. An ICE civil detainer consists of local law enforcement agencies requesting local jurisdictions to keep inmates held for actual or suspected violations of state criminal laws for up to forty-eight hours after the inmate’s scheduled release—potentially extending detention up to five days when arrests and custody stretch over a holiday weekend. The detainers serve the purpose of giving ICE agents enough time to verify the information within federal databases and determine whether the individual should be taken into federal custody.

In its attempt to enforce ICE detainers, the language of the Executive Order—perceived as mandatory—runs afoul of constitutional principles established by judicial interpretation. In 2014, the Third Circuit Court of


176. See Printz, 521 U.S. at 940; Daniel Booth, Note, Federalism on ICE: State and Local Enforcement of Federal Immigration Law, 29 Harv. J.L. & Pub. Pol’y 1063, 1073 (2006). “Matters such as the enlistment of air raid wardens, the administration of a military draft . . . or perhaps the threat of an international terrorist, may require a national response before federal personnel can be made available to respond.” Printz, 521 U.S. at 940 (Stevens, J. dissenting).

177. See Letter from Annie Lai et al. to Donald J. Trump, supra note 143, at 1.

178. Id.


180. Stubblefield, supra note 51, at 546–47.

181. Id. at 545; see also U.S. IMMIGRATION & CUSTOMS ENF’T, 306-112-002B, ISSUANCE OF IMMIGRATION DETAINERS BY ICE IMMIGRATION OFFICERS 2, 4 (Mar. 24, 2017).

Appeals in *Galarza v. Szalczyk*,\(^{183}\) affirmed that local governments are not under any duty to comply with ICE civil detainer requests, which are strictly voluntary.\(^{184}\) In fact, “settled constitutional law clearly establishes that [immigration detainers] must be deemed requests” because, under the Tenth Amendment, any other interpretation would render them unconstitutional.\(^{185}\) Ordering imprisonment of suspected aliens subject to removal would, in fact, be inconsistent with the essential principles of *anti-commandeering*.\(^{186}\) The constitutional violations resulting from mandated imprisonment are not limited to the Tenth Amendment, but often further extend to violations of the Fourth Amendment right against unreasonable seizures.\(^{187}\)

In *Miranda-Olivares v. Clackamas County*,\(^{188}\) the court found Clackamas County in violation of Miranda-Olivares’s Fourth Amendment right against unreasonable seizures.\(^{189}\) Although the county argued that the seizure was a mere continuation of the original arrest, the court found otherwise.\(^{190}\) The “prolonged warrantless, post-arrest, pre-arraignment custody” by the county jail was not justified by the pending detainer request by ICE.\(^{191}\) A similar ruling was given by the Court of Appeals for the First Circuit in *Morales v. Chadbourne*,\(^{192}\) where the court found a twenty-four-hour imprisonment pursuant to an ICE detainer a violation of the arrestee’s Fourth Amendment rights.\(^{193}\) The court stated that, absent a warrant, immigration officers have the faculty to arrest an alien “only if they have ‘reason to believe’ that the alien so arrested is in the United States in violation

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\(^{183}\) 745 F.3d 634 (3d Cir. 2014).
\(^{184}\) See id. at 643, 645.
\(^{185}\) Id. at 643.
\(^{186}\) Id.
\(^{189}\) See id. at *11. “Miranda-Olivares was arrested for violating a . . . restraining order and booked into the [county] [j]ail.” Id. at *1. According to its policy to report arrests of foreign-born persons “on a warrant or probable cause charge[s],” the jail notified ICE, and a detainer request was issued to the jail the following day. Id. In furtherance of ICE objectives, the jail also honors detainers “even if the underlying state criminal charges are resolved or bail is posted.” Id. at *2. Arrested on March 14, 2012, “Miranda-Olivares remained in custody . . . on . . . state charges until March 29, 2012,” but due to the ICE detainer, remained in custody until the following day, when picked up by DHS agents. Miranda-Olivares, 2014 WL 1414305, at *2–3.
\(^{190}\) Id. at *9.
\(^{191}\) Id.
\(^{192}\) 793 F.3d 208 (1st Cir. 2015).
\(^{193}\) See id. at 211, 218, 223.
of any [immigration] law or regulation and is likely to escape before a warrant can be obtained for his arrest.”

The court further affirmed that reason to believe must be effectively considered equal to probable cause for the arrest, and that arrests made in its absence are in violation of Fourth Amendment principles. The plethora of lawsuits and consequential liability for Fourth Amendment violations are some of the reasons why cities and counties across the United States enact policies restricting compliance with ICE detainers.

