

# SANCTUARY JURISDICTIONS: WHAT YOU NEED TO KNOW ABOUT EXECUTIVE ORDER 13768

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President Trump has signed Executive Order No. 13768, Enhancing Public Safety in the Interior of the United States. While little is known about its interpretation or any accompanying guidance, here is some information on how Section 9 of the order could restrict federal funding to sanctuary jurisdictions and impact their efforts to serve people experiencing homelessness.

## WHAT IS A SANCTUARY JURISDICTION?

A sanctuary jurisdiction is generally understood to be a city, town, county, or state that has a policy of protecting undocumented immigrants by not prosecuting them for violations of federal immigration laws. There is no agreed upon definition of a sanctuary jurisdiction.

Sanctuary jurisdictions provide these protections in a number of ways. In some jurisdictions, law enforcement or other local or state government agencies do not ask about immigration status. In others, agencies refuse compliance with voluntary Department of Homeland Security requests for civil immigration detainers.

## HOW DOES THE ORDER DEFINE A SANCTUARY JURISDICTION?

The executive order does not define a sanctuary jurisdiction. It does state that any jurisdiction that does not comply with 8 USC 1371 is not eligible to receive federal grant funding. 8 USC 1371 is a law which prohibits jurisdictions from restricting government entities or officials from sending individual citizenship or immigration status to the U.S. Immigration and Customs Enforcement (ICE).

## WHAT DOES THE ORDER MEAN FOR SANCTUARY JURISDICTIONS?

The executive order *could* lead to a loss of federal grant funding for sanctuary jurisdictions.

The executive order indicates that jurisdictions that willfully refuse to share citizenship or immigration status information with ICE are not eligible to receive Federal grants, with the exception of funding necessary for law enforcement purposes. The exact language is:

“...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 [of Homeland Security]. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction.”

While the Administration has said little about the implementation of this provision, if narrowly interpreted, the order could be limited to funding from the Departments of Justice and Homeland Security. Alternatively, some believe funding restrictions may be limited to discretionary grant programs, while formula grants and payments to individuals would not be affected.

The broadest interpretation of the executive order could mean decreases in funding for certain jurisdictions receiving federal grants that are distributed directly to states and counties. These grants could include:

- The U.S. Department of Housing and Urban Development’s (HUD) Emergency Solutions Grants
- The U.S. Department of Health and Human Service’s Temporary Assistance to Needy Families grants
- The U.S. Department of Justice’s housing grants for victims of sexual assault and domestic violence

This broader interpretation might also apply to funding from other grants open to nonprofits and local/state governments if a local/state government is the grantee. These grants could include the HUD Continuum of Care grants, U.S. Department of Veterans Affairs Grant and Per Diem program grants, and Supportive Services for Veteran Families grants.

## HOW ARE JURISDICTIONS REPLYING TO THIS ORDER?

One reason the executive order is unlikely to have an immediate impact on homeless services providers is that the order is already subject to litigation. To date, the City of San Francisco has filed suit against the Administration on the basis that this order is unconstitutional, and the Santa Clara County Board of Supervisors has voted unanimously to file a lawsuit. Legal experts have cited the coercive nature of this order as a constitutional issue, given it uses federal funding as leverage to force states, cities, and counties to actively enforce federal law.

The tenth amendment prohibits federal coercion of state and local governments to use resources to enforce federal programs like immigration. Two precedential cases have been commonly cited in response. The first, *Printz v. United States*, notes the federal government cannot order local officials to enforce federal law; the second, *National Federation of Independent Business v. Sebelius*, notes the government cannot threaten large funding cuts to “coerce” state adoption of federal policies.

## WHAT COULD THIS MEAN FOR MY PROGRAM?

While there is still a lot of uncertainty around the potential impact of the executive order, we can look to a similar situation/review that took place during the Obama Administration and the recommendations that were the result.

This review looked into several jurisdictions that were allegedly noncompliant and found that jurisdictions that had language prohibiting the disclosure of immigration information to ICE “except as required under federal law” may be considered in violation.

At the request of a Member of the House of Representatives, the Department of Justice (DOJ) Office of Inspector General (OIG) conducted a review of several jurisdictions that were alleged to be noncompliant. In May 2016, the OIG found that jurisdictions that had language prohibiting the disclosure of immigration information to ICE “except as required under federal law” may be considered in violation absent explicit instruction to city employees that the statute or ordinance did not limit their authority to respond to voluntary ICE requests.

This review made several recommendations which resulted in the following changes for the DOJ’s Edward Byrne Memorial Justice Assistance Grant Program and the State Criminal Alien Assistance Program:

- A determination that 8 USC 1373 is an applicable federal law *for purposes of these two programs*
- Provided clearer guidance on compliance with these sections, to include a recognition that compliance does not:
  - Require action from local/state jurisdictions
  - Require compliance with ICE detainers or requests for release date notifications
  - Impose an affirmative obligation to share or collect immigration status information
  - Prohibit enactment of local policies stating that employees are “not required” to share immigration status information

- Requires guidance to grantee personnel to ensure they know that despite state or local policies, federal law does not allow a prohibition on sending or receiving information about immigration status
- 8 USC 1373 has been added to the list of statutes grantees must assure they comply with.
- Grantees found by the OIG to be in violation would be given a reasonable time to remedy policies and comply with the law however; a failure to remedy could result in “withholding of grant rounds or ineligibility for future OJP grants or subgrants, or other administrative, civil, or criminal penalties, as appropriate.”
- No existing or prior year funding was impacted, but grantees were directed to examine policies and procedures to ensure they could submit required assurances when reapplying for funding.
- A process was detailed to determine if grant recipients were in compliance with 8 USC 1373 should DOJ become aware of credible evidence of a violation.

## **WHAT SHOULD I DO TO BE PREPARED?**

Here are a few things concerned programs and community partners in sanctuary jurisdictions can do to prepare for potential effects of the executive order:

- Keep an eye on the news.
- Make sure you know the laws in your jurisdiction. Seek qualified legal advice if necessary.
- Review your policies and procedures to clarify staff roles, client rights, and program policies that deal with the sharing of immigration information with the Federal government.
- Understand your program’s funding streams and make contingency plans for service provision in the unlikely event of funding disruption.
- Let your Member of Congress know how EO 13768 could impact vulnerable people experiencing homelessness.