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SANCTUARY CITIES, SANCTUARY STATES (PART I)

What happens when communities turn their backs on immigration enforcement?

By Julius (Jay) Wachtel. By now the term “sanctuary city” has become such a familiar part of the lexicon that defining it might seem superfluous. But for the record let’s recap what it means to the Feds. According to a [May 2016 memorandum](#) from the Department of Justice the label applies to jurisdictions that, due to law, regulation or policy, either refuse to accept detainers from ICE or don’t promptly inform ICE of aliens they arrest or intend to release.

Memoranda do not carry the force of law. A 1996 Federal law, [8 USC 1373](#), stipulates that “a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” In plain language, neither Hizzoner the Mayor nor any other official can legally order police to keep quiet about the arrest (or simply the whereabouts) of an illegal immigrant.

Of course, that doesn’t require that ICE be tipped off. Yet until recently such notifications were routine. Indeed, many police and sheriff’s departments used to have ICE train and deputize their officers under [section 287-g](#) of the Immigration and Nationality Act so they could enforce Federal immigration laws on the street. At one point the number of participating agencies [exceeded seventy](#).

In time, a growing political divide and instances of excessive anti-immigrant zeal (see, for example, [the saga of former Sheriff Joe Arpaio](#)) led many communities to abandon the program. In 2016 ICE dropped the street enforcement aspect and now restricts cross-designated officers to making immigration checks only of persons [detained for other crimes](#) in local jails. After a recent drive ICE [proudly reported](#) that the number of jurisdictions participating in this modified program stands at sixty. However, nearly all are Sheriff’s offices in the South, with a large chunk in Texas.

At present neither Los Angeles, nor New York, Chicago or virtually any other city of size except Las Vegas participates in the 287-g program. In Blue America objections to immigration enforcement run so deep that many communities have taken affirmative steps to frustrate the Feds. Some don’t let ICE officers review jail records to gather information about arrestees (what jurisdictions participating in the 287-g program do

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with their own cops.) Others don't inform ICE, or only do so selectively, when [national criminal warrants checks](#) reveal that an arrestee was previously deported or has an active criminal or civil warrant for an immigration offense. And many either ignore [detainers](#) (written requests that specific, named arrestees be held for up to 48 hours beyond their release time) or fail to provide timely notice about the impending release of persons wanted by ICE.

Why the resistance? Here's how Montgomery County, Maryland police chief [Tom Manger](#), president of the Major Cities Chiefs Association, [explained it to Congress in 2015](#):

To do our job we must have the trust and respect of the communities we serve. We fail if the public fears their police and will not come forward when we need them. Whether we seek to stop child predators, drug dealers, rapists or robbers – we need the full cooperation of victims and witness. Cooperation is not forthcoming from persons who see their police as immigration agents. When immigrants come to view their local police and sheriffs with distrust because they fear deportation, it creates conditions that encourage criminals to prey upon victims and witnesses alike.

Although Chief Manger's agency does not participate in 287-g, it routinely informs ICE of all arrests so that the Feds can, if they wish, follow up. But Chief Manger refuses to accept so-called "civil" detainers, such as those issued when illegal immigrants fail to appear at an ICE hearing, because they are not based on probable cause that a crime was committed. (In contrast, re-entry after formal deportation is a Federal crime, and in Montgomery County such detainers are honored when accompanied by an arrest warrant.) Chief Manger's position has been adopted as the [official policy](#) of his influential group.

[Maps](#) compiled by the [Center for Immigration Studies](#) and ICE Weekly Declined Detainer Reports (WDDR's) indicate that most law enforcement agencies outside the South and Northwest ignore civil detainers. Section III of the WDDR's identifies the agencies by name. (ICE [recently pulled WDDR's from the Internet](#). The three most recent are archived [here](#), [here](#) and [here](#).) For example, during the [January 28-February 3](#) reporting period, Chief Manger's Montgomery County domain released a person charged with assault because the detainer was only supported by a civil warrant.

According to ICE, many localities impose much stiffer conditions. Baltimore, whose 2015 violence rate was [eight times worse](#) than Montgomery County's, supposedly refuses to honor *all* detainers ([WDDR p. 8](#)). (In defense, [its chief insists](#) they comply

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with “criminal arrest” warrants, however Baltimore might define them.) As crime-ridden metropolitan areas go, Baltimore’s approach is hardly unique:

- Newark ([p. 31](#)) and New York City ([p. 32](#)) reportedly refuse all detainees
- Boston ([p. 25](#)) and Los Angeles County ([p. 13](#)) only honor those accompanied by criminal arrest warrants
- Chicago ([p. 32](#)) requires either a criminal arrest warrant, identification as a “known gang member,” a felony conviction, or active felony charges
- Philadelphia PD ([p. 23](#)) refuses to honor detainees or notify ICE of impending releases unless “the alien has a prior conviction for a first or second degree felony offense involving violence and the detainer is accompanied by a judicial arrest warrant”
- Washington, D.C. ([p. 32](#)) requires a “written agreement from ICE reimbursing costs in honoring detainer” *and* that an immigrant was either released from prison within the past five years or convicted within the past ten years, in both cases of homicide or another “dangerous” or violent crime.

