



FAQ ON 8 USC § 1373 AND FEDERAL FUNDING THREATS TO “SANCTUARY CITIES”



Explanation of what 8 USC § 1373 actually requires

President Trump has threatened to prohibit “sanctuary cities” from receiving federal funding. In an Executive Order on January 25, 2017, the President directed that jurisdictions that wilfully refuse to comply with 8 U.S.C. § 1373, a federal statute, shall not be eligible to receive federal grants.¹ 8 USC § 1373 is already federal law and already binding on all states and local governments.

So what does 8 USC § 1373 actually require, and how does it affect federal grant distribution?

1. What is 8 USC § 1373?

8 USC § 1373(a) is a federal statute that prohibits local and state governments and agencies from enacting laws or policies that limit communication with DHS about “information regarding the immigration or citizenship status” of individuals. The statute prohibits such policies, but does not contain any requirement for anyone to take any action. The full text of 8 USC § 1373 is attached at the end of this FAQ.

2. What does 8 USC § 1373 require?

- 8 USC § 1373 does not require any action from local or state agencies, officers, or governments. It does not require asking about immigration status.
- 8 USC § 1373 does not prohibit policies against asking about immigration status. It only prohibits the enactment of certain policies limiting *sharing* immigration status information.
- 8 USC § 1373 does not compel compliance with ICE detainers. Such a statute would be unconstitutional.²
- 8 USC § 1373 does not address policies limiting other information sharing with ICE. Nothing in the statute mentions or includes criminal case information, contact information, custody status, or release dates of individuals from custody.³
- 8 USC § 1373 does not impose any affirmative obligation to collect information. Nor does it require sharing information in any particular instance.

3. Do Sanctuary Policies violate 8 USC § 1373?

No, sanctuary policies are entirely consistent with federal laws.⁴ There are many varieties of local policies that might be considered “sanctuary policies.” 8 USC § 1373 only governs restrictions on communication with DHS about individuals’ citizenship or immigration status, not other policies limiting the expenditure of state and local resources on immigration enforcement or detention. Cities and counties around the country have policies against local officials questioning individuals about their immigration status; such rules do not conflict with 8 USC § 1373 because they do not address communication with DHS. Many jurisdictions have policies against holding people on immigration detainers or notifying ICE of the date when someone will be released from custody; these policies do not conflict with 8 USC § 1373 because

¹ Executive Order: Enhancing Public Safety in the Interior of the United States, President Donald Trump, January 25, 2017, available at www.whitehouse.gov/the-press-office/2017/01/25/presidential-executive-order-enhancing-public-safety-interior-united.

² See *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (The federal government cannot commandeer state and local resources to enforce a federal regulatory program such as immigration, therefore ICE detainers cannot be mandatory).

³ See *Steinle v. City and County of San Francisco, et. al*, No. 3:16-cv-02859 (N.D. Cal. filed Jan. 6, 2017) (“[N]o plausible reading of [the statute] encompasses the release date of an undocumented inmate.”); *Sturgeon v. Bratton*, 95 Cal.Rptr.3d 718 (Cal.App.4th 2009) (upholding Los Angeles policy against initiating any police action on the basis of suspected immigration violations).

⁴ We are not aware of any ‘sanctuary’ policies that violate 8 USC § 1373 or other federal law.

they don't regulate any communication about citizenship or immigration status. Even if a policy does regulate communication of citizenship or immigration status information, it may still be lawful and consistent with federal law.⁵

4. Does 8 USC § 1373 or other federal law require compliance with ICE detainers or other requests?

No. Nothing in federal law requires localities to enforce the Immigration and Nationality Act and regulations. To the contrary, immigration regulation and enforcement are federal functions.⁶

The Tenth Amendment precludes federal government from coercing state or local governments to use their resources to enforce a federal regulatory program, like immigration.⁷ Policies that limit or prohibit compliance with immigration detainers and requests for notice of release dates do not violate 8 USC § 1373. Immigration detainers are explicitly not mandatory. Electing not to respond to them is entirely within the discretion of local law enforcement.⁸ Moreover, multiple federal courts have found detention by local agencies based on ICE detainers to be unconstitutional.⁹ The federal government cannot commandeer state and local resources, nor can it require actions in violation of the Constitution.

⁵ *City of New York v. United States*, 971 F. Supp 789 (S.D.N.Y. 1997), *aff'd*, 179 F.3d 29 (2d Cir. 1999) (observing that 8 USC § 1373 and 1644 might not survive a constitutional challenge in the context of general confidentiality policies necessary to municipal functions).

⁶ See *Arizona v. United States*, 132 S.Ct. 2492 (2012).

⁷ See *Printz v. United States*, 521 U.S. 898, 923-24 (1997).

⁸ See *Galarza v. Szalczyk*, 745 F.3d 634, 645 (3d Cir. 2014).

⁹ *Miranda-Olivares v. Clackamas County*, No. 3:12-cv-02317-ST, 2014 WL 1414305 (D.Or. April 11, 2014); *Jimenez-Moreno v. Napolitano*, No. 1:11-cv-05452, Docket Entry 230 at 16-17 (N.D. Ill. Sept. 30, 2016); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D.R.I. 2014) *aff'd in part, dismissed in part*, 793 F.3d 208, 215-216 (1st Cir. 2015); *Mercado et al. v. Dallas County*, No. 3:15-CV-3481 (N.D.Tex filed Jan. 17, 2017); *Orellana v. Nobles County*, No. 0:15-cv-03852 (D. Minn. Jan. 6, 2017).

Appendix

8 U.S. Code § 1373 – Communication between government agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or 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

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or 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.

(c) Obligation to respond to inquiries

The Immigration and Naturalization Service shall respond to an inquiry by a Federal, State, or local government agency, seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency for any purpose authorized by law, by providing the requested verification or status information.



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