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Contextualizing Sanctuary Policy Development in the United States: Conceptual and Constitutional Underpinnings, 1979 to 2018

Allan Colbern, Melanie Amoroso-Pohl, & Courtney Gutiérrez

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CONTEXTUALIZING SANCTUARY POLICY DEVELOPMENT IN THE UNITED STATES: CONCEPTUAL AND CONSTITUTIONAL UNDERPINNINGS, 1979 TO 2018

*Allan Colbern, Melanie Amoroso-Pohl, & Courtney Gutiérrez**

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INTRODUCTION

Sanctuary policies are considered among the most contentious feature of today’s immigration federalism debates, because they place federal and local policies in seeming opposition to one another. As a result, the term “sanctuary” is not only highly contested and nuanced in the academic setting¹ and political arena,² but it has also become increasingly obscured through competing narratives in the immigration debate. On January 25, 2017, President Trump attacked “sanctuary cities” by issuing an executive order that targeted

1. See generally Annie Lai & Christopher N. Lasch, *Crimmigration Resistance and the Case of Sanctuary City Defunding*, 57 SANTA CLARA L. REV. 539 (2017) (connecting crimmigration’s critique as a defense strategy of sanctuary policies); Christopher N. Lasch et al., *Understanding “Sanctuary Cities”*, 59 B.C. L. REV. 1703 (2018) (unpacking sanctuary policies’ constitutional legitimacy and importance for severing criminal law from immigration law enforcement) [hereinafter Lasch et al., *Understanding “Sanctuary Cities”*]; Christopher N. Lasch, *Sanctuary Cities and Dog-Whistle Politics*, 42 NEW ENGLAND J. ON CRIM. & CIV. CONFINEMENT 159 (2016) (highlighting waves of sanctuary resistance and counter movements seeking to defund sanctuary jurisdictions) [hereinafter Lasch, *Sanctuary Cities and Dog-Whistle Politics*]; Hiroshi Motomura, *Arguing About Sanctuary*, 52 U.C. DAVIS L. REV. 435 (2018) (unpacking sanctuary policies’ constitutional legitimacy and connection to local prerogatives); Rose Cuison Villazor & Pratheepan Gulasekaram, *The New Sanctuary and Anti-Sanctuary Movements*, 52 U.C. DAVIS L. REV. 459 (2018) (identifying differences between sanctuary and anti-sanctuary policies in relation to federal immigration law, and highlighting their emergence in public and private spaces); Rose Cuison Villazor & Pratheepan Gulasekaram, *Sanctuary Networks*, 103 MINN. L. REV. 1209 (2019) (highlighting different public and private spaces where sanctuary policies have emerged) [hereinafter Villazor & Gulasekaram, *Sanctuary Networks*]; Rose Cuison Villazor, “*Sanctuary Cities*” and *Local Citizenship*, 37 FORDHAM URB. L.J. 573 (2010) (connecting sanctuary policies to the notion of an inclusive local citizenship); Rose Cuison Villazor, *What Is a Sanctuary*, 61 SMU L. REV. 133 (2008) (exploring the discursive debates over the term sanctuary) [hereinafter Villazor, *What Is a Sanctuary*].

2. See Josh Gerstein, *Appeals Court Overturns Block on Texas Anti-Sanctuary Law*, POLITICO (Mar. 13, 2018), <http://politi.co/2DpCrIF> [<https://perma.cc/M2LJ-FUGF>] (highlighting how courts have legitimized both sanctuary and anti-sanctuary policies); Adriana Gomez Licon, *Sessions Blasts Sanctuary Cities, Calls Miami ‘Good’ Example*, DAILY HERALD (Aug. 16, 2017), <https://www.dailyherald.com/article/20170816/news/308169879> [<https://perma.cc/NJ2A-8MJP>] (highlighting different understandings of sanctuary policies from a rule-of-law and federalism perspective); Jazmine Ulloa, *How California’s Trust Act Shaped the Debate on the New ‘Sanctuary State’ Proposal*, L.A. TIMES (Sept. 10, 2017), <http://www.latimes.com/politics/la-pol-ca-trust-act-sanctuary-state-immigration-20170910-htlmlstory.html> [<https://perma.cc/E7UX-VKN4>] (discussing how public officials and law enforcement hold different views of sanctuary policies).

jurisdictions for “willfully violat[ing] Federal law in an attempt to shield aliens from removal from the United States.”³ At the core of his anti-sanctuary order is the political narrative that “[sanctuary] jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.”⁴ When a federal judge in San Francisco issued a nationwide injunction temporarily blocking the executive order, President Trump’s administration responded: “[sanctuary] cities are engaged in the dangerous and unlawful nullification of Federal law in an attempt to erase our borders.”⁵

