

Anti-immigrant Actions and Policies

REACTING TO REFUGE: PRESIDENTIAL RESPONSE TO SANCTUARY POLICIES UNDER THE REAGAN, BUSH, AND TRUMP ADMINISTRATIONS

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Introduction

On January 25, 2017, just five days after taking office, Donald Trump signed Executive Order 13768, entitled “Enhancing Public Safety in the Interior of the United States” (Trump, 2017). The order was the first in U.S. history to target so-called “sanctuary cities” and was an attempt to fulfill one of the president’s key campaign promises. It ordered Attorney General Jeff Sessions to deny sanctuary localities federal grants in response to their refusal to cooperate with federal immigration officials. What exactly constitutes a sanctuary city is a matter of some debate, though Executive Order 13768 vested the attorney general with the authority to designate a city as a sanctuary based on non-cooperation with Immigration and Customs Enforcement (ICE). A general definition that has been used in the academic literature is that a sanctuary city/county/state is one where local officials, including police, are forbidden from inquiring into immigration status and/or where detainer requests from ICE may be declined for low-level offenders (Gonzalez O’Brien, Collingwood, and El-Khatib, 2017; Collingwood and Gonzalez O’Brien, 2019a). Some also bar local officials from assisting ICE in their duties or using local resources to this end. Proponents argue that these policies facilitate cooperation between local police and immigrant communities, while opponents claim they increase crime or may serve as a magnet for dangerous criminals.

While these localities have existed since the 1980s, it was the accidental shooting of Kathryn Steinle by José Inés García Zárate on July 1, 2015 that led to renewed attention by media, politicians, and the public. García Zárate, an undocumented immigrant who had been deported multiple times, had

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recently been in the custody of San Francisco police for a drug violation, though these charges were ultimately dropped. Because of the city's sanctuary policy, an ICE detainer for Mr. García Zárate was declined and he was released (*Los Angeles Times*, 2019). While it became clear during García Zárate's later trial that Ms. Steinle's shooting was accidental and the result of a ricocheting bullet, on the heels of her death a firestorm of controversy broke out over a policy that had, according to some, allowed a dangerous criminal to murder a U.S. citizen. Some have noted that Ms. Steinle's shooting served as a focusing event for sanctuary policies, attracting sustained media attention for the first time since the 1980s (McBeth and Lybecker, 2018). Then-candidate Donald Trump seized on the shooting as an example of the dangers of "illegal" immigration, which he had previously stated brought rapists and criminals into the country, a refrain he would repeat often as president. While Mr. García Zárate was eventually acquitted of murder charges, sanctuary cities became a politically polarizing topic between 2015 and 2017 as Republicans and Democrats took up sides on the issue (Collingwood and Gonzalez O'Brien, 2019a and 2019b; Collingwood, Gonzalez O'Brien, and Tafoya, 2019).

While Donald Trump has taken the hardest line on sanctuary cities to date, there has been little examination of how past administrations have responded to these policies, which can be seen as a challenge to federal authority. Immigration enforcement is the sole jurisdiction of the federal government in the United States, but, particularly in the post-9/11 period, local governments have increasingly tended to participate in the enforcement of immigration policy, whether this is through 287(g) partnerships or the Secure Communities program. In some cases, this cooperative model of federalism has become more conflictual, as was the case with Arizona's SB1070 in 2010, which would have allowed police to inquire into immigration status and detain those who were undocumented. Parts of SB1070 were deemed unconstitutional because Congress is solely vested with authority over immigration policy, but SB1070 represents the other side of the coin to sanctuary policies in immigration federalism (Armacost, 2016; Gulasekaram and Ramakrishnan 2015; Villazor and Gulasekaram, 2018). While SB1070 and similar policies modeled on it looked to challenge federal authority on immigration by expanding the role of states in policymaking, sanctuary policies instead seek to limit to the greatest extent possible under the law local cooperation or information-sharing with federal officials (Armacost, 2016; Collingwood

and Gonzalez O'Brien, 2019a; Villazor and Gulasekarm 2018). For sanctuary jurisdictions, this means avoiding any violations of 8 U.S.C. 1373, which states that federal, state, or local government officials or entities cannot prohibit or restrict the ability of officials to share information on immigration status or citizenship with ICE. Sanctuary policies avoid this by dictating that this information is not to be collected in the first place, meaning there is no information to share.

These conflicts between the federal government and states/localities have deep roots in immigration policy, and, even in the area of sanctuary legislation, these clashes go back decades. First passed in the 1980s in response to the Reagan administration's refusal of asylum claims by Guatemalan and Salvadoran refugees, sanctuary legislation challenges the role that local authorities should play in the enforcement of immigration policy (Bau, 1985; Ridgley, 2008; Villazor, 2007). In their earliest form, sanctuary policies ordered local officials not to inquire into immigration status, thereby ensuring this information could not be shared with federal authorities. These policies now often also refuse to honor immigration detainer requests by Immigration and Customs Enforcement (ICE) for all but certain classes of criminals. Many cite the need for trust by immigrant communities if local law enforcement officers are to do their jobs, but some also directly criticize federal immigration policy and are clear that these policies are meant to make these enforcement operations more difficult. Sanctuary policies have come in three waves, the first in response to the Central American refugee crisis of the 1980s, from approximately 1983 to 1989. The second wave came in response to Bush administration policies and the rollout of the Secure Communities program between 2001 and 2009, while a third wave has resulted from the Trump administration's immigration crackdown and harsh rhetoric on undocumented immigration in the 2015-2019 period.¹

While there is a growing field of sanctuary policy research, little work has been done to date examining how the executive branch has responded to these challenges to federal authority. In this article, I examine this question for the Reagan, Bush, and Trump administrations, all of which saw a growth of sanctuary policies specifically in response to federal immigration policy.

