

# Liberty Briefs

Wisconsin GrandSons of Liberty

## Sanctuary Cities in Wisconsin

5/7/2019

Wisconsin needs to pass state level legislation pertaining to local law enforcement interaction with the Department of Homeland Security, Immigration and Customs Enforcement (ICE). More specifically, the state needs to protect local law enforcement's ability to determine best practices that meet their needs.

### **Sanctuary City Laws or Policies in Other States:**

- Policies define the parameters for state and local law enforcement agencies to engage in immigration enforcement-related activities. Example: California Values Act.
- These policies can force law enforcement to deny ICE detainer requests.
- Can interfere with ability of local law enforcement to determine immigration status.
- Potential to prevent local law enforcement from inquiring about federal immigration offenses in their investigations.
- In California, local law enforcement cannot arrest an individual for the federal offense of unlawful reentry unless that person was previously convicted of an aggravated felony.

### **Wisconsin Sanctuary City Policies, To Date:**

- Milwaukee County Resolution 12-135 states that ICE detainer requests will only be honored if the subject of the request has a felony or two misdemeanor offenses, domestic violence, drunk driving, outstanding criminal warrants, gang member or a suspected terrorist.
- Madison does not arrest based on immigration status alone. It does cooperate with ICE detainer requests. It does notify ICE in cases of serious or violent crimes.

### **Focusing on the Criminal Activity:**

- Federal Dept of Homeland Security data shows in 2016 there were 340,000 deportations, and 135,000 of those were criminal.

### **The Problem for Wisconsin:**

- Without a state level legislative framework, local entities are able to create policies similar to those in other states that inhibit law enforcement's duty to protect.
- Sanctuary City policies potentially create a carveout where certain participants of illegal activity are sheltered from federal investigation, however other criminal activity is reported.
- If a municipality in Wisconsin chose to enact a policy similar to California's Value Act, they could force local law enforcement to deny all ICE detainer requests without exception.

### **Opposing Views of Policies or Legislation creating a Sanctuary for the Unauthorized:**

#### ***Progressive View:***

- Sanctuary Cities or "Safe Cities" prevent undocumented immigrants from being arrested based on their immigration status alone if they've not committed a crime.
- Applies Fourth Amendment constitutional protections to citizens and non-citizens.
- Denies local Law Enforcement authority to detain based on a federal request without a warrant.
- Police need witnesses of criminal activity but witnesses afraid of deportation remain silent.

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### Conservative Views:

- Requiring law enforcement disregard ICE requests to detain suspected illegal aliens is improper.
- They violate 8 U.S. Code 1373, that promotes information sharing related to immigration enforcement.
- Local law enforcement knows the best practices that meet their needs to ensure public safety.
- Releasing violent unauthorized immigrants results in higher crime and a false sense of security.
- Sanctuary Cities shelter for hardcore criminals, human traffickers, plus drug dealers and gangs.

### Existing Law:

- C.F.R. Title 8. Chapter 1. B, Part 287- Gives ICE detainer authority., based on Immigration and Nationality Act under Section 103(a)(3).
- U.S. Code Title 8, Chapter 12, Subchapter 11, Part IX, 1373 - Federal, state or local government entity or official are not prohibited from sending or receiving information regarding individual's immigration status.
- 8 U.S. Code 1324(a)(1)(A)(iii), Knowingly concealing an alien that entered or remains in the United States in violation of the law...or shield from detection....
- 18 U.S.C. Section 1505, paragraph two- Obstruction of an official proceeding
- 18 U.S.C. Section 371. Conspiracy to Defraud the United States - conspiracy for the purpose of impairing, obstructing, or defeating the lawful functions of any department of government, *Hass v. Henkel*, 1909 the court states "The statute is broad enough in its terms to include any department of government."

### SCOTUS Rulings:

- *Printz v. United States* June 27, 1996 - The Brady bill required local chief law enforcement officers to perform background-checks on prospective handgun purchasers, until a federal system could be established. The Court ruled that the "Necessary and Proper Clause of Article I was not justification to compel state law enforcement to fulfill its federal tasks for it.
- In May 14, 2018, the Supreme Court struck down a federal 1992 law passed to stop sport betting. In doing so, the Court reinforced the "anti-commandeering principle" in which the federal government cannot force states to be enforcers of federal policy.
- The Supreme Court affirmed in *Arizona vs U.S.* (2012), which found that only the federal government had authority over immigration enforcement.

### Postion of WiGOL:

Attempts by municipalities to enact "Sanctuary City" policies notwithstanding, Wisconsin should at least enact legislation enabling any state or municipal law enforcement agency to **use their own discretion** when cooperating with Federal Law Enforcement. We recognize that the federal government cannot force or "commandeer" states or agencies within states to do the work of the federal government. However, we feel that state and local government should not have the authority to compel local law enforcement to refrain from cooperating with a federal agency if they feel that that cooperation is in the best interest of the community being protected. We oppose both Sanctuary City Legislation and Policies.