

CLARENCE PAGE: Trump faces a legal wall around ‘sanctuary cities’

Clarence Page

April 28, 2017

President Donald Trump's Justice Department has ramped up its crusade against so-called "sanctuary cities" in a way that looks about as doomed as his Muslim travel ban fiasco.

As the president says he realized with his move to repeal and replace Obamacare, immigration enforcement is a lot more "complicated" than he thought.

That point rang out Tuesday afternoon when a San Francisco judge blocked enforcement of the president's executive order to cut off federal funds from municipalities that refuse to comply with federal authorities to enforce immigration laws.

The ruling hands a victory to San Francisco and Santa Clara County, California, which won preliminary injunctions to block Trump's January order. The Justice Department can still withhold grants from places that don't comply with the law, according to the U.S. District Judge William Orrick's order, but not "in a way that violates the Constitution."

The ruling follows others now moving through the courts that have cast serious doubt on President Trump's order. In September, for example, U.S. District Judge John Z. Lee of Northern Illinois invalidated the practice of issuing detainers – formal requests from federal authorities for a local jail to hold non-citizen inmates – on constitutional grounds.

If federal authorities want to hold an immigrant in local custody, the judge ruled, they must get a warrant.

The issue of sanctuary cities is complicated further by the lack of definition under federal law for what a "sanctuary city" is.

To former Fox News host Bill O'Reilly and other known influencers of our TV-loving president, "sanctuary cities" are local governments that limit their cooperation with federal immigration authorities about the status of prisoners in their custody.

But the level of cooperation can vary a lot from one city to the next. The Justice Department sent warning letters last week to New York City; Chicago; Cook County, Illinois; Miami; Philadelphia; New Orleans; Las Vegas; Milwaukee; and Sacramento.

The department threatened to yank federal funding if state or local governments failed to cooperate with immigration enforcement, as required by federal law.

DHS on Monday released its first weekly list of local jails and jurisdictions that the administration wants to shame for failing to honor immigrant "detainer" requests. Those requests ask local law enforcement to hold an inmate who is in the country illegally and has been arrested or charged with a crime for an additional 48 hours after their release date so federal officials can decide to whether to pick them up and deport them.

But mayors and other local leaders have argued that cooperating actually can hurt law enforcement by undermining local trust in police. Immigrants are less likely to report a crime – even when they're the victims – if they fear it could lead to their deportation.

As a case in point, Los Angeles Police Chief Charlie Beck said last month that reports by the city's Latino residents of sexual assault and domestic violence have plummeted this year (by 25 percent and 10 percent respectively), apparently in response to fears of deportation if they interact with police or testify in court.

One leading immigration reform advocate, Rep. Luis Gutiérrez (D-Illinois), denounced the DOJ's actions, noting, "The reality is that in most cities, the police have found that acting as deportation police makes it harder to keep their cities safe."

Indeed, the sanctuary cities issue, like the larger immigration debate, is enflamed by fears that are not backed up by facts. A study by the libertarian Cato Institute, for example, found unauthorized immigrants to be incarcerated at about half the rate of native-born Americans.

Candidate Trump turned sanctuary cities into a central theme of his presidential campaign, right along with his promise to build a wall along our border with Mexico – and have Mexico pay for it. The proposed wall and form of payment now face pitfalls in Washington's world of legislative sausage-making. So could his plan to stop sanctuary cities.

As Chicago immigration attorney Chirag G. Badlani pointed out to me, Supreme Court decisions prohibit states or cities from being coerced into action by the federal government with a financial "gun to the head." That's from the language of Chief Justice John Roberts in the 2012 Affordable Care Act case.

Federal officials also can't "commandeer" state officials to do their work for them under a 1997 decision involving gun purchases under the Brady Act.

Ultimately, the best way to deal with the complicated issue of immigration is through comprehensive immigration reform. But that would require the thoughtful and rigorous debate and compromise that can't seem to climb over the wall dividing both parties these days.