¹ Sanctuary policies were not passed exclusively during these periods, but this is when the bulk of resolutions or ordinances were put on the books.

Drawing on media coverage of sanctuary cities, I analyze the three administrations' differing responses to these challenges to federal authority. What becomes clear is that Trump has sought to use all the power of the executive branch to force sanctuary jurisdictions into line in a way his Republican predecessors did not. However, this aggressive stance with regard to sanctuary legislation has carried a high cost, with his administration's actions catalyzing greater opposition to federal policy. This may explain some of the reservations that the Reagan and Bush administrations had about aggressively trying to force sanctuary cities to cooperate with federal policy.

Immigration and Federalism

Immigration is an area ripe for conflicts over federalism and the respective powers of states and localities *vis-à-vis* federal authority on immigration. While the Constitution does not expressly confer either the legislative or executive branch with authority regarding immigration policy, Congress's role was established through judicial precedent in the cases of *Chy Lung v. Freeman* (1875) and *Chae Chan Ping v. US* (1889), which established the plenary power doctrine for immigration policy (Gulasekaram and Ramakrishnan, 2016). The scholarship on federalism is divided between conceptualizing states/localities as autonomous challengers and rivals to federal authority, and one where federal programs are generally carried out and assisted. The case for the latter, known as the cooperative model of federalism, can be seen in immigration policy in the growth of 287(g) agreements in the post-9/11 period. While the federal government has sole jurisdiction over immigration policy in the United States, states and other localities are often necessary partners if federal policy is to be enforced. Motomura (2011) has characterized the arrest authority of local law enforcement as the "discretion that matters" in immigration enforcement, in large part because it is local authorities that have regular contact with undocumented populations. By entering into 287(g) agreements, which allow ICE to delegate immigration enforcement power to state and local authorities, this discretion is used to enhance the federal government's ability to enforce immigration policy (Motomura, 2011).

Yet, since the 1980s, states and localities have increasingly pushed back against federal immigration and refugee policy, with the Trump period in

particular seeing a growing number of challenges to federal authority. This “uncooperative federalism” encompasses both policies like SB1070 that seek to expand the authority of state and local governments over immigration policy, as well as sanctuary policies that seek to limit the role played by local officials in enforcement operations and facilitating immigration detention (Armacost, 2016; Bulman-Pozen and Gerken 2009; Villazor and Gulasekaram, 2018). In the former, states are seeking to expand their ability to increase their own enforcement in response to perceived inaction by the federal government (Gulasekaram and Ramakrishnan, 2015; Rodriguez, 2018). In the latter, local officials are responding to what is perceived as either unjust policy, or because federal policies are perceived as impeding the work of local law enforcement.

The Executive Branch and Responses to Sanctuary Policy

Generally speaking, most of the literature on the relationship of immigration to federalism considers the federal government as a single unit and has tended to focus more on policies like SB1070, which attempted to expand local authority over immigration policy (Bulman-Pozen and Gerken, 2009; Newton, 2012; Newton and Adams 2009; Rodriguez, 2018; Varsanyi et al., 2012). The literature on sanctuary policies and federal responses is growing, though it does not tend to separate the responses of the executive and legislative branches (Armacost 2016; Chen 2015; Gulasekaram and Villazor, 2009; Villazor and Gulasekaram 2018). While Congress has sole jurisdiction over immigration policy, the slowness of the legislative process means that responses to something like sanctuary policy can take not only a long time, but also require some kind of bipartisan consensus on an appropriate response. Needless to say, this consensus rarely exists. This leaves the executive branch as the most equipped to quickly respond to challenges to federal authority over immigration policy. Gulasekaram and Ramakrishnan (2016) detail the president’s possible responses, which they argue are threefold. First, he/she can take actions to curtail state or local immigration responses, whether they seek to expand local authority at the expense of federal authority, as SB1070 did, or try to impede the work of federal authorities through

non-cooperation. The president can also try to co-opt actions that may be taken at the state or local level through policies like the 287(g) program. Lastly, the executive branch can try to shape state or local policies in a way that is consistent with the administration's agenda on immigration.

While Gulasekaram and Ramakrishnan (2016) do mention sanctuary policies in their examination of immigration federalism, their primary concern is with states that look to expand local authority over immigration, instead of those localities that seek to stymie federal immigration enforcement. However, it is not hard to adapt their framework for a study of immigration policies. The president can—and has under the Trump administration—try to strip sanctuary jurisdictions of federal funding for non-cooperation, which would be an attempt to curtail adding to the number of sanctuary cities nationwide. These kinds of threats by the president can present a significant barrier to the passage of sanctuary legislation if it is believed that such a policy will lead to negative consequences for the city, county, or state.

In terms of coopting states or localities regarding sanctuary policies, a president could shift enforcement priorities or take action through executive orders that could signal a less restrictive stance toward undocumented immigration. This position could obviate the need for new sanctuary policies if cities or states are less concerned about large and highly visible immigration raids leading to fear among their immigrant communities or potentially complicating local law enforcement operations.

