

SUPPORTING AND PROTECTING IMMIGRANTS *THE CONSTITUTIONALITY & PUBLIC SAFETY CASE*

Immigrants living in the US, regardless of legal status, are protected by laws that confer responsibility for immigration enforcement on the federal government, as affirmed by the Supreme Court in *Arizona v. US* (2011). Recent court cases have upheld the right of all those residing in the US to protection from warrantless arrest under the 4th Amendment to the Constitution. Threats to withhold federal funds from sanctuary cities for programs unrelated to law enforcement violate Congress' powers, Supreme Court precedent and the 10th Amendment. Crime is lower in jurisdictions with high immigrant populations, particularly in sanctuary cities and counties. Cooperation between local law enforcement and immigration authorities erodes immigrant trust in police, and utilizes limited local resources, thereby diminishing public safety for all.

IMMIGRATION ENFORCEMENT IS A FEDERAL RESPONSIBILITY

- Immigration enforcement has always been a responsibility of the federal government, a fact upheld in the 2012 Supreme Court case *Arizona v. US*
- Cooperation between local law enforcement and Immigration and Customs Enforcement (ICE) is therefore voluntary
- Absent a 287 (g) contractual agreement between local law enforcement and ICE, local police, sheriff's and jails should consider ICE detainer and notifications as requests, not contractually or legally required
- Both the International Association of Chiefs of Police and the Major Cities Police Chiefs have issued statements against commingling of local law and federal immigration enforcement

IMMIGRANTS ARE PROTECTED BY THE 4TH AMENDMENT

- The 4th Amendment generally prohibits arrests without a warrant. Local jurisdictions that hold incarcerated immigrants past their release date in response to ICE detainer requests violate this "warrantless arrest" prohibition.
- Courts in several states, Pennsylvania, Oregon, California, Nebraska and Rhode Island, among others, have upheld plaintiffs suing local jurisdictions, citing ICE's need to provide probable cause or the "voluntary" (not mandatory) nature of local compliance with an ICE detainer
- In October 2016, the Federal Court for the Northern District of Illinois held that nearly all ICE detainers issued by the ICE Chicago Field Office were invalidated by a lack of judicial warrants or individual finding of risk of escape

WITHHOLDING FEDERAL FUNDS VIOLATES MANY CONSTITUTIONAL PROVISIONS

- Only Congress can put conditions on Federal funding for state and local activities. Therefore the Executive branch cannot withhold funds from cities that do not cooperate on immigration matters (except for 2 or 3 law enforcement programs for which Congress has stipulated cooperation in the funding agreements).
- The Supreme Court has held that any withheld funds must be "germane" and small enough to be non-coercive. *South Dakota v. Dole* (1987) and *National Federation of Independent Businesses v. Sebelius* (2012). Threats to withhold federal funds in large amounts or for state or local programs unrelated to law enforcement violate the 10th Amendment.

- The 10th Amendment reserves all powers not held by the federal government to the States. The Federal government cannot conscript States and cities against their will into carrying out Federal immigration law.
- Administration proposals also likely violate the due process protections of States and cities under the Fifth Amendment.
- Wholesale federal defunding of sanctuary states or localities is unconstitutional; only limited federal defunding of law enforcement activities related to immigration (through funds set aside by the Department of Justice), may be constitutional

IMMIGRANTS ARE LESS LIKELY TO COMMIT CRIMES THAN THE NATIVE-BORN

- Crime rates are lowest in states with highest immigrant populations
- Since 1990, the foreign-born share of the US population has doubled and crime has been reduced by nearly 50%
- Incarceration rates for young immigrant men are 1.6%; for young native-born men, they are 3.3%
- Sanctuary cities have lower crime rates than those that have not chosen this status
- Jurisdictions that do not comply with ICE detainer requests have 35.5 fewer crimes per 10,000 people than those that do

LOCAL ENFORCEMENT OF IMMIGRATION LAW ERODES PUBLIC TRUST AND SAFETY

- Immigrants who live in jurisdictions that cooperate with ICE are less likely to report crime for fear of being detained; this includes victims of domestic abuse
- When local law enforcement collaborates with ICE in honoring notifications or detainer requests, the costs associated with this work are not reimbursed by the federal government
- If understaffed and under-resourced local law enforcement spend time enforcing immigration law, they have much less ability to track and manage crime
- Fear of police is amplified in communities when ICE agents appear wearing jackets labeled "police"
- All of these factors lead to an erosion of public trust and safety

The information presented herein was obtained from the following: American Immigration Council; Catholic Legal Immigration Network; Center for American Progress; Immigrant Legal Resource Center; Huffington Post; International Association of Chiefs of Police; Major Cities Police Chiefs; New York Times; New Yorker; State of California Government Code; State of Illinois New Americans Trust Initiative. It has been fact-checked and reviewed by an attorney working with the ACLU and faith communities in southern Arizona.