Given the extensive jurisprudence on the unconstitutionality of detainer requests, which often lead to prolonged arrest periods for aliens absent probable cause, it becomes difficult to not justify the decision of local jurisdictions to refuse compliance to ICE detainers, which is likely a mere exercise of constitutional police powers.

b. Police Powers

The so-called police powers are the states’ reserved constitutional authority under the Tenth Amendment to promote health, safety, and welfare of their residents. In Sligh v. Kirkwood, the Supreme Court of the United States affirmed that:

The police power, in its broadest sense, includes all legislation and almost every function of civil government. It is not subject to definite limitations, but [it] is coextensive with the necessities of the case and the safeguards of public interest. It embraces regulations designed to promote public convenience or the general prosperity or welfare, as well as those specifically intended to promote the public safety or the public health.

Sanctuary policies reflect determination by states and local jurisdiction to exercise their judgment and promote health and safety of their residents.
residents.\textsuperscript{201} It is undisputed that “[t]he promotion of safety of persons and property is . . . at the core of the [s]tate’s police power.”\textsuperscript{202} United States v. Morrison\textsuperscript{203} affirms the long recognized principle that states possess a unique domain of authority over many functions of government.\textsuperscript{204} In fact, the Founders “ensured that powers which ‘in the ordinary course of affairs, concern the lives, liberties, and properties of the people’ were held by governments more local and more accountable than a distant federal bureaucracy.”\textsuperscript{205} Moreover, the choice to limit direct involvement in the enforcement of federal immigration policies is dictated by practical issues of community management, and is strongly supported by those charged with patrolling the community to ensure its safety.\textsuperscript{206} The Executive Order arguably infringes upon the discretion of local law enforcement authorities to make the policy judgments deemed necessary, replacing them with federal preferences.\textsuperscript{207} Law enforcement agencies throughout the country have shown support for sanctuary policies.\textsuperscript{208} Police chiefs and sheriffs, together with the Major Cities Chiefs Association, sustain that using local law

\begin{itemize}
\item \textsuperscript{201} Letter from Annie Lai et al. to Donald J. Trump, \textit{supra} note 143, at 1.
\item \textsuperscript{202} Kelley v. Johnson, 425 U.S. 238, 247 (1976).
\item \textsuperscript{203} 529 U.S. 598 (2000).
\item \textsuperscript{204} \textit{Id.} at 618.
\item \textsuperscript{205} Nat’l Fed’n of Indep. Bus. v. Sebelius, 132 S. Ct. 2566, 2578 (2012) (quoting \textit{The Federalist} No. 45, at 262 (James Madison) (American Bar Association ed., 2009)). The issue of accountability is a fundamental factor in the jurisprudence of the Supreme Court. \textit{Id.} at 2592, 2602. “Accountability is considered a particularly powerful argument against commandeering . . . .” Jessica Bulman-Pozen & Heather K. Gerken, \textit{Uncooperative Federalism}, 118 YALE L.J. 1256, 1289 (2009); cf. New York v. United States, 505 U.S. 144, 169 (1992) (affirming that “where the federal government directs the [s]tates to regulate, it may be state officials who will bear the brunt of public disapproval, while the federal officials who devised the regulatory program may remain insulated from the electoral ramifications of their decision[s].”).
\item \textsuperscript{206} Pham, \textit{supra} note 48, at 981.
\end{itemize}
enforcement agents to further federal immigration laws would be a detriment to the safety of local communities.\textsuperscript{209}

Police apprehension towards local officers enforcing federal immigration laws is based upon multiple reasons.\textsuperscript{210} First, enforcement of immigration laws risks “[u]ndermin[ing] [the] [t]rust and [c]ooperation of [i]mmigrant [c]ommunities.”\textsuperscript{211} Studies have shown that a majority of chiefs and sheriffs—from both red and blue states—consider maintaining high levels of trust with the immigrant communities towards police officers a priority.\textsuperscript{212} If any sort of trust is lacking, a reasonable consequence to the legitimate fear for deportation, the process of community policing is halted, hindering the community.\textsuperscript{213} Second, “budgets and resources of local police agencies” are limited when compared to the economic power of the federal government—making the use of local officers to implement federal immigration laws financially burdensome for local communities.\textsuperscript{214} Third, federal immigration laws present complicated policies, both on the civil and criminal side of the law, and local agents are not necessarily fit to enforce them.\textsuperscript{215} Fourth, local police lack the degree of authority that federal agents can exercise when enforcing immigration laws, thus increasing the level of difficulty for local agents to discern whether a particular violation results in criminal charges or mere civil violations.\textsuperscript{216} Finally, participation of local police officers in the enforcement of immigration laws would possibly expose local agencies to civil litigation and liability.\textsuperscript{217} “By upending the independent judgment of local officials responsible for ‘the suppression of


\textsuperscript{211}. Id. at 5.