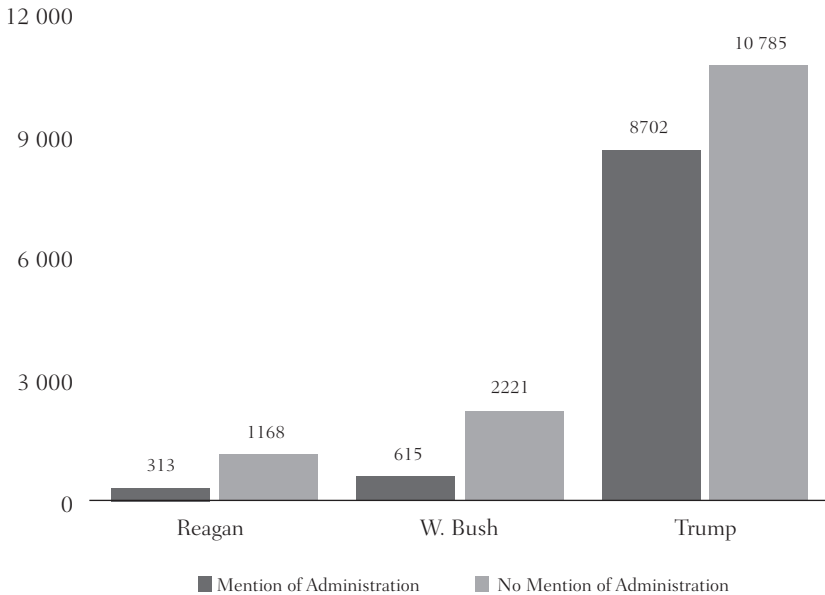
The president can also try to catalyze state-level bans on sanctuary policy, such as Texas's SB4, which fit in with the administration's goals and positions on sanctuary policy. Through the bully pulpit and their ability to go public, presidents can try to shame sanctuary jurisdictions into compliance or exact an electoral cost for non-cooperation. However, he/she may also choose to ignore sanctuary policies in order to prevent the administration's actions from being used as a catalyzing event for their expansion and to deny these localities the attention they seek in order to place pressure on the federal government to change enforcement priorities or adopt new legislation. This is particularly true of ideological sanctuary cities, where, in addition to their functional aspect, policies are also meant to shine a spotlight on what is perceived as unjust federal policies or enforcement priorities. Denying sanctuary cities this soapbox can make it harder for these policies to lead to a broader national discussion of immigration policy, which some have as a central goal.

Data and Methods

This article seeks to answer two questions regarding presidential responses to sanctuary policies. First, how did the Reagan, George W. Bush, and Trump administrations respond to sanctuary policy? Secondly, drawing on the framework laid out by Gulasekaram and Ramakrishnan (2016), how have the responses of the three administrations differed and why?

To answer these questions, I drew on Nexis Uni, running a search for all news articles containing the terms “sanctuary city/cities,” “sanctuary policy/policies,” and “sanctuary movement” for three periods: January 20, 1981 to January 21, 1989; January 20, 2001 to January 20, 2009; and January 20, 2017 to January 29, 2019. This covers the entirety of the Reagan and W. Bush administrations and the first two years of the Trump administration. I then narrowed the search by looking for the name of the administration within the results and limiting results to news sources from North America. Figure 1 shows the total number of articles for each of the three administrations based on these searches.

FIGURE 1
SANCTUARY ARTICLES PER ADMINISTRATION



SOURCE: Developed by the author.

What is immediately clear is the amount of media attention that sanctuary policies have received in the first two years of the Trump administration, dwarfing the total number of articles written on these policies under the Reagan or Bush administrations. Under the Reagan administration, 1168 articles appeared on sanctuary policies or the Sanctuary Movement. Of these, only 313, or approximately 27 percent, mentioned the administration by name. Under the Bush administration, more articles appeared overall on sanctuary policies (2221) and more mentioning the president (615), but the percentage was virtually unchanged at 28 percent. However, under the Trump administration, the number of articles increased exponentially, as did the percentage mentioning the president. Of the 10785 articles on sanctuary cities, 8702, or 81 percent, referenced the administration in some way. This is over a two-year period compared to the eight-year periods for the Reagan and W. Bush administrations, showing both the increased amount of attention sanctuary policies have received, as well as how linked the current administration is to sanctuary policy.

I then read the articles the Nexis Uni search returned and added any mention of executive action to a spreadsheet and coded as curtailing, coopting, catalyzing, or ignoring as a response to the policies in question. The next three sections draw on these articles to detail executive responses to sanctuary policies. After examining the three administrations individually, I compare responses and discuss the reasons that each administration may have adopted the strategy in question.

Sanctuary Responses under the Reagan Administration

Sanctuary policies were born under the Reagan administration in response to the Central American refugee crisis, which would prompt the creation of the faith-based Sanctuary Movement, which helped refugees from Guatemala and El Salvador find shelter from deportation in churches and synagogues. Often compared to the Underground Railroad, the Sanctuary Movement would spur cities like Madison, Wisconsin, to adopt city-level sanctuary policies in solidarity (Bagelman, 2016; Delgado, 2018; Ridgley, 2008). Most of these declarations were ideological in nature since their goal was to change the Reagan administration's refugee policy, which they claimed was in violation

of international law because of the high percentage of asylum claims that were denied for Salvadoran and Guatemalan refugees (Ridgley, 2008; Villazor, 2007). This was also the goal of the Sanctuary Movement itself, which was trying to shine a light on the administration's unjust practices, which members of the movement argued were based on the U.S. involvement and support for groups in both countries that were responsible for some of the violence the refugees claimed to be fleeing (Bau, 1985; Coutin, 1993; Crittenden, 1988; Cunningham, 1995; Golden and MacConnell, 1986).