Today, the term “sanctuary” in relation to sanctuary cities is “generally associated with the unlawful facilitation of the continued presence of unauthorized immigrants and their families in this country” — a narrative crafted by anti-immigrant groups like the Federation for American Immigration Reform (FAIR).⁶ The scholarly consensus, however, points to sanctuary policies’ many benefits, rather than their harms.⁷ Framing sanctuary policies as constitutionally legitimate remains a challenge, in part because of the category of “illegal alien” and the complex history of immigration federalism.⁸ President Trump’s political narratives and legal threats to defund cities have been effective precisely because they situate

3. Exec. Order No. 13768, 82 Fed. Reg. 8,799 (Jan. 25, 2017), <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states> [<https://perma.cc/N5XB-28HM>].

4. *Id.*

5. Press Release, Office of the Press Secretary, The White House, *Statement on Sanctuary Cities Ruling* (Apr. 25, 2017), <https://www.whitehouse.gov/briefings-statements/statement-sanctuary-cities-ruling/> [<https://perma.cc/H72J-JCEL>].

6. Villazor, *What Is a Sanctuary*, *supra* note 1, at 138.

7. *See, e.g.*, Benjamin Gonzalez et al., *The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration*, 55 URB. AFF. REV. 3 (2017); Christopher J. Lyons et al., *Neighborhood Immigration, Violence, and City-Level Immigrant Political Opportunities*, 78 AM. SOC. REV. 604 (2013); Daniel E. Martínez et al., *Providing Sanctuary or Fostering Crime? A Review of the Research on ‘Sanctuary Cities’ and Crime*, 12 SOC. COMPASS 1 (2017); Ricardo D. Martínez-Schuldt & Daniel E. Martínez, *Sanctuary Policies and City-Level Incidents of Violence, 1990 to 2010*, JUST. Q. (2017); MARCEL ROMAN ET AL., CTR. FOR AM. PROGRESS, A MESS IN TEXAS: THE DELETERIOUS EFFECTS OF SB4 ON PUBLIC TRUST IN LAW ENFORCEMENT (forthcoming 2019) (on file with author); TOM K. WONG, CTR. FOR AM. PROGRESS, THE EFFECTS OF SANCTUARY POLICIES ON CRIME AND THE ECONOMY (Jan. 26, 2017), <https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effects-of-sanctuary-policies-on-crime-and-the-economy/> [<https://perma.cc/R27M-RK3N>] [hereinafter WONG, THE EFFECTS OF SANCTUARY POLICIES].

8. *See generally* ALLAN COLBERN & S. KARTHICK RAMAKRISHNAN, STATE CITIZENSHIP: A NEW FRAMEWORK FOR RIGHTS IN THE UNITED STATES (forthcoming 2020); PRATHEEPAN GULASEKARAM & S. KARTHICK RAMAKRISHNAN, THE NEW IMMIGRATION FEDERALISM (2015); MAE M. NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND THE MAKING OF MODERN AMERICA (2004).

sanctuary policies as a resistance to federal law without guiding principles.⁹ State and local governments' special interest in protecting their residents and the constitutional rights of all persons, regardless of their immigration status, are notably absent in the narrative, when they should be front-and-center. Going beyond the Tenth Amendment's anti-commandeering principle, rights-based guiding principles and state and local government interests substantiate the legitimacy of sanctuary policies.

Shortly after President Trump took office and issued his anti-sanctuary executive order, Mayor Carlos Gimenez repealed Miami-Dade's 2013 county jail sanctuary policy.¹⁰ This effectively allowed all new detainer requests issued by Immigration and Customs Enforcement (ICE) to be honored and for suspected undocumented immigrants to be held longer than forty-eight hours, thereby violating an individual's due process rights.¹¹ As a result, 436 people in Miami-Dade were turned over to ICE on detainer requests in 2017.¹² This local repeal was a response to increased federal pressure. On August 4, 2017, acting Attorney General Alan Hanson sent Miami-Dade, among other sanctuary jurisdictions, a memo "warning [that] they must prove compliance with federal policies or lose crime-fighting

9. See Michael Kagan, *What We Talk About When We Talk About Sanctuary Cities*, 52 U.C. DAVIS L. REV. 391, 391–408 (2018).