\textsuperscript{214}. FERRELL, JR. ET AL., supra note 210, at 6.

\textsuperscript{215}. See id. at 7.

\textsuperscript{216}. See id. at 7–8.

\textsuperscript{217}. Id. at 8.
violent crime and vindication of its victims,’ . . . the Executive Order intrudes upon a power reserved for the states and local governments, and threatens to undermine the mission of local law enforcement.”

Data analysis hints to a different reality than the one claimed by President Trump, and police departments across the country seem to agree with it. The data evidences that sanctuary jurisdictions present a lower average criminality level when compared to comparably sized non-sanctuary jurisdictions. Although numerically not impressive, researchers point out results that are statistically important, like lower crime and homicide rates. Generally, however, production of conflicting studies and interpretation of data render an objective analysis of the issue all but simple. Taking Phoenix, Arizona as an example, data shows that crime rates fell by impressive margins following the city renouncing its sanctuary status. A six-year study from the University of California, Riverside found levels of violent crimes to be “slightly higher in sanctuary cities.” Independent from the crime rates analysis, it is important to highlight that one of the main fears of pro-sanctuary police departments across the country—decrease in crime reports resulting from the distrust towards law enforcement and immigration agents in non-sanctuary jurisdictions—is legitimate. Crime reports in Latino communities throughout the United States are decreasing, thus making police officers’ investigating jobs harder while simultaneously increasing the amount of silent victims. Therefore, although conflicting data exists, it is indisputably within the interest, right, and power of local

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218. Amicus Brief, supra note 213, at 8 (quoting United States v. Morrison, 529 U.S. 598, 618 (2000)).
220. See id.
221. See id.
223. See id.
224. Id.
226. See id.
jurisdictions to foster participation of all members of the community when it comes to crime reporting and cooperation.\textsuperscript{227}


As confirmed by the Attorney General, the intent of the Executive Order is to enforce 8 U.S.C. § 1373 against jurisdictions deemed to be in violation of the language of the statute.\textsuperscript{228} However, it is not clear whether by implementing their policies, sanctuary jurisdictions are in violation of the statute, thus triggering federal preemption.\textsuperscript{229} The relationship between federal and state law in case of a conflict is regulated by the preemption doctrine, which provides the superiority of federal law over state law.\textsuperscript{230} A classical analysis of preemption principles generally considers whether the language of the “federal law expressly precludes state and local governments from passing such a law.”\textsuperscript{231} \textit{De Canas v. Bica} developed a similar analysis to determine whether state or local policies are preempted.\textsuperscript{232} The three-prong analysis first considers “whether the law is attempting to regulate immigration;” second, whether it occupies “a field [generally] occupied by Congress;” and third, whether it is in conflict with federal law.\textsuperscript{233} The first and second prongs are easily discernible because they “are unique to immigration law.”\textsuperscript{234} It is a widely recognized principle that the power to regulate immigration matters is retained by the federal government.\textsuperscript{235} The third prong is based upon the Supremacy Clause.\textsuperscript{236}

\textsuperscript{227} See Jawetz, supra note 209.


\textsuperscript{229} See Letter from Annie Lai et al. to Donald J. Trump, supra note 143, at 2, 2 n.7; Yee & Ruiz, supra note 147.


\textsuperscript{232} 424 U.S. 351 (1976).

\textsuperscript{233} See id. at 356–63; Gulasekaram & Villazor, supra note 231, at 1699.

\textsuperscript{234} Gulasekaram & Villazor, supra note 231, at 1698–99; see also De Canas, 424 U.S. at 354–63.

\textsuperscript{235} Gulasekaram & Villazor, supra note 231, at 1699.