The administration thus had to respond to both the Sanctuary Movement, which was openly defying federal anti-harboring laws, as well as the cities that were declaring their own solidarity with the movement. Cities could not prevent enforcement operations, but many sanctuary policies banned local officials from asking about immigration status or assisting in them (Collingwood and Gonzalez O'Brien, 2019a; Ridgley 2008). Because federal immigration policies do not require the participation of local jurisdictions, cities, counties, and states are technically in compliance with federal law even as they seek to challenge it. The same cannot be said of individuals involved in the Sanctuary Movement, who were transporting and sheltering refugees whose asylum claims had been denied.

As the Sanctuary Movement took off in 1983, the Reagan administration initially took little action against members. An April 17, 1983 article in the *Washington Post* noted that the administration had chosen to "look the other way," and that Immigration and Naturalization Services (INS) stated that they were not looking for a confrontation with churches (McCarthy, 1983). It is also noted that churches and synagogues affiliated with the Sanctuary Movement were "publicity seekers," but that they sought public attention in hopes of shining a light on the Reagan administration's policies in Central America (McCarthy, 1983). In the *Christian Science Monitor*, Jim Bencivenga noted that the movement's goal was to shift public opinion against the administration's policies in Central America, with hopes that this would lead to extended voluntary departure status for Guatemalan and Salvadoran refugees (Bencivenga, 1983).

While the administration took no direct action against members of the Sanctuary Movement in its early days, a strategy was in place for trying to prevent any significant shift in public opinion. Representatives of the Reagan administration and the INS characterized Salvadorans and Guatemalans not

as refugees but instead as economic migrants in an attempt to frame the crisis as simply driven by economics. INS spokesman Duke Austin pointed out that, "A Salvadoran once into Mexico is free of the war-torn ravages. . . . Why then come into the United States? He comes because of the jobs, because of the economic conditions. How can we keep anyone out if they come for economics and not safety?" (Bencivenga, 1983). This claim was repeated in other official statements by INS representatives in the early years of the Sanctuary Movement and was also part of a broader attempt to refute any responsibility of the administration for the conditions in Central America. The Reagan administration was involved in providing financial and military support to groups in both Guatemala and El Salvador—and later Nicaragua—that were blamed for the violence the asylum seekers claimed to be fleeing. They therefore had an interest in playing down the human costs that U.S. involvement entailed (Bau, 1985; Coutin, 1993; Crittenden, 1988; Cunningham, 1995; Golden and MacConnell, 1986).

The choice to ignore the movement in its early days instead of cracking down on it would be reversed in 1984, when federal authorities began to arrest high profile members. On April 1, 1984, the administration warned that those involved in the movement could be fined up to US\$2000 and face up to five years in prison for their actions (Goldman, 1984). This warning came as federal authorities began to arrest movement members, first in McAllen, Texas, and Nogales, Arizona (Beck and Greenberg, 1984). In February 1984, Border Patrol agents arrested *Dallas Times Herald* reporter Jack Edward Fischer and two Sanctuary Movement members, Stacey Lynn Merkt and Dianne Muhlenkamp (Sick, 1984). Stacey Lynn Merkt would be the first individual prosecuted for her involvement in the movement, with the goal of dissuading others from joining. While the administration did secure a conviction, Merkt only received a three-month suspended sentence, which would not serve as much of a deterrent (McCarthy, 1984).

Despite this, the administration continued with its strategy of high-profile arrests. By 1985, sixteen indictments had been issued, and more than 60 individuals associated with the Sanctuary Movement had been arrested. Those indicted were charged with conspiring to smuggle undocumented immigrants into the United States (News Hours Production, 1985). The government also used undercover informants to infiltrate the movement and were accused of staging a number of break-ins to intimidate members (Casler,

1986; McCarthy, 1985). The administration's actions were meant to curtail the Sanctuary Movement, but as cities began to declare their solidarity with the group and pass sanctuary resolutions in the hope of lessening the likelihood that refugees would be deported, the Reagan administration was also faced with a challenge from the local level.

The main difference between the movement and sanctuary cities was that the former could be formally charged because of their active involvement in the defiance of federal immigration policies. Localities took a more passive approach to protecting refugees, electing to bar local officials from inquiring into immigration status, which, while it did not clash with federal law, was still meant to complicate immigration enforcement in sanctuary cities. The Reagan administration had far more tools at its disposal to try to curtail the Sanctuary Movement itself than it did in the case of sanctuary cities. With the latter, it could not charge local officials with a crime, since they were technically in compliance with federal policy.

The administration made some weak attempts to catalyze support against sanctuary cities by painting these policies as both illegal and politically motivated. In a February 21, 1985 article, the INS Spokesman for the Western Region, John Bellurado, laid into members of the Berkeley City Council, who had recently voted to make the city a sanctuary for Central American refugees. He stated, "City Council members are elected representatives of the people who are supposed to obey the law of the land, not break it. . . . The sanctuary movement is basically a Trojan horse, using these individuals as tokens to criticize the Reagan administration's policy in Central America. It's basically a politically motivated movement rather than a humanitarian movement" (United Press International, 1985). However, the same article noted that Berkeley's police chief believed that the resolution was "largely symbolic" and the administration tended to treat sanctuary resolutions as such (United Press International, 1985). From the beginning to the end of Reagan's presidency, sanctuary cities were never mentioned by the president or officials, outside of those associated with the INS. Strategically, this makes a lot of sense since the catalyst for sanctuary cities was the growth of the Sanctuary Movement, and curtailing the latter was probably seen as reducing the likelihood of more cities adopting similar policies.

Despite the high profile trials and the successful prosecutions of some members of the movement, what actually led to its decline was not the ad-

ministration's action, but instead a decrease in the number of refugees from Central America and the passage of temporary protected status for Salvadorans in the 1990s, as well as the terms of the settlement of a class-action lawsuit filed against the federal government claiming Central American refugees had been discriminated against in decisions on asylum claims (Gzesh, 2006). Despite the Sanctuary Movement largely ending, the policies passed in solidarity at the city level would stay on the books and become the basis for the sanctuary policies of the 2000s and 2010s.

