



## 8 USC § 1373

### *What Does It Mean for Sanctuary Jurisdictions?*

President Trump has threatened yet again to prohibit “sanctuary jurisdictions” from receiving federal funding. In an Executive Order on January 20, 2025, the President directed the Attorney General and the Secretary of Homeland Security to “evaluate and undertake any lawful actions to ensure that so-called “sanctuary jurisdictions,” which seek to interfere with the lawful exercise of Federal law enforcement operations, do not receive Federal funds.”<sup>1</sup> Additionally, the Executive Order directed the Secretary of Homeland Security to issue guidance to ensure “maximum compliance” by the Department of Homeland Security (DHS) of the provisions of 8 U.S.C. § 1373.<sup>2</sup> In response to this Executive Order, the Department of Justice (DOJ) also issued a memorandum on February 5, 2025, directing the department to require all state and local jurisdictions that apply for DOJ grants to be in compliance with 8 USC § 1373.<sup>3</sup> Although 8 USC § 1373 is federal law and already binding on all states and local governments, sanctuary policies do not violate the statute. Currently, President Trump’s Executive Order and the DOJ memorandum is being challenged.<sup>4</sup>

#### I. What is 8 USC § 1373?

**8 USC § 1373** is a federal statute that prohibits local and state governments and agencies from enacting laws or policies that limit communication with DHS about “information regarding the immigration or citizenship status” of individuals. The statute prohibits such policies but does not contain any requirement for specific action.

#### II. What Does 8 USC § 1373 Require Localities to Do?

**Nothing.** 8 USC § 1373 does not require any action from local governments or local officials. It prohibits the creation of certain policies. 8 USC § 1373 forbids local policies that limit communication with DHS about immigration status or citizenship.

<sup>1</sup> Executive Order: Protecting the American People Against Invasion, President Donald Trump, January 20, 2025, available at <https://www.whitehouse.gov/presidential-actions/2025/01/protecting-the-american-people-against-invasion/>.

<sup>2</sup> *Id.*

<sup>3</sup> DOJ, *Sanctuary Jurisdiction Directives*, (Feb. 5, 2025), available at <https://www.justice.gov/ag/media/1388531/dl?inline>.

<sup>4</sup> *City and County of San Francisco, et al. v. Trump*, No. CV 25-1350 (N.D. Cal. Feb. 7, 2025).

- 8 USC § 1373 does not require any action from local or state agencies, officers, or governments. It does not require asking about immigration status.
- 8 USC § 1373 does not prohibit policies against asking about immigration status. It only prohibits the enactment of policies that limit sharing immigration status information.
- 8 USC § 1373 does not compel compliance with ICE detainers. Such a statute would be unconstitutional.<sup>5</sup>
- 8 USC § 1373 does not address policies limiting other information sharing with ICE. Nothing in the statute mentions or includes criminal case information, contact information, custody status, or release dates of prisoners from custody.<sup>6</sup>
- 8 USC § 1373 does not impose any affirmative obligation to collect information. Nor does it require sharing information in any particular instance.

### III. Do Sanctuary Policies Violate 8 USC § 1373?

No, sanctuary policies are entirely consistent with federal laws.<sup>7</sup> There are many varieties of local policies that might be considered “sanctuary policies.” 8 USC § 1373 only governs restrictions on communication with DHS about individuals’ citizenship or immigration status, not other policies limiting the expenditure of state and local resources on immigration enforcement or detention. Cities and counties around the country have policies against local officials questioning individuals about their immigration status; such rules do not conflict with 8 USC § 1373 because they do not address communication with DHS. Even if a policy does regulate communication of citizenship or immigration status information, it may still be lawful and consistent with federal law.<sup>8</sup>

### IV. Does 8 USC § 1373 or Other Federal Law Require Compliance with ICE Detainers or Other Requests?

No. Nothing in federal law requires localities to enforce the Immigration and Nationality Act and regulations. To the contrary, immigration regulation and enforcement are federal functions.<sup>9</sup>

<sup>5</sup> See *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (The federal government cannot commandeer state and local resources to enforce a federal regulatory program such as immigration, therefore ICE detainers cannot be mandatory).