10. See Patricia Mazzei, *Miami-Dade Mayor Orders Jails to Comply with Trump Crackdown on "Sanctuary" Counties*, MIAMI HERALD (Jan. 26, 2017), <https://www.miamiherald.com/news/local/community/miami-dade/article128984759.html> (last visited June 5, 2019); Press Release, Miami Dade Cty., Statement from Mayor Carlos A. Gimenez Regarding Changes to Federal Immigration Laws (Jan. 30, 2017), <http://www.miamidade.gov/releases/2017-01-31-mayor-statement.asp> [<https://perma.cc/J6D9-XZWX>].

11. Miami-Dade passed an anti-detainer policy on December 3, 2013, authorizing the Miami-Dade Corrections and Rehabilitation Department to honor detainer requests from ICE "only if the federal government agrees in writing to reimburse Miami-Dade County for any and all costs relating to compliance" and limited this to inmates being held that had "a Forcible Felony, as defined in Florida Statute section 776.08" or a "pending charge of a non-bondable offense, as provided by Article I, Section 14 of the Florida Constitution." Res. No. R-1008-13 (Miami-Dade Cty., Fla. 2013); see Douglass Hanks, *Miami-Dade Complied with Trump to Change Its 'Sanctuary' Status. It Worked*, MIAMI HERALD (Aug. 7, 2017), <https://www.miamiherald.com/news/local/community/miami-dade/article165837497.html> [<https://perma.cc/4K3S-D2AC>].

12. Douglas Hanks, *Sanctuary No More: Feds Seize 1 Immigration Detainee per Day from Miami-Dade Jails*, MIAMI HERALD (Jan. 3, 2018), <https://www.miamiherald.com/news/local/community/miami-dade/article192652294.html> [<https://perma.cc/5DLQ-W9HN>].

grant money.”¹³ At the core of the letter was a carefully crafted narrative linking sanctuary policies to increased crime, citing progressive states like California and large cities like Chicago and New York. Despite social science research showing that sanctuary policies are successful¹⁴ and that immigrants are less frequently engaged in criminal activity¹⁵ than citizens, when sanctuary policies are conservatively defined as unprincipled resistance to federal law, they become open to conflation with anti-immigrant frames and false notions of immigrant criminality.

The federal government and its agencies have exclusive authority to pass and enforce immigration laws, but federal capacity to enforce its laws has always been limited.¹⁶ As a result, the federal government has formed partnerships with states and localities in order to expand its own capacity to identify and apprehend

13. Douglas Hanks, *Trump Administration Warns Miami-Dade over ‘Sanctuary’ Compliance*, MIAMI HERALD (Apr. 21, 2017), <https://www.miamiherald.com/news/local/community/miami-dade/article146091594.html> [<https://perma.cc/R5YQ-WG9G>].

14. *See supra* note 7.

15. *See generally* Michael T. Light & Ty Miller, *Does Undocumented Immigration Increase Violent Crime?*, 56 CRIMINOLOGY 370 (2018); Thomas J. Miles & Adam B. Cox, *Does Immigration Enforcement Reduce Crime? Evidence from Secure Communities*, 57 J.L. & ECON. 937 (2014); Alex Nowrasteh, *Criminal Immigrants in Texas: Illegal Immigrant Conviction and Arrest Rates for Homicide, Sex Crimes, Larceny, and Other Crimes*, CATO INST. (Feb. 26, 2018), <https://www.cato.org/publications/immigration-research-policy-brief/criminal-immigrants-texas-illegal-immigrant> [<https://perma.cc/RVZ5-CT7Z>].

16. *See* GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 20 (providing a table of the major court cases establishing federal plenary power from 1875 to 1948). Federal plenary power over immigration law first emerged in 1849, and then continued to expand through the late 1800s and early 1900s. *Smith v. Turner* struck down New York and Massachusetts’ state laws imposing an entry tax on alien passengers arriving from foreign ports as preempted by federal exclusivity over foreign commerce. 48 U.S. 283 (1849). *Chy Lung v. Freeman* struck down California’s state law imposing an entry bond on Chinese immigrants, ruling that control over the admission of foreigners into the country was exclusively a federal responsibility. 92 U.S. 275 (1875). *Chae Chan Ping v. United States* declared that the U.S. Constitution provided for federal immigration control, describing such control as absolute, exclusive, and beyond judicial review. 130 U.S. 581 (1889). The distinction between federal immigration law and state/local alienage law began to emerge during this time as well. *Yick Wo v. Hopkins* struck down a San Francisco ordinance regulating laundry establishments in the city that discriminated against Chinese immigrants for violating the Fourteenth Amendment’s equal protection clause. 118 U.S. 356 (1886). *Fong Yue Ting v. United States*, by contrast, expanded federal power by allowing federal deportation of Chinese immigrants, even long-term residents. 149 U.S. 698 (1893).

individuals for removal.¹⁷ Referring to President Trump’s campaign promise to deport two to three million immigrants, Anna Law explains, “to find, apprehend, legally process, incarcerate and return that many people to their home countries would require the cooperation of local law enforcement.”¹⁸ This is why the executive order not only targets sanctuary policies, but also makes interior enforcement partnerships a top priority and reinstates the Secure Communities (“S-Comm”) program.¹⁹ State and local governments that refuse to cooperate present a major obstacle to Trump’s anti-immigrant agenda.