Thus, under the Reagan administration, the response to the Sanctuary Movement was to use federal prosecutions in an attempt to curtail its challenge to federal asylum policies. The president chose to ignore sanctuary cities, since local officials could not be charged with any violation of federal law as they were technically in compliance. It would not be until 1996 that state and local governments would be prohibited from restricting the sharing of immigration-related information with the INS as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) (Cornell Law School, n.d.). This would become the oft-referenced 8 U.S. Code § 1373 that the Trump administration has drawn on to justify its threat to deny federal grants to sanctuary jurisdictions. Since this tool was not available to the Reagan administration, its hands were tied much more securely regarding punitive measures to deter cities from adopting or maintaining sanctuary policies. This is despite the fact that Reagan was a known proponent of a coercive form of federalism, whereby the federal government adopted statutes that preempted state and local authority (Kincaid 1990). The administration and its allies in Congress certainly could have pursued preemption of sanctuary declarations by requiring the sharing of immigration-related information in the 1986 Immigration Reform and Control Act (IRCA), but at that particular time, sanctuary policies were not seen either as a significant challenge to federal authority or as the mobilizing issue that Trump administration sees in them.

In addition, while not explicitly stated, the administration also probably recognized that one of the goals of sanctuary resolutions was to attract media attention. The more federal authorities criticized these localities, the more attention they would attract. This could have had effects on both public opinion toward the administration's activities in Central America, as well as future sanctuary declarations. Aggressive executive action could have catalyzed support by making the administration appear heavy-handed.

As the United States exited the 1980s, the decline of the Sanctuary Movement, the decline in Central American immigration, and the granting of TPS to Salvadoran refugees all led to a sharp drop in media and public attention to the question of sanctuary policies. After more than a decade in the background, sanctuary policies would reemerge in the 2000s as the result of the September 11 attacks.

Sanctuary Responses Under the George W. Bush Administration

As discussed earlier, sanctuary policies have largely come in three waves, the second of which would be in response to the Bush administration's immigration crackdown following the September 11 attacks. This second wave of policies is particularly interesting because of the increased salience of both immigration and security issues in the period following 9/11. These new or revised sanctuary policies were also aimed at different beneficiaries from those of the 1980s. During the Reagan administration, they had been meant to benefit a fairly sympathetic group of Central American refugees. While the administration tried to paint Guatemalan and Salvadoran asylum-seekers as economic migrants and sanctuary policies as part of a political agenda, the involvement of faith-based organizations and the violence in Central America made this narrative difficult to sustain (Bau, 1985; Coutin, 1993; Crittenden, 1988; Cunningham, 1995; Golden and MacConnell, 1986). On the heels of the September 11 attacks, policies and enforcement operations by the newly formed Immigration and Customs Enforcement (ICE) generated new resistance from cities that were increasingly asked to participate in programs like 287(g), which allowed local law officers to be trained and deputized to enforce immigration laws, or Secure Communities, which automatically transmitted immigration information to ICE when someone was booked at a local jail or prison. Increasingly, state and local governments became concerned about the potential impact these policies, as well as expanded deportation operations, could have on the likelihood of immigrant communities cooperating with local law enforcement or reporting crimes (Chen, 2015; Collingwood and Gonzalez O'Brien, 2019a; Delgado, 2018; Mancina, 2016; Ridgley, 2008; Villazor, 2007). Immigrants and Latinos have both been shown to have more reservations

about contacting law enforcement if they worry that they will be asked about their immigration status, and many of the policies aimed to reduce this fear (Barrick, 2014; Messing et al., 2015; Theodore, 2013; Theodore and Habans, 2016). Yet many of the sanctuary policies passed in this second wave were also ideological in nature. Many involved the need for the cooperation of local communities in order for law enforcement to do their jobs, but also included criticisms of federal immigration policy and operations. In Berkeley, the city's revised sanctuary policy drew heavily on the policy they had passed in 1985 as part of the first wave of sanctuary declarations, but also criticized the newly formed ICE for Operation Return to Sender. This was a large-scale campaign of raids aimed at criminal immigrants, but that also regularly led to collateral arrests (Berkeley Resolution 63 711, 2007). Berkeley's revised sanctuary policy, Resolution 63 711, charged that Operation Return to Sender violated immigrants' civil rights, separated families, and also created a climate of fear (Berkeley Resolution 63,711, 2007).

Thus, like the 1980s, many sanctuary policies had a distinctive ideological component and mentioned specific federal policies they opposed in the text of the resolution. Unlike the first wave of sanctuary resolutions, no social movement existed to serve as the impetus for these policies, which instead drew largely on the example set by past policies and a growing resistance to the Bush administration's aggressive immigration stance as a result of September 11. As mentioned above, after 9/11 the Bush administration sought to increase the cooperation between local and federal officials through participation in 287(g) programs and Secure Communities.

These drew on models of cooperative federalism, where state, county, and local governments would be enticed to participate in enforcing federal immigration policy through additional training for local law enforcement and grants for participating agencies (Amdur, 2016; Kincaid, 1990; Krane, 2007; Newton and Adams, 2009; Schuck, 2007; Spiro, 2001). These programs were an attempt to catalyze greater support for the administration's policies by, in the case of the 287(g) program, incentivizing cooperation. Bush was also a proponent of comprehensive immigration reform, including an expanded guest worker program and path to citizenship for undocumented immigrants already in the United States (Ruiz, 2007).

