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Introduction

[No formal, legal definition](#) of the term “sanctuary jurisdiction” exists in the U.S. Code or under federal regulations. Some define “sanctuary jurisdiction” as one that fails to cooperate with the federal government as required by a once-obscure provision of the Immigration and Nationality Act (INA): [8 U.S.C. § 1373](#).

Plain Text of § 1373

[Section 1373\(a\)](#) states that governmental units or officials “may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” Section 1373(b) similarly prohibits restrictions on sending, maintaining or exchanging such information.

Because the [Immigration and Naturalization Service was abolished](#) upon the creation of the U.S. Department of Homeland Security (DHS), § 1373 now prohibits restrictions on information sharing with U.S. Immigration and Customs Enforcement (ICE), the successor agency.

The plain text of § 1373 does not include an affirmative requirement to collect information regarding citizenship or immigration status. Nor does it cover sharing additional information beyond that concerning citizenship or immigration status. Nor does the provision mention [federal immigration detainees](#), let alone require that localities honor them.

More Expansive Interpretations of § 1373

In October 2016, the U.S. Department of Justice’s (DOJ) Office of Justice Programs issued [guidance](#) specifying that jurisdictions receiving grants under the Byrne-JAG program and the State Criminal Alien Assistance Program (SCAAP) had to comply with 8 U.S.C. § 1373. It set forth a procedure requiring them to undertake a review and certify their policies’ compliance with § 1373 by June 30, 2017. Earlier in 2016, DOJ’s Office of the Inspector General (DOJ-OIG) issued a [report](#) examining whether 10 state and local jurisdictions with community trust policies were in violation of § 1373. After examining these jurisdictions’

community trust and detainer policies, DOJ-OIG determined that none of the policies “explicitly restricts” the sharing of information under § 1373, but noted that “these policies and others like them may be causing local officials to ... apply the policies in a manner that prohibits or restricts cooperation with ICE,” suggesting such policies were inconsistent with § 1373.

On July 7, 2017, DOJ [provided an update](#) on these 10 jurisdictions, stating that it “received alleged compliance information from each of the 10 jurisdictions by the deadline [and] is in the process of reviewing them.” The release quoted Attorney General Jeff Sessions: “It is not enough to assert compliance, the jurisdictions must actually be in compliance.”

Subsequently, on July 25, DOJ [issued new guidance](#), requiring all Byrne-JAG grant recipients to certify compliance with § 1373.

President Trump’s January 25, 2017, executive order on “[Enhancing Public Safety in the Interior of the United States](#)” appears to equate the term “sanctuary jurisdictions” with those “that willfully refuse to comply with 8 U.S.C. [§] 1373.” The executive order states that administration policy is that jurisdictions “shall comply” with § 1373 and charges the attorney general and the DHS secretary with taking enforcement actions against those that are willfully noncompliant, including cutting off certain federal grants. The executive order does not classify honoring federal immigration detainers as part of § 1373. In May 2017, Attorney General Sessions issued a [memorandum](#) defining “sanctuary jurisdictions” as those that willfully refuse to comply with § 1373, but [has acknowledged](#) that the provision does not require localities to honor [federal immigration detainers](#).

The executive order prompted lawsuits by [several cities and counties](#). A federal judge in California [issued a preliminary injunction](#) blocking its enforcement in April, which he subsequently [reaffirmed](#) in July. The court [noted](#) that the injunction “does not affect the ability of the Attorney General or the [DHS] Secretary to enforce existing conditions of federal grants or 8 U.S.C. [§] 1373, nor does it impact the [DHS] Secretary’s ability to develop regulations or other guidance defining what a sanctuary jurisdiction is or designating a jurisdiction as such.” The court did not rule on the plaintiffs’ argument that § 1373 itself violates the 10th Amendment and is unconstitutional.

Proposed Changes to § 1373

In 2017, the Trump administration and members of Congress have proposed amendments that would expand the scope of § 1373, creating new information collecting and reporting obligations for states and localities and making immigration detainers mandatory.

In May, the Trump administration's budget proposal included language that [would amend § 1373](#) (1) to bar prohibitions on information collection, (2) to expand the types of information jurisdictions must share with federal immigration authorities, (3) to require jurisdictions to honor warrantless immigration detainers and (4) to explicitly make broad categories of grant funding conditional on compliance with the amended version of § 1373.

In June, the House of Representatives [passed](#) the "No Sanctuary for Criminals Act" ([H.R. 3003](#)). Similar to the proposed budget language, the [bill would expand the scope of § 1373](#) to bar policies limiting the collection or reporting on information relating to immigration status, require compliance with information requests from federal immigration authorities and make certain grant funding related to law enforcement or counterterrorism conditional on compliance with § 1373.

Another bill, The "Michael Davis, Jr. and Danny Oliver in Honor of State and Local Law Enforcement Act" ([H.R. 2431](#)) [would bar](#) policies that limit collection of immigration status information and condition certain grant funding related to immigration enforcement on compliance with § 1373. That bill [was approved](#) by the House Judiciary Committee in May, but has not been considered by the full House of Representatives.

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