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“Sanctuary Cities” and President Trump’s
Executive Order: Enhancing Public Safety in
the Interior of the United States

8/23/2017



Outline of Presentation

- "Sanctuary City"
- City Council's 2015 Civil Liberties Resolution
- HB 318
- 8 U.S.C. 1373
- 287(g) and the Mecklenburg County Sheriff's Office
- The Executive Order
- A Legal Challenge

“Sanctuary City”

- No agreed upon legal definition
- Some cities self-identify – Charlotte has not
- Possible attributes:
 - prohibit officers from inquiring as to an individual’s immigration status
 - prohibit sharing information with Immigration and Customs Enforcement (ICE)
 - prohibit enforcement of Federal immigration law
 - prohibit cooperating with detainer requests



Council's 2015 Civil Liberties Resolution

- June 8, 2015
 - Arbitrary profiling
 - Passive protests and peaceful demonstrations
 - Data gathering and usage
 - Tactical communication, de-escalation, and prevention

- Section 2.E. Immigration enforcement:
 1. Arbitrary Profiling related to a person's citizenship or immigration status shall not be a motivating factor for any police activity.
 2. Suspicion that a person is undocumented shall not alone be the basis for contact, detention, or arrest.
 3. Officers shall not question any person regarding his or her citizenship or immigration status unless there is Reasonable Suspicion, supported by objective and clearly defined evidence, that the person is involved in criminal street gang activity or terrorism related activities.

§160A-499.4. Adoption of sanctuary ordinances prohibited.

(a) No city may have in effect any policy, ordinance, or procedure that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law.

(b) No city shall do any of the following related to information regarding the citizenship or immigration status, lawful or unlawful, of any individual:

- (1) Prohibit law enforcement officials or agencies from gathering such information.
- (2) Direct law enforcement officials or agencies not to gather such information.
- (3) Prohibit the communication of such information to federal law enforcement agencies.

- Council was advised that:
 - HB 318 preempted Sec. 2.E.3. (prohibition on questioning a person regarding citizenship or immigration status)
 - HB 318 preempted the inclusion of “citizenship” in Sec. 3.C. (collection of prohibited information at lawful assemblies/passive protests)
 - CMPD would conform its policies and directives



8 U.S.C. 1373

§ 1373. Communication between government agencies and the Immigration and Naturalization Service

(a) In general

... a ... local government entity or official 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.**

(b) Additional authority of government entities

... no person or agency may prohibit, or in any way restrict, a ... local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.



287(g) and Mecklenburg County Sheriff

- ICE's delegation of authority program
- MOA/MOU
- Mecklenburg County Sheriff's Office – 2006 program
- Only applies in the jail facility
- Currently 37 agreements across the country – all for "jail enforcement"

- Request to maintain custody of “an alien not otherwise detained by a criminal justice agency” for up to 48 hours
- Courts have characterized local participation as “voluntary”
- Local jurisdiction assumes civil liability

- Sec. 2(c) – “It is the policy of the executive branch to ... [e]nsure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law”

January 25 Executive Order

- Sec. 9. Sanctuary Jurisdictions
 - states a policy to ensure compliance with 8 U.S.C. 1373
 - Attorney General and Secretary of Homeland Security, in their discretion, shall ensure that jurisdictions that willfully refuse to comply with Sec. 1373 are not eligible to receive Federal grants
 - Secretary can, in his discretion, designate jurisdictions as “sanctuary jurisdictions”
 - AG charged with taking appropriate enforcement against any entity that violates Sec. 1373 or “which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.”

- U.S. Supreme Court – the federal government cannot require state or local officials to enforce federal laws – the “anti-commandeering principle”
- Unrelated grant conditions may be unconstitutional

- Filed January 31
- SF claims to be a sanctuary city based on ordinances that:
 - prohibit use of city funds or resources to assist in the enforcement of immigration laws or to gather or disseminate information unless required by law
 - prohibits detention based on a civil immigration detainer request

- Seeks declaration that:
 - San Francisco complies with Sec. 1373
 - Sec. 1373 is unconstitutional under the Tenth Amendment by “commandeering” local governments
 - the enforcement directive is unconstitutional under the Tenth Amendment by forcing compliance with detainer requests

- Charlotte:
 - is compliant with HB 318
 - is compliant with 8 U.S.C. 1373
 - does not operate jail facilities and therefore does not receive civil detainer requests
 - is not a “sanctuary city”



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Questions?