Sanctuary policies form resistance to federal law that are built on deep constitutional grounds. This Article contributes to the literature on sanctuary by proposing a new framework for organizing and characterizing the motivations behind, and goals of, sanctuary policies over time. Part I explores and considers how four current approaches to understanding sanctuary — typological-legal, historical-legal, historical-moral and policy-data — are employed in areas of scholarship that are currently unbridged. We argue that each of these

17. The Criminal Alien Program (CAP), created in the 1980s and continuing to be enforced today, makes identifying, arresting, and deporting noncitizens encountered in federal, state, and local prisons and jails a priority. See Lasch et al., *Understanding “Sanctuary Cities”*, *supra* note 1, at 1724. The Illegal Immigration Reform and Immigration Responsibility Act passed in 1996 created Section 287(g) (of the Immigration and Nationality Act), granting the Department of Homeland Security the ability to enter into agreements with local law enforcement agencies to deputize local officers to engage in immigration enforcement. See Illegal Immigration Reform and Immigration Responsibility Act, Pub. L. No. 104-208, § 287(g), 110 Stat. 3009, 3009-563 (codified at 8 U.S.C. § 1357(g) (2012)); see also Lasch et al., *Understanding “Sanctuary Cities”*, *supra* note 1, at 1725–27. The biggest shift occurred from 2008 to 2014, with the creation of the Secure Communities (S-Comm) program, which automatically shares the biometric fingerprint data of every person booked into a local jail with the Department of Homeland Security. This enables ICE to issue detainer requests to local jails for immigrants identified by federal databases for residing in the country unlawfully. See Christopher N. Lasch, *Rendition Resistance*, 92 N.C. L. REV. 149, 154 (2013); Christopher N. Lasch, *Enforcing the Limits of the Executive’s Authority to Issue Immigration Detainers Immigration Law*, 35 WILLIAM MITCHELL L. REV. 164, 173 (2008).

18. Anna O. Law, *States Resisting Trump Deportation Plans Can Look to the Antebellum South*, NEWSWEEK (Jan. 14, 2017), <https://www.newsweek.com/states-resisting-trump-deportation-antebellum-south-540727> [https://perma.cc/2DMU-4Y9Y].

19. S-Comm was temporarily suspended by DHS policy under President Obama from November 20, 2014 through January 25, 2017, and was reauthorized under President Trump’s executive order. See Exec. Order No. 13768, 82 Fed. Reg. 8,799 (Jan. 25, 2017), <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states> [https://perma.cc/N5XB-28HM].

approaches have led to similar arguments in defense of sanctuary, as a constitutionally legitimate function of state and local governance. Part II proposes a new framework for organizing and analyzing the motivations behind, and goals of, sanctuary policies over three distinctive periods of development between 1979 and 2018. Part III explains why this Article's framework is able to ground a synthesis of the four separate approaches to show that sanctuary is much more than a resistance movement. Our framework adds greater precision to understanding how social movements have evolved and re-structured sanctuary policies to better resist the federal government and uphold constitutional rights. It also focuses on how immigrant rights are being shaped by actors who engage in state and local policy-making with constitutional constraints in mind.

This Article argues that the narrative of sanctuary policies as violating federal law and challenging core American values, ignores their critical place in American history. Since their origin in the 1980s, sanctuary policies became less connected to the specific struggles of Central American refugees and assumed broader goals related to civil rights and immigrant rights that span the basic functions of state and local governance. Sanctuary today provides a moral and constitutionally legitimate form of integration and protection with regard to undocumented residents.

I. APPROACHES TO UNDERSTANDING SANCTUARY

This Part briefly identifies and reviews four approaches that have been employed to understand sanctuary policies: typological-legal, historical-legal, historical-moral and policy-data. The first approach focuses almost exclusively on unpacking the constitutional underpinnings and specific functions of sanctuary policies. The second approach, by contrast, focuses on broader constitutional dynamics that shape federal preemption and state and local policy-making in relation to immigration law. The third and fourth approaches shift the focus away from the U.S. Constitution and towards a political understanding of how social movements shape sanctuary and how sanctuary policies, once they are passed, are linked to crime and economic outcomes.

