



# The Conservative Case for Sanctuary Cities and States

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Subduing and punishing liberal "sanctuary cities" and states that refused to help enforce federal immigration restrictions was a principal focus of the Trump Administration, one backed by most conservatives. Ironically, that effort largely failed in part because sanctuary jurisdictions won a series of lawsuits in which they relied on constitutional federalism arguments previously pioneered by conservatives and libertarians, such as claims that the Tenth Amendment bans federal "commandeering" of state governments. In an insightful recent article, University of Texas and Hoover Institution political scientist David Leal argues that conservatives should rethink their opposition to sanctuary jurisdictions:

Donald Trump fought "sanctuary cities" from the very start of his presidency, but these efforts came to an unsuccessful end in 2020 for two reasons. The first was that sanctuaries beat the administration at the Supreme Court in June of that year; technically, the justices declined to hear *United States v. California*, thereby letting stand an appeals court ruling that upheld the bulk of California's sanctuary laws. The second was that Joe Biden won the presidential election. The federal government is no longer opposed to state and local sanctuary policies. This raises a question: when a Republican returns to the White House, should that person carry on the Trump administration's fight against sanctuaries or choose other battles?

This is a consequential matter. Sanctuary jurisdictions impede the ability of Immigration and Customs Enforcement (ICE) to identify and remove unauthorized immigrants...

Because the political debate about these local and state laws can generate more heat than light, this essay addresses the following questions: what is an immigration sanctuary; must states and localities follow the immigration enforcement priorities of the federal government; and what are the implications of the sanctuary controversy for policies beyond immigration?

A successful federal attack on sanctuary legislation could lead to spillover effects in many policy areas, and in ways that go against core conservative values. Many conservatives would be unwilling to pay such a price, so it is crucial for the sanctuary debate to consider this larger context....

To change this status quo would require a dramatic weakening of federalism, which would be contrary to core conservative values and could come back to haunt conservatives....

For example, consider the policy implications of a more "unitary" federal government with Democrats in power in Washington. Such a government could potentially deny funding to conservative locales unless they changed their laws and policies, thereby pressuring "red" states

and locales into directly carrying out and enforcing "blue" federal policies. This could allow Washington to override state and local decisions about the best way to promote safety, health, growth, and education.

Leal summarizes a range of both policy and constitutional reasons for conservatives to back sanctuary jurisdictions, even if in some cases the latter use their autonomy for purposes the political right opposes.

As Leal points out, conservatives themselves have long relied on sanctuary-style policies to resist enforcement of federal gun control laws. In recent year, several conservative states - in a trend begun by Montana - have adopted "gun sanctuary" laws modeled on immigration sanctuary policies. While the Biden administration initially did little to counter this trend, more recently they have filed a dubious lawsuit against Missouri's gun sanctuary law - one in many ways modeled on Trump-era arguments against immigration sanctuaries.

Leal isn't the first analyst to highlight the conservative elements of the case for sanctuary cities. I have previously written about several of the issues raised by Leal, myself, in a 2019 *Texas Law Review* article on Trump-era sanctuary city litigation, and a piece for the *Washington Post* (see also here and here). But Leal's article is notable for bringing together the major right-leaning policy and legal rationales for sanctuary jurisdictions all in one readily accessible place.

He also points out how the anti-immigration policies underpinning Trump's attack on sanctuary cities are themselves inimical to traditional conservative values, even aside from federalism concerns and fears about the consequences for other policy areas:

In addition, principled conservatives must ask whether attacks on sanctuary cities, and the more general impulse toward immigration restriction and enforcement, are consistent with prosperity, freedom, and family values. In his "Farewell Address to the Nation," President Reagan said the following:

"I've spoken of the shining city all my political life, but I don't know if I ever quite communicated what I saw when I said it. But in my mind it was a tall, proud city built on rocks stronger than oceans, windswept, God-blessed, and teeming with people of all kinds living in harmony and peace; a city with free ports that hummed with commerce and creativity. And if there had to be city walls, the walls had doors and the doors were open to anyone with the will and the heart to get here. That's how I saw it, and see it still...."

Sanctuary jurisdictions make the case that such policies reduce crime, while some police chiefs have argued that local enforcement of immigration laws actually encourages criminality. The reasoning is that immigrants grow fearful of contacting the police, which gives criminals greater latitude. Such criminality may also spread out beyond immigrant communities. Blanket bans on sanctuary policies may therefore increase the very lawbreaking that sanctuary critics decry.

As Matthew Feeney of the Cato Institute has argued, "Although some might like to portray sanctuary cities as lawless holdouts run by politicians who consider political correctness their North Star, the fact is sanctuary policies can help improve police-community relationships." He

observes that "such trust is crucial to policing" and that "it's not hard to see why officers in some communities prefer sanctuary policies to being perceived as deputized federal agents...."

Recent research finds no support for the claim that sanctuary cities increase crime....

President Reagan saw immigration as key to America and its success. He would be appalled to see the disparaging of immigrants and the disrespecting of federalism, and he would be shrewd enough to know that decisions made today in the name of fighting sanctuary cities might come back to haunt conservatives when party fortunes change, as they always do.

In my own writings, I have made the case that immigration restrictions are at odds with other traditional conservative values, such as color-blindness in government policy and economic liberty - including that of native-born citizens.

Of course, what counts as "conservative" is very much in flux. Much of the American political right today has more in common with European "big-government conservative" ethnonationalist movements than with the ideology espoused by Ronald Reagan. If your main priority is restricting immigration, then you are unlikely to find Leal's arguments persuasive. You may be willing to pay the price of restricting state and local authority, strengthening federal restrictions on gun rights, and impeding law-enforcement efforts to combat violent and property crime. Many "national conservatives" might even view the resulting increase in federal power as a feature, not a bug.

But if you view federal power with suspicion, and hope to maintain and strengthen constitutional constraints on it, then you have reason to applaud sanctuary jurisdictions. In a deeply divided society, decentralization of power could help ease conflict and tensions in a variety of ways, including by empowering people to "vote with their feet" for the policies they prefer. Sanctuary jurisdictions of both the left and right-wing varieties can play a vital role in achieving that goal.