Like Reagan, George W. Bush never formally addressed sanctuary policies in official speeches or comments, despite the fact that the number of

sanctuary policies across the United States significantly increased over this period.² While the president largely chose to ignore these policies, beginning in 2004, calls from the right for Bush to act were increasing. Fox News's *The O'Reilly Factor* made sanctuary policies a regular feature of the show, with Bill O'Reilly railing against sanctuary cities on a January 26, 2004 episode. After calling homeland security a "farce," O'Reilly continued, "Now cities like Los Angeles, San Francisco, New York, and Houston don't enforce the immigration laws. That's against federal law. Can't the feds come in and cut off funding to those cities?" (O'Reilly, 2004). O'Reilly's guest, Mark Krikorian, of the right-wing, restrictionist Center for Immigration Studies (CIS), picked up where O'Reilly left off, stating, "Well, it's even worse than not enforcing the immigration law. What they do is they prohibit their employees, cops, social service people, etc., from even inquiring as to immigration status, and, if they find out something, they're not allowed to tell . . . immigration authorities" (O'Reilly, 2004). Krikorian would note that this was illegal based on IIRIRA, but that no one wanted to enforce the law. While not specifically calling out the Bush administration by name for ignoring sanctuary cities, both O'Reilly and Krikorian strongly implied that the federal government and the administration were looking the other way when it came to sanctuary policies.

This would come up again in 2004 during Condoleezza Rice's testimony before the 9/11 Commission, during which she was asked if she was "aware the U.S. government established policy not to question or oppose the sanctuary policies of New York, Los Angeles, Houston, Chicago, [or] San Diego for political reasons" (Blitzer, 2004). Rice claimed she was not aware of this policy, but attacks by right-wing media on the Bush administration for not taking action would continue, with a March 15, 2005 episode of *The O'Reilly Factor* featuring an interview with Kris Kobach, at the time a former counsel to John Ashcroft and outspoken critic of the U.S.'s immigration policies. On the show, Kobach noted a growing concern with the federal government's refusal to address sanctuary policies, though he provided no evidence for this, before characterizing these policies as expressly political and aimed at capturing the Latino vote (O'Reilly, 2005). O'Reilly would go further in his criticism, arguing that this didn't excuse the Bush administration and that, "All

² This was based on a search of the American Presidency Project's database for any speeches, written comments, or press releases mentioning "sanctuary city/cities."

the president has to do is sign an order saying, 'You cities disband the sanctuary policy or we're cutting off federal aid.' He will not do it" (O'Reilly, 2005). O'Reilly would become one of the harshest critics of Bush's approach to immigration policy and decision to ignore sanctuary policies, but the issue also increasingly became a talking point for conservative groups and in right-leaning media outlets like Fox News.

Some Republican politicians also took up the issue of sanctuary, with Tom Tancredo, a representative for Colorado's sixth congressional district becoming one of the most strident opponents of sanctuary policy, and, more broadly, what he saw as the nation's weak immigration laws. In a January 6, 2006 article, Tancredo attacked sanctuary cities, as well as the Bush administration's failure to address the nation's immigration problems. Tancredo stated, "We must end illegal alien sanctuary policies, which pit officer against officer, and one level of government against the other. . . . What really puzzles me is why President Bush is being so touchy-feely on this. . . . I think I know the reason why. . . . The GOP wants those Hispanic voters" (Burns, 2006). Tancredo would also be one of the first to use anecdotes of immigrant criminality to push for a crackdown on sanctuary policies. In a March 9, 2006 op-ed in the *Charleston Gazette*, Tancredo argued, "The result of Denver's sanctuary policy was tragic yet predictable. In April of 2005, an illegal alien with an invalid Mexican license who had resided in the city for ten months walked away from a Denver courtroom and three weeks later shot and killed Denver policeman Donnie Young" (Tancredo, 2006). Linking sanctuary policies to the deaths of U.S. citizens would become a regular tactic with conservative media, pundits, and, increasingly, politicians. Many also linked these deaths, at least implicitly, to the Bush administration's refusal to crack down on sanctuary cities. In 2007, O'Reilly called for the Bush administration to "warn all the sanctuary cities, which we have listed on billoreilly.com, that, if they continue to disobey federal law, their law enforcement federal grants will be cut off," based on the death of two Virginia Beach teenagers in a drunk driving accident involving an undocumented immigrant who had not been asked about his immigration status after previous citations for drunk driving (O'Reilly, 2007a). Similar criticisms would be leveled at both sanctuary policies and the administration's response in relation to murders in Newark and the shooting of a police officer in Phoenix, Arizona (O'Reilly, 2007a, 2007b).

Despite these criticisms of his administration, Bush took no action on sanctuary policies, choosing, much like Reagan, to ignore them. This was despite both the increasing number of sanctuary cities as well as their increasing visibility as they became a popular talking point in conservative media. This is likely due in large part to the president's moderate stance on immigration policy. Bush had tried to get a comprehensive immigration bill through Congress, which would have included both a path to citizenship and a fairly ambitious guest worker program, but this was ultimately defeated near the end of his second term. A final vote on the bill in the Senate was blocked by a vote of forty-six to fifty-three, killing any hopes the administration had of a breakthrough on immigration policy (Montgomery, 2007).