\textsuperscript{236} U.S. CONST. art. I, § 8, cl. 4. “The Congress shall have [the] [p]ower . . . [t]o establish an uniform Rule of Naturalization . . . .” \textit{Id}. 
The language of 8 U.S.C. § 1373 primarily targets only one of the three scholarly-developed categories of sanctuary policies namely the so-called *don’t tell* policies.\textsuperscript{238} Summing up the language of the statute analyzed in Part II of this Comment, the statute “prohibits government entities, agencies, officials, and persons from preventing the voluntary reporting of a person’s immigration status by any governmental entity, officials, or employees to federal immigration authority.”\textsuperscript{239} Sanctuary policies have been enacted by jurisdictions throughout the country, however, did not include, for the most part, any language prohibiting communications between local and federal authorities.\textsuperscript{240} For example, Santa Clara authorities prohibit employees from using County resources to transmit any information to federal agencies that was collected while providing services to the community.\textsuperscript{241} Santa Clara further prohibits employees from initiating inquiries or enforcement actions based upon the actual or suspected immigration status of the individual, national origin, race, ethnicity, or English-speaking ability.\textsuperscript{242} Another example of a *don’t ask* policy is given by the City of Philadelphia, where police officers are required “not [to] ask about the documentation status of people they encounter,” although cooperation with federal agencies in “anti-terrorism and drug trafficking task forces” is encouraged.\textsuperscript{243} New Orleans also has similar policies.\textsuperscript{244} The New Orleans Police Department ("NOPD") forbids officers from initiating investigations or taking law enforcement actions due to immigration status, “including the initiation of a stop, an apprehension, [or] arrest,” a policy.

\begin{footnotesize}
\begin{enumerate}
\item[U.S. CONST. art. VI, § 2.]
This Constitution, and the [l]aws of the United States which shall be made in [p]ursuance thereof; and all [t]reaties made, or which shall be made, under the [a]uthority of the United States shall be the supreme [l]aw of the [l]and; and the [j]udges in every state shall be bound thereby, any [t]hing in the Constitution or [l]aws of any [s]tate to the [c]ontrary notwithstanding.

\textit{Id.}

\item[Gulasekaram & Villazor, supra note 231, at 1700, 1704; see also 8 U.S.C. § 1373 (1996).]

\item[Gulasekaram & Villazor, supra note 231, at 1700.]


\item[See Bd. of Supervisors of the Cty. of Santa Clara Res. 2010-316 (2010).]

\item[Id.; see also Morales v. Chadbourne, 793 F.3d 208, 215 (1st Cir. 2015).]

\item[Reasonable suspicion is required for police officers to stop individuals and inquire about “them regarding their immigration status.” \textit{Morales}, 793 F.3d at 215.]

\item[CITY OF PHILA., supra note 240; Kittrie, supra note 49, at 1455.]

\item[See NEW ORLEANS POLICE DEP’T, OPERATIONS MANUAL CH. 41.6.1, IMMIGRATION STATUS 1 (2016).]
\end{enumerate}
\end{footnotesize}
fitting the parameters of so-called *don’t enforce* policies.\(^{245}\) The NOPD also explicitly states that the activities of police officers must be in compliance with the statutory requirements, and that communications between federal and local law enforcement agents are welcomed.\(^{246}\) Jurisdictions implementing *don’t ask* policies also respect judicial doctrines against brief stops—absent reasonable suspicion—of alien individuals for inquiries on the alien’s immigration status.\(^{247}\) Detention to inquire about an individual’s immigration status has in fact been ruled a seizure implicating the Fourth Amendment.\(^{248}\) Further, “no exception to the Tenth Amendment” permits federal mandates to the states to disclose private information of residents gathered by the exercise of *sovereign capacity*.\(^{249}\) The principle is embedded in the Supreme Court’s ruling in *Reno v. Condon*,\(^{250}\) allowing federal requirements of information sharing only when not requiring states “to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals.”\(^{251}\)

Nothing within the language of 8 U.S.C. § 1373 can be read to preempt jurisdictions from prohibiting the use of local funds to help federal agencies in enforcing immigration laws.\(^{252}\) Further, the statute does not proscribe the implementation of policies designed to prevent police officers from proactively searching for information that would not be promptly or inevitably available to them.\(^{253}\) In fact, although an argument could be presented that the language of the statute impliedly preempts proscriptions of information-gathering activities by police officers, it appears that the statute was designed to foster communication between agencies of already available information.\(^ {254}\) It is well established that:

\(^{245}\) *Id.*; Kittrie, *supra* note 49, at 1455. Multiple jurisdictions across the country implemented policies presenting the same characteristics. Gulasekaram & Villazor, *supra* note 231, at 1694.

