‘Sanctuary City’ Is Being Used as a Catch-All. It Shouldn’t.

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Since the tragic murder of Kathryn Steinle on July 1, 2015 in San Francisco, so-called sanctuary cities have been under the microscope. Members of Congress are proposing numerous bills to upend longstanding state and local policies that limit state and local officials’ immigration enforcement functions.

But there is no single definition of what comprises a “sanctuary city” or jurisdiction. The term, which is borrowed from the church-centered sanctuary movement of the 1980s, is not defined by federal law and has been applied to a wide variety of cities, from those that have passed ordinances barring many types of cooperation with federal immigration authorities to those that merely have signed on to friend-of-the-court legal briefs opposing Arizona’s controversial SB 1070 law.

Congress needs to keep a few things in mind as it addresses the various local policies.

First, there is no such thing as a “law-free zone” for immigration. Federal immigration laws are valid throughout the United States, including in “sanctuary” jurisdictions. Even where a particular city or law enforcement agency declines to honor an U.S. Immigration and Customs Enforcement (ICE) immigration detainer or limits involvement with federal immigration authorities, officers and agents from Customs and Border Protection and ICE can (and do) enforce federal immigration laws.

Additionally, most of the jurisdictions the press and politicians are referring to are not actually “sanctuary” jurisdictions. Many cooperate with federal immigration officials, including honoring criminal detainers accompanied by a warrant or court order, partnering with ICE in the 287(g) program, and providing notification of impending releases of undocumented individuals with previous criminal convictions. Accordingly, it is misleading and overly simplistic to conflate sanctuary jurisdictions with jurisdictions that refuse to honor federal immigration detainers.

Similarly, adopting community policing principles is not the same thing as being a “sanctuary” jurisdiction. Over the past three decades, numerous state and local law enforcement agencies have implemented community policing strategies, emphasizing trust building in immigrant populations. These policies, which recognize that state and

local law enforcement need the trust of their communities, are tailored to ensure that immigrant victims and witnesses of crimes cooperate with police, leaving it to federal authorities to carry out immigration enforcement activities. These strategies are well-established and effective.

Lost in the discussion over "sanctuary" jurisdictions is that immigration enforcement always has been primarily a federal responsibility. As the U.S. Supreme Court recently reaffirmed in *Arizona v. U.S.*, the case striking down much of SB 1070, the federal government possesses "broad, undoubted power over the subject of immigration." At the same time, federalism principles under the U.S. Constitution limit what Congress can do to mandate that state and local law enforcement carry out federal immigration priorities and programs. Constitutional restrictions prevent the federal government from attempting to "commandeer" state governments into directly carrying out federal regulatory programs.

The anti-commandeering principle prevents the federal government from ordering state and local officials to carry out certain federal enforcement functions, including holding detainees in accordance with ICE immigration detainers. Immigration detainers — federal requests to detain individuals suspected of being in the U.S. unlawfully — are highly controversial. Their legality in many circumstances is dubious, as the statutory language said to authorize them only explicitly covers arrests "relating to controlled substances." Additionally, because they rarely arise from a warrant or court order, immigration detainers raise significant Fourth Amendment issues, as they request the seizure and/or detention of a person without probable cause that the person has committed a crime. Some federal courts have clarified that states and localities are not required to honor immigration detainers and have held that states and localities may be legally liable for civil rights violations arising from a detainer. For these reasons, many jurisdictions — more than 200, according to former ICE Director Sarah Saldaña — decline to honor ICE immigration detainers.

With genuine concerns about local law enforcement being asked to enforce federal immigration law and the effects that has on community safety, Congress must be careful not to use a sweeping definition that hurts community policing and community safety. After all, only a handful of jurisdictions call themselves sanctuaries in the first place.

No matter the language, cities are trying to do what is best and safest for all of their residents in the long run. Rather than use "sanctuary city" as both a catch-all and a scapegoat, Congress should make a good-faith effort to clarify immigration enforcement responsibilities. Rather than a political firestorm in the wake of a tragedy, we need cooperation that demonizes no one and at the same time makes all of us safer.

This post can be found online at: http://immigrationforum.org/blog/sanctuary-city-is-being-used-as-a-catch-all-it-shouldnt/