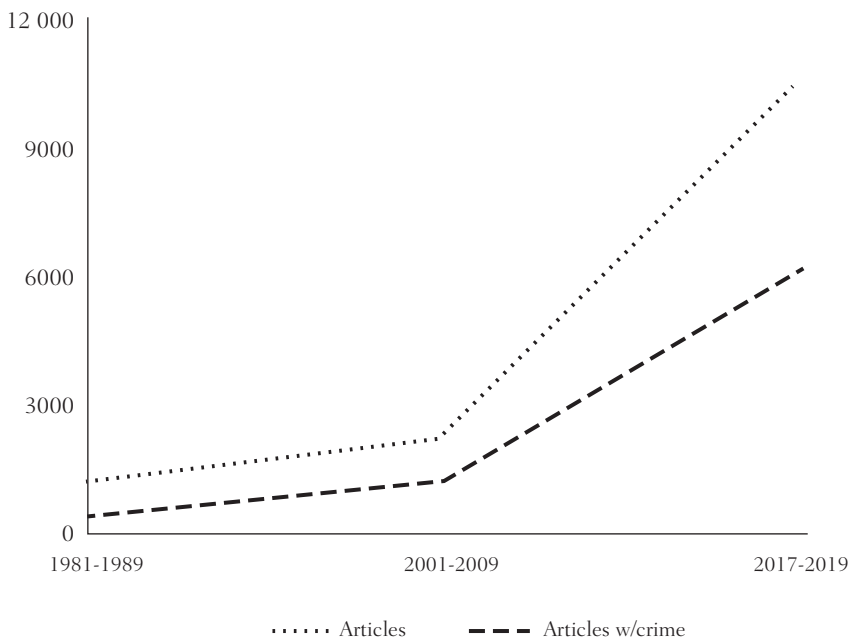
As mentioned above, the Bush administration did try to encourage cooperation through the 287(g) program and Secure Communities. Participation in either program would effectively coopt the passage of sanctuary policies since both would preempt and undermine their purpose, but neither program explicitly targeted sanctuary jurisdictions. Thus, despite the increasing calls from anti-immigration voices on the right to crack down on sanctuary cities the Bush administration simply chose to ignore them, as the Reagan administration had. Instead the federal government directed its energy to enforcement campaigns like Operation Return to Sender and cooption through the passive compliance of Secure Communities or incentivized cooperation via the 287(g) program.

Sanctuary Responses under the Trump Administration

The tendency to ignore sanctuary policies would end with Donald Trump's presidential campaign in 2015. Trump was not the first candidate to make sanctuary policies part of the Republican primary, as both Mitt Romney and Fred Thompson had done so in 2007 in an attempt to damage Rudy Giuliani, a fellow Republican contender for the party's nomination and former mayor of New York. Both Thompson and Romney hit Giuliani repeatedly on New York's position on sanctuary and Giuliani's past statements about the city's policy (Romney, 2007; Thompson, 2007). Outside of the politics of a primary, the choice by Tancredo, Thompson, and Romney to try to make sanctuary policies a decisive issue in the 2008 Republican primary suggests that

they saw it as a salient issue for the Republican base, probably due to Fox News’s continued coverage of sanctuary cities. In addition to Fox, immigration-restriction activists like Mark Krikorian and Kris Kobach helped keep the topic in the news by serving as guests and immigration “experts” on the network. In the early 2000s, we saw the early linkages between sanctuary policies and crime, something that had been common in the discussion of undocumented immigration more broadly but had not been as much a part of the sanctuary debate. Indeed, as Figure 2 shows, media references to crime in stories about sanctuary cities increased across the 2000s and 2010s, with a significant uptick following the 2015 Steinle shooting and during the first two years of Trump’s presidency.

FIGURE 2
ARTICLES WITH MENTION OF A CRIME



SOURCE: Developed by the author.

The deaths of U.S. citizens were linked to sanctuary policies through drunk driving incidents like the one in Virginia Beach in 2007, the murders that took place in Newark in the same year, and the accidental shooting of

Kathryn Steinle in 2015. While these were simply anecdotes, with most research finding that immigrants, both documented and undocumented, commit crime at a far lower rate than native-born U.S. Americans, they were effective in demonizing these policies among a base that was increasingly being pushed to the right on immigration issues as a result of political and media elites seeing this as a way to attract voters or viewers (Abrajano and Hajnal, 2017; Hajnal and Rivera, 2014; Nowrasteh, 2015). Donald Trump's campaign would elevate both immigrant criminality and sanctuary policies to center stage in the 2015 Republican primary.

One of Trump's first actions as president was to fulfill his promise to crack down on sanctuary cities and to do what Tom Tancredo, Fred Thompson, and Mitt Romney had advocated for as presidential candidates: strip sanctuary cities of federal funding. On January 25, 2017, he signed Executive Order 13 768, which directed the attorney general to strip federal grants from sanctuary jurisdictions (White House, 2017). The order was not specific about what grants would be stripped, nor in the definition of a "sanctuary jurisdiction," instead delegating this designation to the attorney general. It also directed him to compile a list for public release of those jurisdictions that refused to honor ICE detainer requests.

A couple of different tactics are at work in the executive order. The most obvious is an attempt to curtail further sanctuary declarations and coerce existing sanctuary jurisdictions to reverse these policies by threatening to strip federal grants in response to non-cooperation. Yet this threat was immediately questioned, since past Supreme Court decisions suggested that the administration could not simply strip federal grants from sanctuary cities. In a November 2016 article that preceded Trump's executive order, Ilya Somin noted that,

under the Constitution, state and local governments have every right to refuse to help enforce federal law. In cases like *Printz v. United States* (1997) and *New York v. United States* (1992), the Supreme Court has ruled that the Tenth Amendment forbids federal "commandeering" of state governments to help enforce federal law. Most of the support for this anti-commandeering principle came from conservative justices such as the late Antonin Scalia, who wrote the majority opinion in *Printz*.