Each of the four approaches provides a unique understanding of sanctuary, but scholars have yet to bridge the gap and see the connection between these approaches. This gap has prevented the development of a comprehensive understanding, forged from joining constitutional analysis, social movement analysis, and policy analysis in the context of federalism. While the four approaches have

emerged separately from one another, they are connected through their shared understanding of sanctuary policies as substantively justified local prerogatives grounded in constitutional principles, moral values, and good policy. This Article posits that a more holistic understanding of sanctuary policies emerges where the four approaches complement one another. By analyzing policy trends over time, this Article integrates key features from all four approaches to explain the motivations behind, and goals of, sanctuary policies.

A. Typological-Legal Approach

Grounding sanctuary policies in a set of guiding constitutional principles, the typological-legal approach provides an important corrective to the framing of sanctuary policies as unlawful.²⁰ Christopher Lasch's typology shows how sanctuary policies, rather than breaking the rule-of-law, serve as critical constitutional instruments often used to sever the connection between criminal law and immigration law.²¹ Referred to by scholars as "cimmigration," the intersection between criminal law mechanisms (such as the use of local law enforcement and detention) and federal immigration law enforcement problematically casts a wider interior enforcement net for immigration violations that are civil and not criminal. Immigrants in deportation proceedings as a result of cimmigration lack due process and procedural protections, making Lasch's typology of sanctuary policies both about protecting the rights of all persons and creating resistance to immigration enforcement mechanisms that use state or local governing resources.²² The typology unpacks five areas

20. See, e.g., *supra* note 1.

21. Lasch et al., *Understanding "Sanctuary Cities"*, *supra* note 1.

22. See Juliet Stumpf, *The Cimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 379 (2006). According to Juliet Stumpf, "[c]riminal law seeks to prevent and address harm to individuals and society from violence or fraud or evil motive," whereas "[i]mmigration law determines who may cross the border and reside here, and who must leave." See generally Felicia Arriaga, *Understanding Cimmigration: Implications for Racial and Ethnic Minorities Within the United States*, 10 SOC. COMPASS, 805 (2016); Jennifer M. Chacon, *Managing Migration through Crime*, 109 COLUM. L. REV. SIDEBAR 135, 805-06 (2009) (explaining "cimmigration" and its historical development and why it is important); César Cuahtémoc García Hernández, *Creating Cimmigration*, 2013 BYU L. REV. 1457 (2013) (analyzing the development of cimmigration law); Stephen H. Legomsky, *The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms*, 64 WASH. & LEE L. REV. 469 (2007) (examining the convergence of criminal justice and immigration control); Hiroshi Motomura, *The Discretion that Matters: Federal Immigration Enforcement, State and Local Arrests*,

in local law enforcement agencies' formal and informal rules that create local sanctuary:

- (1) barring investigation of civil and criminal immigration violations by local law enforcement, (2) limiting compliance with immigration detainers and immigration warrants, (3) refusing U.S. Immigration and Customs Enforcement ("ICE") access to local jails, (4) limiting local law enforcement's disclosure of sensitive information, and (5) precluding local participation in joint operations with federal immigration enforcement.²³

Localities enacting these five types of policies generally seek to "preserve local sovereignty, define local priorities, and enhance community trust in law enforcement."²⁴ These local prerogatives in policing and community trust are deeply rooted in constitutional rights, including Fourth Amendment jurisprudence, which protects individuals from illegal searches and stops and from arrests without probable cause.²⁵

Addressing the constitutional substance of local prerogatives through a typology approach offers a critical counter-narrative to anti-immigrant positions, which rely on framing sanctuary policies as local resistance to federal law that demeans the rule-of-law.²⁶ Lasch's

and the Civil-Criminal Line, 32 IMMIGR. & NAT'LITY L. REV. 167 (2011) (examining how immigration federalism is affected by the relationship between criminal law and immigration law).

23. Lasch et al., *Understanding "Sanctuary Cities"*, *supra* note 1, at 1707.

24. *Id.* at 1709.

25. See *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014) (applying the Fourth Amendment protection of arrests without probable cause); *Miranda-Olivares v. Clackamas County*, No. 3:12-CV-02317-ST, 2014 WL 1414305 (D. Or. Apr. 11, 2014) (applying the Fourth Amendment protection of arrests without probable cause); see *infra* Section I.C. See generally Christopher N. Lasch, *Federal Immigration Detainers After Arizona v. United States*, 46 LOY. L.A. L. REV. 629 (2013) [hereinafter *Federal Immigration Detainers After Arizona*].