\(^{246}\) See *NEW ORLEANS POLICE DEP’T*, *supra* note 244, at 1, 3.

\(^{247}\) *CITY OF PHILA.*, *supra* note 240; Kittrie, *supra* note 49, at 1455; Pham, *supra* note 48, at 982.

\(^{248}\) Lopez v. Garriga, 917 F.2d 63, 69 (1st Cir. 1990) (citing Immigration & Naturalization Serv. v. Delgado, 466 U.S. 210, 216–17 (1984)).

\(^{249}\) Letter from Annie Lai et al. to Donald J. Trump, *supra* note 143, at 5; see also U.S. CONST. amend. X.

\(^{250}\) 528 U.S. 141 (2000).

\(^{251}\) *Id.* at 151; Letter from Annie Lai et al. to Donald J. Trump, *supra* note 143, at 5.


\(^{253}\) See *id*.

\(^{254}\) *See id.*; Gulasekaram & Villazor, *supra* note 231, at 1703.
Congress, in passing 8 U.S.C. § 1373, opted not to require state and local governments to ask for an individual’s immigration status or mandate them to report such status to immigration officials. Congress was well aware of the sanctuary movement when it passed this law yet it chose not to mandate the gathering or reporting of information.\textsuperscript{255}

Realistically, the statute only prohibits jurisdictions from imposing restrictions on the sharing of collected information.\textsuperscript{256} An argument under the Supremacy Clause would likely fail, because no inconsistency with the language of the statute is created by sanctuary policies.\textsuperscript{257} Courts may conclude, and many scholars have agreed, that “sanctuary policies [are] not [in] violat[ion] [of] 8 U.S.C. § 1373.”\textsuperscript{258}

Albeit this interpretation of the statute is probable, some jurisdictions opted to accept the request of the federal government and vowed to strictly implement the statute.\textsuperscript{259} Under the pressure of the DOJ, the Mayor of Miami-Dade County ordered jails to comply with detainer requests from federal officials—a decision later upheld by the county commission.\textsuperscript{260}

V. FLORIDA LOCALITIES

The State of Florida is no stranger to the debate around sanctuary jurisdictions and possible defunding from the federal government.\textsuperscript{261} As a final destination to many immigrants, both legal and illegal, Florida contains

\begin{itemize}
\item Hines v. Davidowitz, 312 U.S. 52, 67 (1941).
\item 255. Gulasekaram & Villazor, \textit{supra} note 231, at 1703 (emphasis in original).
\item 256. See 8 U.S.C. § 1373(a)–(b).
\item 257. See U.S. CONST. art. VI, § 2; 8 U.S.C. § 1373; Bd. of Supervisors of the Cty. of Santa Clara Res. 2010-316 (2010). \textit{But see} Proposed Brief of Amici Curiae, \textit{supra} note 102, at 10–12.
\item 258. Letter from Annie Lai et al. to Donald J. Trump, \textit{supra} note 143, at 2 (emphasis in original); \textit{see also} 8 U.S.C. § 1373.
\item 261. Foley, \textit{supra} note 259; Swisher, \textit{supra} note 259.
\end{itemize}
one of the highest foreign-born populations in the country.\textsuperscript{262} In the twenty-five year span between 1990 and 2015, the percentage of foreign-born residents of Florida grew from 12.9\% in 1990 to 20.2\% in 2015.\textsuperscript{263} According to the 2015 census conducted by the U.S. Census Bureau’s American Community Survey, over four million Florida residents are foreign born.\textsuperscript{264} Among them, 75.1\% were born in Latin America.\textsuperscript{265} Online data sources show that Florida has, within its territory, about two dozen jurisdictions with sanctuary policies including Broward County, Palm Beach County, and Miami Beach.\textsuperscript{266} However, many jurisdictions disagree with the label of \textit{sanctuary} that has been given to them.\textsuperscript{267} Both Broward County and Palm Beach County affirmed their compliance with federal immigration laws.\textsuperscript{268} Nevertheless, actions taken by the Sheriff’s Department in both counties may be considered otherwise.\textsuperscript{269} Broward County Sheriff’s Office stopped honoring ICE detainers after courts ruled them unconstitutional in 2014.\textsuperscript{270} Palm Beach County Sheriff’s Office also enforces similar detainer procedures.\textsuperscript{271} Moreover, in an attempt to appease their large immigrant communities, Broward County passed a resolution defining itself as “an inclusive county which welcomes, celebrates, and offers refuge to all residents and visitors irrespective of race, religion, ethnicity, or national


\textsuperscript{263} \textit{State Immigration Data Profiles: Florida}, supra note 262.

