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Sanctuary Campuses: To Be or Not To Be, That is the Question

PUBLISHED ON *January 26, 2018* by *Renei Caballes*

November 8, 2016 is a day that, for many, will live in infamy. While some celebrated the election of now President Donald Trump, others (http://www.huffingtonpost.com/entry/hillary-clinton-supporters-election_us_5822aad3e4b0d9ce6fbfe13c) sat in tears, fearful of the road ahead. These fears were not unmerited. Throughout his bid for the presidency, President Trump boasted about his plans to defund (<http://www.lifenews.com/2016/09/16/donald-trump-calls-for-defunding-planned-parenthood-i-am-committed-to-defunding-it/>) Planned Parenthood, to rescind (<http://www.politico.com/story/2016/11/trump-erase-obama-policies-231156>) President Obama's executive orders tightening restrictions on gun sales, and most frightening to millions of undocumented immigrants, to repeal (https://www.washingtonpost.com/blogs/plum-line/wp/2016/11/10/the-first-big-political-war-of-trumps-presidency-will-be-explosive/?tid=a_inl&utm_term=.472ba38f80e9) President Obama's executive orders regarding immigration. In an attempt to comfort those frightened and worried about the new President and his changes to the nation's immigration policies, community leaders and mayors across the country released statements (<https://www.dnainfo.com/chicago/20161113/pilsen/chicago-remain-sanctuary-city-despite-trumps-election-rahm>) immediately following the 2016 election, noting their continued status as sanctuary cities. Sanctuary cities are cities that limit (<https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html>) their local law enforcement's cooperation with federal agencies enforcing immigration policies. Sanctuary cities were a target for President Trump throughout his campaign and continue to be a target to this day.

In addition to cities affirming their status as sanctuaries to undocumented immigrants, college campuses have also pressured their administrations to declare their campuses sanctuaries in order to combat the President's attacks on the undocumented members of their student bodies. Despite this pressure, many campuses are reluctant (https://www.nytimes.com/2017/01/26/education/edlife/sanctuary-for-undocumented-students.html?_r=0) to definitively state whether or not they will be considered a "sanctuary campus" given the potential consequences of such a declaration, namely having their vital federal funding stripped. Further, for institutions that are willing to deem themselves sanctuary campuses, it is unclear just what a sanctuary campus will look like and entail. While sanctuary cities (https://www.washingtonpost.com/news/the-fix/wp/2015/07/08/4-big-things-to-know-about-sanctuary-cities-and-illegal-immigration/?utm_term=.b1faa54a1398), such as San Francisco, Los Angeles, New York, and Houston, have been around for decades, sanctuary campuses are likely to face different challenges and function differently than their city counterparts.

Sanctuary Cities & President Trump's Executive Order: "Enhancing Public Safety in the Interior of the United States"

While there is no specific legal definition of what a sanctuary city is, the term is often used to refer to those cities that protect (<http://www.economist.com/blogs/economist-explains/2016/11/economist-explains-13>) undocumented immigrants by limiting their cooperation with federal agencies implementing immigration policy. This often equates to sanctuary cities refusing (<http://www.economist.com/blogs/economist-explains/2016/11/economist-explains-13>) to allocate funds for the enforcement of federal immigration policy by local law enforcement, prohibiting local law enforcement officers from asking someone their immigration status, and generally refusing to comply with federal agencies attempting to enforce immigration policies within their cities. Some cities have gone as far as to make such practices law (<http://sfgov.org/oceia/sites/default/files/Documents/SF%20Admin%20Code%2012H-12I.pdf>) while others are content with merely implementing such practices as policy.

Shortly after taking office, President Trump signed an executive order (<https://www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united>) entitled "Enhancing Public Safety in the Interior of the United States," which strips federal funding from those cities that do not comply with federal law regarding immigration. Within a week of the order, cities across the nation filed suits challenging the order, with San Francisco (<http://www.reuters.com/article/us-usa-trump-immigration-sanfrancisco-idUSKBN15F2B1>) being the first. In a 41-page complaint (<http://documents.latimes.com/read-san-franciscos-lawsuit-against-president-trump/>), San Francisco argues that President Trump's executive order is a violation of the Tenth Amendment. The Tenth Amendment provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Essentially, the Tenth Amendment limits the power of the federal government and protects the states from what San Francisco deems as "the excessive accumulation of power in any single entity and . . . the risk of tyranny and abuse from any government office." San Francisco argues that in writing the executive order, President Trump violated the Tenth Amendment and thus, the executive order must be struck down.

San Francisco contends that the new requirements to receive funding, namely the implementation of and cooperation with federal immigration laws, are unduly coercive. The Supreme Court recently reiterated (<https://supreme.justia.com/cases/federal/us/567/11-393/opinion3.html>) that the Legislative or Executive Branch violates the Tenth Amendment when its conditions for a State's receipt of federal funds move from mere encouragement to unduly coercive. The Legislative or Executive Branches may use its powers

to “create incentives for States to act in accordance with federal policies,” but may not order or coerce the States to enact or enforce a federal program. Further, these incentives pose no issues when “a State has a legitimate choice whether to accept the federal conditions in exchange for federal funds.” The issue, however, arises, when “the State has no choice.” Here, San Francisco stands to lose (<http://documents.latimes.com/read-san-franciscos-lawsuit-against-president-trump/>) upwards of \$1.2 billion in federal funding, a large part of its \$9.6 billion budget (<http://www.sfgate.com/politics/article/SF-seeks-to-freeze-executive-order-on-cuts-to-10987982.php>). These funds go towards public health programs, transportation and infrastructure projects, supportive housing, and social welfare programs, with only a small percentage of those funds relating to immigration or law enforcement. Thus, San Francisco argues that the funding requirements are unduly coercive and violate the Tenth Amendment.