26. When signing Texas's anti-sanctuary state law (S.B. 4) in 2017, Texas Governor Gregg Abbot argued that pro-sanctuary policies demeaned the rule-of-law, led to higher rates of crime (without evidence), and referred to the case of Kate Steinle, who was shot and killed by an undocumented immigrant in San Francisco, California (a sanctuary city). Patrick Svitek, *Texas Gov. Greg Abbott Signs 'Sanctuary Cities' Bill into Law*, TEX. TRIB. (May 7, 2017, 8:00 PM), <https://www.texastribune.org/2017/05/07/abbott-signs-sanctuary-cities-bill/> [https://perma.cc/7BT2-FJE5]. Immediately after the tragic death of Steinle, the Republican-controlled House passed the "Enforce the Law for Sanctuary Cities Act" (H.R. 3009), which would have denied federal funding to cities that refuse to report detained immigrants, also known as "sanctuary cities." H.R. 3009, 114th Cong. (1st Sess. 2017), <https://www.congress.gov/bill/114th-congress/house-bill/3009> [https://perma.cc/NW7F-TTWS]. See generally Lasch, *Sanctuary Cities and Dog-Whistle Politics*, *supra* note 1 (highlighting multiple legislative attempts in Congress to defund sanctuary jurisdictions).

typology reveals how sanctuary is a legitimate policy means of upholding the U.S. Constitution. Importantly, the constitutional roots anchoring sanctuary policies are not exclusive to Tenth Amendment anti-commandeering concerns.²⁷ Annie Lai and Christopher Lasch make this point very clear, explaining that President Trump's executive order and federal funding of local law enforcement raise much deeper constitutional concerns over the use of criminal law to enforce immigration law.²⁸ They explain, "contact with criminal justice system actors serves as an entry point to a jail-to-deportation pipeline" that has led state and local governments to passing some form of sanctuary policy in order "to protect the civil and constitutional rights of [their] residents."²⁹

A key feature of sanctuary policies is how they symbolically and legally insulate a group of people from the enforcement of federal law. A report by the Immigrant Legal Resource Center identifies seven different county-level policies that limit local assistance by sheriffs and jails who often engage directly with ICE on immigration enforcement.³⁰ Additionally, crimmigration analysis of sanctuary policies provides an important alternative frame that can help unlink immigrants with criminality.³¹ Even more powerful, the report's analysis highlights constitutional intersections that provide direction for considering sanctuary policies beyond Tenth Amendment tensions between federal and local policymaking.³² The policies are also substantively grounded in the Fourth,³³ Fifth,³⁴ and Fourteenth³⁵

27. See *Federal Immigration Detainers After Arizona*, *supra* note 25, at 698–700; Motomura, *supra* note 1, at 446–47; Lasch et al., *Understanding "Sanctuary Cities"*, *supra* note 1, at 1747–57.

28. See Lai & Lasch, *supra* note 1, at 557–83.

29. See *id.* at 545.

30. See generally LENA GRABER & NIKKI MARQUEZ, IMMIGRANT LEGAL RESOURCE CTR., SEARCHING FOR SANCTUARY: AN ANALYSIS OF AMERICA'S COUNTIES & THEIR VOLUNTARY ASSISTANCE WITH DEPORTATIONS (Dec. 2016), https://www.ilrc.org/sites/default/files/resources/sanctuary_report_final_1-min.pdf [<https://perma.cc/8PBK-Q2BC>].

31. See *supra* note 22.

32. See Lai & Lasch, *supra* note 1, at 542, 573–75.

33. See Motomura, *supra* note 1, at 449 (explaining that "the Fourth Amendment prohibits searches and seizures without a judicial warrant or probable cause to believe that a crime has occurred" and noting that "complying with an ICE request to extend detention would typically violate the U.S. Constitution"). See Lasch et al., *Understanding "Sanctuary Cities," supra* note 1, 1732–33 (referencing court decisions and officials that suggest how local detentions based on detainer requests might violate Fourth Amendment due process rights).

34. See Motomura, *supra* note 1, at 446, n.36 (explaining that a "federal district court found that section 9(a) of the [Anti-Sanctuary Presidential] Executive Order

Amendments as fundamental protections for citizens and non-citizens alike.³⁶ Sanctuary protections are not only for undocumented immigrants, but also for people of color and transgender individuals, which are all groups that have historically been subject to punitive policies, over policed, and excluded from having adequate federal protections.³⁷

Historical precedent confirms this trend. For example, sanctuary was provided to runaway slaves by a Massachusetts law from the 1850s, which forbade state and local officials from enforcing the federal fugitive slave law, making the removal of *any* black person from the state without court approval a crime and granting all blacks equal due process protections under state law.³⁸ Civil rights have been subsequently employed in other contexts to frame sanctuary policies: When San Francisco, New York, and Chicago passed revised versions of their sanctuary ordinances in 1989, advocates began to assert that City of Refuge ordinances were part of a civil rights policy.³⁹ Advocates brought city sanctuary policies in line with the principle “that *all* persons residing within the city and county have

violates the Fifth Amendment’s procedural due process requirement and is void for vagueness”).