\textsuperscript{264} \textit{Id.}

\textsuperscript{265} \textit{Id.}


\textsuperscript{267} See Swisher, supra note 259.

\textsuperscript{268} See \textit{id.}


Parallel efforts were also made by the City of West Palm Beach, which declared itself “a welcoming city for immigrants.” Although non-compliance with ICE detainers is among the types of conduct that the Executive Order is trying to eliminate, it is not established whether friendly relationships with immigrant communities risk labeling Florida jurisdictions as sanctuaries. However, one thing is clear: Some degree of confusion exists regarding the conduct targeted by the Executive Order and the possible consequences for non-complying jurisdictions.

Florida State Legislators, however, are trying to solve some of the issues and to untie the Gordian Knot. The Florida House of Representatives approved a bill “prohibiting local law enforcement from resisting compliance with federal immigration laws and [detainer] requests” from ICE. Although the bill will unlikely become law—because no discussion has occurred yet on the floor of the Senate—legislators are showing anxiety regarding the possible consequences of the Executive Order. However, the Florida House of Representatives is not the first legislating body within state boundaries to adopt policies in compliance with federal requests.


275. See Barszewski, supra note 270; Sacchetti & Horwitz, supra note 228.


277. Id.

278. Id.; see also Daniel Ducassi, Bill Cracking Down on ‘Sanctuary Cities’ Clears First Committee Stop, POLITICO: FLA. (Mar. 13, 2017, 7:01 PM), http://www.politico.com/states/florida/story/2017/03/bill-cracking-down-on-sanctuary-cities-clears-first-committee-stop-110339. The bill, later affirmed by the Florida House, compels state and local governments to support enforcement of federal immigration law, barring the creation and implementation of any law or practice hindering the operations of federal officers. Ducassi, supra; see also Clark, supra note 276. The bill is a response to judicial injunctions of the Executive Order, and bypasses constitutional challenges to the Executive Order through state action. See Ducassi, supra.

A. Miami-Dade County

Miami-Dade is the only county in the United States where foreign-born residents constitute the majority.\(^{280}\) According to the latest census data from the United States Census Bureau, 51.7% of Miami-Dade County’s population is foreign-born, with a heavy majority being of Hispanic or Latino heritage.\(^{281}\) Yet, on January 26, 2017, the day after President Trump signed the Executive Order, Miami-Dade County Mayor Carlos Gimenez announced his agreement with the new policies.\(^{282}\) The Mayor released a memorandum to all county jails, directing them to observe federal detainer requests.\(^{283}\) The memorandum stated that, “[i]n light of the provisions of the Executive Order, I direct . . . to honor all immigration detainer requests received from the Department of Homeland Security. Miami-Dade County complies with federal law and intends to fully cooperate with the [F]ederal [G]overnment.”\(^{284}\) In an effort to avoid the label of sanctuary city, thus risking sanctions in the form of cuts in federal funding, Miami-Dade County Commissioners voted in favor of the mayoral policy.\(^{285}\) The decision reversed a previous county policy, approved in 2013, opposing detention as a result of detainer requests from federal agencies.\(^{286}\)

The 2013 policy created a two-fold threshold to allow detainers.\(^{287}\) First, for the county to allow ICE detainers, the federal government had to agree to reimburse all costs associated with the detention—an agreement which had to be in writing.\(^{288}\) Second, once the reimbursement was agreed

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\(^{281}\) U.S. CENSUS BUREAU, supra note 280.


\(^{283}\) Memorandum from Carlos A. Gimenez to Daniel Junior, supra note 279.

\(^{284}\) Id.


\(^{288}\) Id. at 4.
upon, detainers would be implemented only against individuals charged or convicted of certain enumerated offenses—principally felonies. Although the Board of County Commissioners passed a resolution upholding the anti-detainer policies in December of 2013, the tide changed quickly after President Trump signed the Executive Order, and a February vote by the same body reinstated full cooperation for detainers. The county’s decisions have already presented legal consequences.

1. Lacroix v. Junior

On March 3, 2017, Judge Milton Hirsch of the Eleventh Judicial Circuit in and for Miami-Dade County ruled the detention of James Lacroix, a Haitian national, unconstitutional. Judge Hirsch found the coercive conduct of ICE, pushing the Miami-Dade County jail to continue to incarcerate Lacroix, a violation of the Tenth Amendment. Questioning the constitutionality of the detainer, and denying the Miami-Dade County alleged sanctuary city status, Judge Hirsch affirmed that: “[T]he issue raised . . . has nothing to do with affording sanctuary to those unlawfully in this country. It has everything to do with the separation of powers between the state and federal governments as reflected in the Tenth Amendment to, and in the very structure of, the United States Constitution.”