Currently, President Trump’s administration has not cut any funds to San Francisco. As the City awaits a resolution to its suit, City Attorney Dennis Herrera asked a federal judge to freeze the order until the lawsuit is resolved. The City argued that although President Trump’s administration has not yet cut any federal funding, the mere threat of cuts affects the City’s current budgeting. On April 25, 2017, the City’s request for a freeze on the order was granted (<http://www.mercurynews.com/2017/04/25/judge-stays-trump-sanctuary-city-funding-freeze/>) by District Court Judge William H. Orrick.

Sanctuary Campuses & The Effect of the Executive Order

As cities await the fate of the executive order, university campuses around the nation are facing increased pressure to declare themselves sanctuary campuses, especially in light of President Trump’s repeal (<https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>) of the Deferred Action for Childhood Arrivals (DACA) Program, a program which protects from deportation nearly 800,000 (<http://www.cnn.com/2017/09/05/politics/universities-respond-to-daca-decision/index.html>) undocumented people who were brought to the United States as children. Most administrations have resisted and have declined (https://www.nytimes.com/2017/01/26/education/edlife/sanctuary-for-undocumented-students.html?_r=0) to categorize themselves as sanctuary campuses, fearing a similar executive order or Congressional legislation (<http://www.washingtontimes.com/news/2017/jan/18/congress-looks-punish-sanctuary-campus-colleges/>) that would strip their institutions of vital federal funds. Still, while refusing to use the word “sanctuary” in describing their institutions, many still offer support to their undocumented students. This begs the question: what will sanctuary campuses look like in effect and what will be considered a sanctuary campus regardless of its own self categorization?

Sanctuary campuses thus far have declared (<http://www.nyu.edu/content/dam/nyu/president/documents/11.29.16-letter-from-andrew-hamilton.pdf>) that they will not allow any federal agencies such as U.S. Immigration and Customs Enforcement (ICE) onto their campuses “without permission or legal process,” such as a search warrant or subpoena. Further, information and records on undocumented students will continue to be protected by existing acts such as the Family Educational Rights and Privacy Act (FERPA), which prohibits (<http://www.motherjones.com/politics/2016/12/sanctuary-campus-college-dreamers-deportation>) institutions from disclosing personal information without the student’s consent. Public safety officers and other members of the school administration additionally will not inquire about the immigration status of students. Should they learn of a student’s immigration status, however, they will not disclose such information voluntarily to federal agencies seeking such information.

Unfortunately for undocumented students, the process for acquiring a search warrant or subpoena is not exceedingly difficult. Thus, the label “sanctuary campus” does not offer much more protection than a campus that merely abides by FERPA in keeping the status of their students confidential. Sanctuary campus designations by institutions are therefore seen as more symbolic (https://www.washingtonpost.com/news/grade-point/wp/2017/02/06/calls-for-sanctuary-campuses-multiply-as-fears-grow-over-trump-immigration-policy/?utm_term=.b57ca0f82f63) than having any substantive effect.

The risk of losing federal funding for universities also promises to have a much more debilitating effect than if a city were to lose such funding. The University of California, for example, stands to lose \$9 billion (<http://www.latimes.com/local/lanow/la-me-ln-uc-federal-funding-20170202-story.html>) in federal funding for research, education, and healthcare. The University of California is the nation’s largest recipient of federal funding for research and related projects, with approximately 2,500 undocumented immigrants across their campuses. In addition to these federal funds that support research, education, and healthcare, students at these institutions stand to lose billions in loans and grants available to them in the upcoming school years. As a result of such threats, some institutions such as Arizona State University are seeking out donors to provide scholarships for undocumented students to allow them to continue to attend their institutions at the in-state rates.

Although a bill was introduced (<http://www.kpbs.org/news/2017/feb/13/hunter-bill-would-withhold-federal-student-aid-san/>) by Congressman Duncan Hunter earlier this year proposing to cut federal funding for sanctuary universities, there have been arguments against the bill similar to those brought by San Francisco in their suit against President Trump’s executive order. While universities question the legality of such a bill, the mere threat of losing federal funding seems to have had mixed reactions from universities, with some holding steadfast in their commitment to their undocumented students and others (<http://www.washingtonexaminer.com/american-university-president-rejects-call-to-become-a-sanctuary-campus/article/2633463>) backing away from calling themselves sanctuary campuses. It is likely that universities across the nation will take more decisive stances once a ruling is handed down on the constitutionality of President Trump’s executive order. Whether undocumented students will be afforded the opportunity to continue to be contributing members of student bodies in the coming months remains to be seen.