35. Lasch et al., *Understanding “Sanctuary Cities”*, *supra* note 1, at 1764–65 (referencing how states and cities have modelled their anti-discrimination laws after the Fourteenth Amendment’s equal protection clause).

36. See COLBERN & RAMAKRISHNAN, *supra* note 8, at 98–110; Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 390 (2006) (noting that criminal process rights are embodied in the Fourth, Fifth, and Sixth Amendments, while immigration proceedings are generally governed by the Fifth Amendment’s Due Process Clause).

37. Allan Colbern’s book manuscript traces the development of state and local sanctuary policies through American history, including those protecting: runaway slaves (1780–1860) from federal fugitive slave law, and Central American asylum seekers (1980–1997) and undocumented immigrants (2000–2018) from federal immigration law. See *generally* Allan Colbern, *Today’s Runaway Slaves: Unauthorized Immigrants in a Federalist Framework* (unpublished manuscript) (on file with author) [hereinafter, Colbern, *Today’s Runaway Slaves*]; see also Allan Colbern, *The House Is Picking a Fight with ‘Sanctuary City’ Ordinances. How Is This Like the Fugitive Slave Laws?*, WASH. POST (Aug. 13, 2015), <http://www.washingtonpost.com/blogs/monkey-cage/wp/2015/08/13/the-house-is-picking-a-fight-with-sanctuary-city-ordinances-how-is-this-like-the-fugitive-slave-laws/> [https://perma.cc/6PAL-6L97].

38. An Act to Protect the Rights and Liberties of the People of the Commonwealth of Massachusetts, Chap. 0498, (Mass. 1855), <https://archives.lib.state.ma.us/bitstream/handle/2452/97312/1855acts0489.txt?sequence=1&isAllowed=y> [https://perma.cc/PT8W-DHME].

39. Jennifer Ridgley, *The Birth of a Sanctuary-City: A History of Governmental Sanctuary in San Francisco*, in SANCTUARY PRACTICES IN INTERNATIONAL PERSPECTIVES: MIGRATION, CITIZENSHIP AND SOCIAL MOVEMENTS 225 (2012).

fundamental human, civil and constitutional rights.”⁴⁰ Similarly, as recently as 2017, Santa Rosa’s sanctuary policy specifies “people of color, Muslims, LGBTQ people and people with disabilities” alongside immigrant residents.⁴¹ Sanctuary under this policy goes beyond resistance to federal immigration law and “calls upon all City residents and all City Departments and employees to speak out against acts of bullying, discrimination and hate violence and to stand up for those who are targeted for such acts.”⁴²

Hiroshi Motomura developed a typology that goes beyond local law enforcement to draw out two basic features of sanctuary policies: resistance to enforcement and integration of protected groups.⁴³ Rather than focusing exclusively on sanctuary policies, Motomura unpacks five categories in which sanctuary policies have been grounded within broader policy dynamics of immigration federalism: (1) structural limits on federal authority; (2) state and local prerogatives; (3) substantive limits on arrests and detention; (4) fairness, equity, and proportionality; and (5) transparency and non-discrimination. The first three categories unpack the legal foundations of sanctuary policies in American federalism. The federal, state, and local governments are all bound — to varying extents — by the Constitution. The interplay between the three is delineated by constitutional prescriptions. For example, as Motomura explains, structural limits are placed on federal authority by the Tenth Amendment anti-commandeering doctrine and by the Spending Clause, both of which insulate states from federal mandates.⁴⁴ Beyond structural limits found in federalism, separation of powers makes congressional legislation — not presidential executive orders — the appropriate vehicle for allowing federal grants to be conditioned on state or local government compliance with particular mandates.⁴⁵

40. *See id.* (emphasis added).

41. *See Res.* 2017-017 (Santa Rosa City Council, Cal. 2017).

42. *See id.*

43. *See* Motomura, *supra* note 1, at 437–40.