The jail’s decision to comply with ICE’s demands to detain Lacroix is, in the words of Judge Hirsch, “a demand with which the local government is constitutionally prohibited from complying.” The beneficiaries of the

289. Id.
293. See Order on Petition for Writ of Habeas Corpus, supra note 292, at 9–11.
294. Id. at 5 (emphasis in original).
295. Id. at 8. “It might well be deemed an unconstitutional exercise . . . to insist that the states are bound to provide means to carry into effect the duties of the national
constitutional structure are the people, whose rights and liberties are protected through a strong-willed local government in opposition to a heavy-handed federal government.\textsuperscript{296}

Judge Hirsch’s ruling lends way to the fact that, regardless of whether or not a jurisdiction is a sanctuary—and regardless of the fact that local agencies and officials support President Trump’s crackdown on immigration—there are constitutional rights afforded to every person in this country, legal or illegal, which simply cannot be infringed upon.\textsuperscript{297}

2. Creedle v. Gimenez

Tenth Amendment violations, however, are not the only claims that have been raised against Miami-Dade County as a result of the new policies.\textsuperscript{298} The American Civil Liberties Union (“ACLU”) of Florida, in conjunction with the University of Miami School of Law’s Immigration Clinic, filed a federal suit against the county for violation of the Fourth Amendment right against unreasonable seizures.\textsuperscript{299} In \textit{Creedle v. Gimenez},\textsuperscript{300} the action was filed on behalf of Garland Creedle, an American citizen voluntarily detained by Miami-Dade County in response to an ICE detainer.\textsuperscript{301} After being arrested on the evening of March 12, 2017, Creedle was fingerprinted by county correctional officials.\textsuperscript{302} After receiving an immigration detainer from ICE, correctional officers refused to release Creedle upon bond being posted.\textsuperscript{303} Although notified that Creedle was an American citizen by Creedle himself, county correctional officers did not release him until the next day.\textsuperscript{304}

The Fourth Amendment violation, alleged by the ACLU, is a direct result of the nature of the ICE detainers implemented by Miami-Dade.\textsuperscript{305}

government, nowhere delegated or [e]ntrusted . . . to them by the Constitution.” \textit{Id.} (quoting Prigg v. Pennsylvania, 41 U.S. 539, 541 (1842)).

\textsuperscript{296}. See \textit{id.} at 8–9.

\textsuperscript{297}. See \textit{Order on Petition for Writ of Habeas Corpus, supra} note 292, at 14.


\textsuperscript{299}. Complaint for Damages & Declaratory Relief at 12, 15, Creedle v. Gimenez, No. 1:17-cv-22477-KMW (S.D. Fla. filed July 5, 2017); Dickerson, \textit{supra} note 298.


\textsuperscript{301}. \textit{Id.} at 1.

\textsuperscript{302}. \textit{Id.} at 9.

\textsuperscript{303}. \textit{Id.} at 11.

\textsuperscript{304}. \textit{Id.} at 10–11.

\textsuperscript{305}. See \textit{Complaint for Damages & Declaratory Relief, supra} note 299, at 11–12.
Since detainers are issued by immigration officers, the procedure lacks the necessary “probable cause determination by a detached and neutral” magistrate.\(^{306}\) It is indeed only logical that an immigration officer, due to the basic nature of his position, can hardly be a *neutral and detached adjudicator.*\(^ {307}\) For the alleged violations perpetrated against him, Creedle is seeking compensatory damages, attorneys’ fees and costs, and any additional equitable relief deemed appropriate by the court.\(^ {308}\) The absence of probable cause, added to the often nonexistent presence of an arrest warrant, exposes Miami-Dade County and its correctional agencies to hypothetically infinite legal liability, with the costs taken on by taxpayers.\(^{309}\)