Existing precedent suggested that the Trump administration would have difficulty stripping jurisdictions of federal grants based on the anti-com-

mandeering doctrine. Under existing federal immigration policy, sanctuary jurisdictions cannot prohibit officials from sharing immigration-related information, but policies typically exploited a loophole by simply barring these officials from collecting this information in the first place. They therefore were technically in compliance with federal law and administration attempts to strip funding would be repeatedly blocked by the courts (Rosenberg, 2017). Yet this threat was effective in some cases. On the heels of Trump's executive order, Miami-Dade County chose to reverse its earlier sanctuary policy because of fears they could lose access to federal grants (Rivero, 2018). Other cities would follow suit, though probably fewer than the administration hoped for. Instead, a number of sanctuary cities sued the administration to block E.O. 13 768 and the courts generally ruled against the administration (Associated Press, 2018). The attorney general would try to get a favorable decision by narrowing the threat to law enforcement grants generally, and then to the Edward Byrne Memorial Justice Assistance Grant Program (JAG) in particular. Through the beginning of 2020, these attempts have been unsuccessful.

While the attempts to curtail sanctuary policies have been largely unsuccessful to date, another important part of the administration's strategy has been to publicly release a list of sanctuary jurisdictions, as well as to try to link sanctuary policies to increased crime rates (Executive Order 13 768). This strategy does not aim at curtailing sanctuary policies but instead at catalyzing support against them to either exact a political cost for political leaders in the cities, who are often Democratic mayors or city council members, or to build an anti-sanctuary movement. A February 24, 2017 *New York Times* article pointed out, "As Mr. Trump ratchets up the pressure on so-called sanctuary cities through what some advocates are denouncing as a 'name-and-shame' campaign to force them to work more closely with federal immigration authorities, police and sheriff's departments are being caught in a crossfire" (Stockman and Goodman, 2017). Jeff Sessions would later specifically single out nine jurisdictions, who all received letters from the administration asking for proof of compliance with federal immigration policy. This name-and-shame campaign was paired with the administration's contention that sanctuary policies led to increased crime and endangered U.S. Americans. In a February 5, 2017 interview on *The O'Reilly Factor*, Trump would argue that sanctuary jurisdictions "breed crime," and in March, Jeff Sessions,

then attorney general, would contend that, “When cities and states refuse to help enforce immigration laws, our nation is less safe” (Dobbs, 2017). The elevation of sanctuary policies to a national issue and the president’s claims that they increased crime would lead to an anti-sanctuary movement at the state level, with Texas passing the first anti-sanctuary bill into law on May 7, 2017. This bill permitted local officials who were not complying with federal immigration policy to face civil penalties and even removal from office (Legisican, 2017). State-level preemption is probably the most effective means the administration and its allies have for curtailing sanctuary legislation, though this, of course, requires passage by state legislatures and the governor’s signature, so it is both a longer and more politically fraught process than Trump’s unilateral actions. To date, only a small number of states have specific anti-sanctuary legislation on the books: Alabama, Arizona, Arkansas, Florida, Georgia, Iowa, Mississippi, Missouri, North Carolina, South Carolina, Tennessee, and Texas (Collingwood, Gonzalez O’Brien, and Tafoya, 2018; Riverstone-Newell, 2017; Shoichet, 2019; Villazor and Gulasekaram, 2018).

Sanctuary Responses under Reagan, Bush, and Trump

One thing that should be clear from the preceding discussion of presidential responses during the Reagan, Bush, and Trump administrations is how tied the executive’s hands are when it comes to sanctuary policies. This seems like something acknowledged by Reagan and Bush, at least based on their inaction on the issue. Neither president mentioned sanctuary cities in any official address, written comment, debate, or speech according to the database at the American Presidency Project. Trump, on the other hand, has mentioned sanctuary cities repeatedly. In public remarks, press releases, or addresses, he had criticized sanctuary cities on eighty separate occasions though the end of November 2018.

Trump’s attention to sanctuary policies has in some ways backfired. Thus far, unilateral executive actions against sanctuary policies have proven ineffective and have been rejected repeatedly by the courts. The inability of the administration to penalize these jurisdictions also means that the initial deterrent effect the threats may have had earlier has probably weakened significantly as the court decisions stack up against the administration.

Trump's aggressive stance on these policies has also engendered a backlash among cities, with mayors of sanctuary jurisdictions proclaiming they would fight the administration on their right to refuse to participate in federal immigration enforcement (Reuters, 2019). Other cities have become sanctuaries for the first time based on the administration's bellicose rhetoric and anti-immigrant stance (Smith, 2016).

Should Trump lose the presidency in 2020, it is very likely the issue of sanctuary policies will once again fade into the background, with greater saliency at the local rather than national level. Yet until there is comprehensive immigration reform, including both a pathway to citizenship for those already in the United States and a rational guest worker program that actually addresses the demand for immigrant labor, questions of immigration federalism are likely to persist. Texas's SB4 has shown that sanctuary policies can be preempted and more laws like this are likely, regardless of who wins the election. States and local jurisdictions will continue to retain a great deal of autonomy in the area of immigration enforcement unless Congress decides to make this issue part of a broader push for reform of a system that both conservatives and liberals acknowledge has long been dysfunctional, if not broken. Unfortunately, the weaponizing of the immigration —and sanctuary— debate by the Trump administration has probably put us further from any kind of comprehensive overhaul of our system of immigration, since Democrats and Republicans are increasingly polarized on the issue. As long as we continue to treat immigrants as criminals, and immigration as a threat, sanctuary policies will continue to be a necessity for those cities that are concerned with the well-being of their undocumented community and hope to foster trust and cooperation between that community and local officials.

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