What were the criminal backgrounds of those named in ICE detainees? A hand tally of [206 detainees](#) declined between January 28 and February 3, 2017 reveals that twenty-six of the named immigrants had been convicted of domestic violence. Twenty-three others had convictions for DUI, fourteen for assault, eight for burglary, robbery or arson, seven for a drug offense, six for a sex crime, four for resisting or weapons offenses, and four for forgery or fraud. Dozens more had been charged with but not convicted of crimes, including twenty for assault, seventeen for burglary and robbery, sixteen for sex crimes, eleven for domestic violence, and one each for kidnapping and murder.

ICE can, of course, track down subjects itself. However, serving civil and criminal process in the field carries risks for both officers and immigrants. But why should the Feds even bother? After all, as we reported in “[Ideology Trumps Reason](#),” research demonstrates that, overall, immigrants are substantially more law-abiding than ordinary folks.

But there’s a catch. Unlike ethnicity, immigration *status* isn’t systematically captured by criminal history repositories. So whether *illegal* immigrants are more likely to commit crimes than those legally in the U.S. is unknown. (One might think so after

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reviewing the above list, but these examples may not fairly represent illegal immigrants in general.) Still, the list of troubling anecdotes keeps growing. In December 2016 [Denver ignored a detainer](#) and let go a known gang member who had been jailed for multiple offenses, including weapons, auto theft and eluding police. Within two months Ever Valles, 19 was back in jail after he and an associate allegedly committed a brutal robbery-murder. Criminal misconduct by illegal immigrants [has even caught the attention](#) of the liberally-inclined *New York Times*. (For a running compendium in an anti-illegal immigration website click [here](#).)

There's another important "if." As our table in "[Ideology Trumps Reason](#)" suggests, legal status aside, the advantage of being foreign-born doesn't necessarily carry over to subsequent generations. Imprisonment data reveals that third-generation Hispanic males are more than twice as likely to be incarcerated as non-Hispanic whites. Why is that? Many illegal immigrants are unskilled, poorly educated and reside in poverty-stricken, crime-ridden areas. This might expose their descendants to role models and behaviors that the grandchildren of legal migrants can't begin to imagine.

It's clear that competing ideologies and selectively interpreted "facts" have complicated the relationship between police and the Feds. During his career as an ATF agent your blogger worked closely with local police and detectives, and he suspects that most ICE officers and street cops still get along. Even so, policies have consequences. While it seems petty and self-defeating to kick out law-abiding, hard-working persons, refusing to honor detainers can obviously imperil the law-abiding.

On the other hand, concerns that police involvement in immigration matters can erode trust with the Hispanic community are not easily dismissed. A somewhat dated study provides ammunition for both sides of the debate. In 2008 Prince William County, Maryland mandated that police "investigate the citizenship or immigration status of all persons who are arrested for a violation of a state law or county ordinance." Two years later university scholars and the Police Executive Research Forum produced a [detailed report](#) assessing the policy's effects. As one might expect, illegal immigration decreased. So did aggravated assault, hit-and-run accidents and some forms of public disorder. However, "a palpable chill" fell over relations between Hispanics and police. Fortunately, in time the wound mostly healed, and within two years goodwill was largely (but not completely) restored.

So was the policy a good idea? Here is what the study's authors think: "Despite our mixed findings, the current version of the policy, which mandates immigration checks only for arrestees, appears to be a reasonable way of targeting illegal immigrants who

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commit criminal violations. There is fairly broad agreement on this as a goal for law enforcement.”

Whatever the “facts,” both sides remain dug in. LAPD Chief Charlie Beck, whose agency typically refuses to honor detainers, [concedes that illegal immigrants](#) who have been convicted of violent felonies should be deported once they’ve done their time. But he’s in favor of granting illegal immigrants driver licenses and insists that helping ICE deport them “is not our job, nor will I make it our job.” Angrily rejecting such views, [Attorney General Jeff Sessions recently announced](#) that DOJ will withhold “Byrne” grants unless jurisdictions “comply with federal law, allow federal immigration access to detention facilities, and provide 48 hours notice before they release an illegal alien wanted by federal authorities.”

Take that, L.A., New York, Chicago...

Well, that’s enough for now. In Part II we’ll discuss the possible consequences of the Federal-state split in marijuana enforcement. And as always, stay tuned!