**B. What Does Federal Defunding Mean for Florida Jurisdictions?**

Cities throughout the state risk losing “hundreds of millions of dollars” in federal funding if found not in compliance with the directives of the Executive Order.\(^ {310}\) However, the exact amount will depend on the interpretation of the language of the Executive Order and the exact nature of the targeted grants.\(^ {311}\) Summed together, the counties of Palm Beach, Broward, Miami-Dade, and Monroe received a total of $565 million in grants from the federal government in 2016 alone.\(^ {312}\) The funds are used for programs in different areas, from education and public health, to transportation and housing.\(^{313}\) Mayor Gimenez’s choice to retract previous county policies regarding detainers is likely a response to the threat of losing hundreds of millions of dollars in federal funding.\(^ {314}\) In fact, “Miami-Dade County is due to receive $355 million” in federal government money that the county cannot afford to lose.\(^ {315}\) In an effort to explain the rationale behind the choice made, Gimenez affirmed that losing federal funding to keep implementing restrictions on detainer requests is not worth the risk.\(^ {316}\) And although Mayor Gimenez’s choice to retract county policies is

\(^{306}\) *Id.* at 10, 12.

\(^{307}\) *Id.* at 10.

\(^{308}\) *Id.* at 14.

\(^{309}\) *Id.* at 5, 7–8.

\(^{310}\) Persaud, supra note 272.

\(^{311}\) See *id.*

\(^{312}\) *Id.*

\(^{313}\) *Id.*


\(^{315}\) See Gomez, supra note 314.

\(^{316}\) See Pazmino et al., supra note 60; Sanchez et al., supra note 17.
understandable under the circumstances, it is exactly the type of coerced reaction the Constitution protects against.

VI. CONCLUSION

Judge William H. Orrick III of the United States District Court for the Northern District of California issued a court order granting a motion for nationwide injunction of section 9(a) of the Executive Order. After being requested to revisit the Order in light of the Attorney General’s memorandum clarifying the language of the Executive Order, Judge Orrick confirmed the injunction, leaving President Trump with a difficult task: Solve immigration problems and appease the electorate without infringing upon constitutional rights and principles. The power of states to implement and enforce their own laws is one of the cornerstones of American democracy. Compelling states, counties, municipalities, and other local jurisdictions into enforcing federal immigration laws threatens the system’s balance, and violates the Constitution so dear to most.

The independence of state and local jurisdictions has been established by the Founding Fathers in hopes of a new, better world, distinguishing itself from the crooked, corrupted, oppressive Motherland. Centralization of power is a dangerous threat to democracy, and risks shifting constitutional balances to a direction of no return. The question that should be asked is whether we, as a democracy, prefer independent, empowered, knowledgeable, competent, engaged, and accountable local governments and representatives ruling over us, or a distant, centralized, controlling federal government.

The powers delegated by the proposed Constitution to the [F]ederal [G]overnment are few and defined. Those which are to remain in the State [G]overnments are numerous and indefinite.

317. See Printz v. United States, 521 U.S. 898, 935 (1997); Sanchez et al., supra note 17.
318. Order Granting the County of Santa Clara’s & City & County of San Francisco’s Motions, supra note 97, at 1, 29–30.
319. Id. at 25, 30; see also Dan Levine, Judge Refuses to Remove Block on Trump Sanctuary City Order, REUTERS: POL. (July 20, 2017, 7:15 PM), http://www.reuters.com/article/us-usa-immigration-ruling-idUSKBN1A531K.
320. See Printz, 521 U.S. at 928.
321. See id. at 920–21.
323. See Printz, 521 U.S. at 928–29.
324. See id.
The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce . . . . The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. 325

The right answer may have indeed been given by James Madison in his promotion of the Constitution, on January 26, 1788. 326 Although an injunction is currently in place, there still exists a real possibility that the Attorney General, Secretary of State, and President Trump may enforce the stated intent of the Executive Order to the detriment of states and localities around the country, including within Florida. 327 “[H]undreds of millions of dollars” in federal grants could be taken away, to the disadvantage of the people in communities that rely upon the funding. 328 Clarification—by the courts or the President himself—of the federal funds involved and the sanctuary jurisdictions that will be impacted needs to be made clear, so that states can make rational and knowledgeable decisions as to whether to comply with the Executive Order. 329

325. THE FEDERALIST NO. 45, supra note 205, at 262 (James Madison).
326. See id.; THE FEDERALIST NO. 45, at 293 (James Madison) (Project Gutenberg ed.).
327. See Complaint for Damages & Declaratory Relief, supra note 299, at 1; Order on Petition for Writ of Habeas Corpus, supra note 292, at 9; Levine, supra note 319.
328. See Persaud, supra note 272.
329. See Letter from Annie Lai et al. to Donald J. Trump, supra note 143, at 1, 3.