<sup>6</sup> See *Steinle v. City and County of San Francisco, et. al*, No. 3:16-cv-02859 (N.D. Cal. filed Jan. 6, 2017) (“[N]o plausible reading of [the statute] encompasses the release date of an undocumented inmate.”); *Sturgeon v. Bratton*, 95 Cal.Rptr.3d 718 (Cal.App.4th 2009) (upholding Los Angeles policy against initiating any police action on the basis of suspected immigration violations); *United States v. California*, 314 F.Supp.3d 1077, 1107 (E.D. Cal 2018) (the “plain meaning of Section 1373 limits its reach to information strictly pertaining to immigration status (i.e. what one’s immigration status is) and does not include information like release dates and addresses”) upheld by *United States v. California*, 921 F.3d 865 (9th Cir. 2019).

<sup>7</sup> We are not aware of any ‘sanctuary’ policies that violate 8 USC § 1373 or other federal law.

<sup>8</sup> *City of New York v. United States*, 971 F. Supp 789 (S.D.N.Y 1997), aff’d, 179 F.3d 29 (2d Cir. 1999) (observing that 8 USC § 1373 and 1644 might not survive a constitutional challenge in the context of general confidentiality policies necessary to municipal functions).

<sup>9</sup> See *Arizona v. United States*, 132 S.Ct. 2492 (2012).

The Tenth Amendment precludes federal government from coercing state or local governments to use their resources to enforce a federal regulatory program, like immigration.<sup>10</sup> Policies that limit or prohibit compliance with immigration detainers and requests for notice of release dates do not violate 8 USC § 1373. Immigration detainers are explicitly not mandatory. Electing not to respond to them is entirely within the discretion of local law enforcement.<sup>11</sup> Moreover, multiple federal courts have found detention by local agencies based on ICE detainers to be unconstitutional.<sup>12</sup> The federal government cannot commandeer state and local resources, nor can it require actions in violation of the constitution.



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<sup>10</sup> See *Printz v. United States*, 521 U.S. 898, 923-24 (1997); *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461 (2018) (holding the Tenth Amendment bars the federal government from issuing direct orders to state and local jurisdictions); *City of Philadelphia v. Sessions*, 309 F. Supp. 3d 289 (E.D. Pa. 2018), *aff'd in part, vacated in part sub nom. City of Philadelphia v. Att'y Gen. of United States*, 916 F.3d 276 (3d Cir. 2019)(holding 8 U.S.C. 1373 unconstitutional under the anti-commandeering doctrine); *United States v. California*, 921 F.3d 865 (9th Cir. 2019)(holding the state of California had the right under the anticommandeering doctrine to refrain from assisting with federal immigration enforcement); *City of Chicago v. Sessions*, 321 F. Supp. 3d 855 (N.D. Ill. 2018), *aff'd and remanded sub nom. City of Chicago v. Barr*, 957 F.3d 772 (7th Cir. 2020), *opinion amended and superseded*, 961 F.3d 882 (7th Cir. 2020), and *aff'd and remanded sub nom. City of Chicago v. Barr*, 961 F.3d 882 (7th Cir. 2020) (holding 8 U.S.C. § 1373 on its face was unconstitutional under the anti-commandeering doctrine of the Tenth Amendment); *Cnty. of Ocean v. Grewal*, 475 F. Supp. 3d 355 (D.N.J. 2020), *aff'd sub nom. Ocean Cnty. Bd. of Commissioners v. Att'y Gen. of State of New Jersey*, 8 F.4th 176 (3d Cir. 2021)(holding “the federal government cannot strong arm the State into doing its own bidding”); *City of El Cenizo, Texas v. Texas*, 890 F.3d 164 (5th Cir. 2018)(noting “Federal law does not suggest the intent—let alone a “clear and manifest” one—to prevent states from regulating whether their localities cooperate in immigration enforcement”).

<sup>11</sup> See *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014).

<sup>12</sup> *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014); *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452, Docket Entry 230 at 16-17 (N.D. Ill. Sept. 30, 2016); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014) *aff'd in part, dismissed in part*, 793 F.3d 208, 215-216 (1st Cir. 2015); *Mercado et al. v. Dallas County*, No. 3:15-CV-3481 (N.D.Tex filed Jan. 17, 2017); *Orellana v. Nobles County*, No. 0:15-cv-03852 (D. Minn. Jan. 6, 2017).