



Should Sanctuary Cities Receive Federal Funding?

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Under America's system of government, Congress determines how federal money is spent, and states and cities make determinations on how to use their own resources. But the Trump administration is now undermining these fundamental principles by attempting to coerce cities and states to help federal immigration agents arrest immigrants in the country illegally. This coercion undermines federalism, usurps the authority of Congress to set spending, and adds nothing to public safety.

Last year, Attorney General Jeff Sessions announced that the Department of Justice would not award law enforcement grants under the Edward Byrne Memorial Justice Assistance Grant Program to certain cities or states. Grants would no longer be given to those that refuse to share information on the status of unauthorized immigrants, refuse to give federal immigration agents access to state and local jails or prisons, and refuse to give the agents notice when they are about to release an immigrant whom agents had asked the state or locality to detain.

As law professor Ilya Somin has pointed out, "The main constitutional flaw in (the) policies is simple: only Congress has the power to spend money or impose conditions on federal grants to states."

The simple fact is that Congress has never required JAG recipients to help enforce immigration law, implying that the purpose of those grants was not immigration enforcement but rather to aid state and local police in enforcing state and local laws.

The history behind the grant program confirms this implication. Far from a concern about immigrant criminals, Congress created the JAG program after local criminals murdered a New York City police officer who was protecting a Guyanese immigrant witness against them. The fact that Congress failed to authorize these restrictions has resulted in the Trump administration repeatedly losing challenges to the policy in court.

Even if the law did allow the administration to impose these restrictions, it should not do so. When the federal government gives grants to states and localities only to attempt to coerce them into doing what it wants, it undermines a critical component of federalism, which holds that local policies are determined by local elected officials, not by bureaucrats in Washington.

It was this principle that the Supreme Court articulated in its 2012 decision in the Obamacare case, *NFIB v. Sebelius*, which found that Congress could not constitutionally take away all Medicaid funding from states if they did not expand Medicaid coverage. "Permitting the Federal

Government to force the States to implement a federal program would threaten the political accountability key to our federal system,” it found.

Whether this much more limited coercion rises to this level of concern or not, the principles on which the American government was founded support the separation of federal and state policies. If local policy is to be changed, that change should happen without intrusion by the federal government.

For conservatives who favor this policy, they should remember that a more liberal Congress once attempted to require local sheriffs to enforce federal gun laws — a law that the Supreme Court also overturned. A strict separation protects local autonomy to the benefit of both sides.

The Trump administration feels that these principles — that Congress decides how to spend federal money and that states and localities decide how to spend theirs — are worth ignoring due to the threat from illegal immigrants. This is despite the fact that, as documented in a 2017 Cato Institute report, the Census Bureau figures show that unauthorized immigrant adults are half as likely to commit serious crimes and wind up behind bars than U.S.-born Americans of the same age.

In Texas, which has a high proportion of illegal immigrants and no sanctuary cities, the rate of arrest and conviction of illegal immigrants was well below that for U.S.-born adults for almost all serious crimes, including all violent crimes. Because illegal immigrants are less likely to commit crimes, illegal immigration actually reduces the rate of crime in places where they settle. Still, some illegal immigrants do commit serious crimes, including murder. But all so-called sanctuary cities — even in California — do report immigrants convicted murder, rape and other violent felonies. It makes no sense for states and localities to spend their time targeting the nonviolent, noncriminal illegal immigrants if they are less likely to commit these crimes. That’s taking police time away from catching murderers and rapists — thousands of whom get away with their crimes every year.

The public safety basis for the Trump administration’s attack on sanctuary cities is baseless, and its attempt to remove law enforcement funds will not make these cities safer.

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