44. *See id.* at 446. Motomura explains that, under the Tenth Amendment’s anti-commandeering clause, the “federal government may not directly compel a state to enact a regulation or enforce a federal regulatory program, conscript state officers for that purpose, or prohibit a state from enacting laws.” *Id.* Similarly, the Spending Clause, Motomura explains, limits the federal government from using “its control over the authorization and disbursement of funds to “coerce” states in their decision-making.” *Id.*

45. *See id.* at 446 n.36 (providing a brief description of court cases that have uniformly held that the federal executive branch may not withhold federal funding to localities because the conditions were not authorized by federal legislation).

Whereas the first category in Motomura's typology insulates states and localities from federal enforcement, the second and third categories move away from the focus on federal-state relations and instead highlight the state-specific origins of sanctuary policies.⁴⁶ Beyond the Tenth Amendment, local prerogatives in the form of community policing or integration policies, and local concerns over the substantive limits on arrests and detentions raised by Fourth Amendment rights, are both legal foundations upon which sanctuary policies emerge.⁴⁷ Meanwhile, state and local prerogatives point towards how state and local governments perform their basic governing responsibilities.⁴⁸

In direct contrast to the resistance-only understanding, Motomura's fourth category establishes a progressive federalism⁴⁹ understanding of sanctuary policies as a state or local cushion to the harsh federal immigration system.⁵⁰ This parallels the crimmigration approach,⁵¹ but with a different point of emphasis on how the national and local are connected.⁵² It also directly contrasts Kris Kobach's "attrition through enforcement" approach to federalism, which encourages state and local governments to further restrict immigrant access and rights in order to make life conditions so harsh that immigrants opt to self-deport.⁵³ Sanctuary policies increase local discretion in ways that can ease the harshness of the immigration system as a whole, not only by preventing state or local authorities

46. *See id.* at 445–48.

47. *See id.*

48. *See id.*

49. The term "progressive federalism" refers to the interconnection between local, state, and national government and policy that propels the national direction on rights and equality. *See* COLBERN & RAMAKRISHNAN, *supra* note 8, at 12–16 (advancing the argument that progressive federalism, located in state or local level policies that advance equality and justice, can move the entire country forward in advancing the rights of immigrants and other marginalized populations); Heather K. Gerken, *A New Progressive Federalism*, DEMOCRACY J. (Spring 2012), <https://democracyjournal.org/magazine/24/a-new-progressive-federalism/> [<https://perma.cc/B445-5NMS>]; *see generally* Heather K. Gerken, *Federalism as the New Nationalism: An Overview*, 123 YALE L.J. 1889 (2014) (arguing that federalism is a tool for progress in national politics, national power, national policymaking, and national norms, where progressive state and local policies can go beyond policy diffusion from the bottom up, to also include pushing the nation forward by overcoming political gridlock, cultivating discourse and agenda setting, and diffusing policy up that leads to larger progress in national political development).

50. *See* Motomura, *supra* note 1, at 460–61.

51. *See supra* note 22.

52. *See supra* note 50.

53. *See generally* Kris W. Kobach, *Attrition Through Enforcement: A Rational Approach to Illegal Immigration*, 15 TULSA J. COMP. & INT'L L. 155 (2007).

and resources from enforcing federal immigration law, but also by facilitating immigrant access to local resources and participation in local institutions. Motomura's last category of non-discrimination adds that sanctuary policies have taken on an important contemporary role in preserving America's core values in the rule of law. Contemporary U.S. immigration law has replaced the past tradition of providing expansive rights to immigrants, who were once considered to be "Americans-in-waiting," with a harsh system of interior enforcement that infringes on constitutional rights.⁵⁴

Some scholars have taken the typological-legal approach one step further: They have begun to consider how sanctuary policies might cumulate into more robust forms of protection. Rose Cruison Villazor and Pratheepan Gulasekaram developed the concept of a "sanctuary network" to capture how state and local jurisdictions — like city governments, county courts, and universities — can enact sanctuary policies that, together, form robust networks of legal protections to insulate immigrants from federal enforcement of immigration law.⁵⁵ This emergence of sanctuary networks across multiple levels of government and institutional spaces, and their capacity to insulate undocumented immigrants in more robust ways when paired together, adds new depth to their substantive foundation. Many of the innovations in sanctuary's location are emerging entirely outside of formal policy-making, including in both courts and schools.

B. Historical-Legal Approach

The historical-legal approach focuses on how federal preemption over immigration law shapes the role played by states and localities in regulating the lives of immigrants. This is distinctive from the typological approach because it centers the analysis on federal preemption, rather than unpacking constitutional sources of tensions in federalism. At the same time, the two approaches provide complementary conceptions of state and local government's role in immigrant integration. The typological approach provides a precise understanding of how sanctuary policies function to integrate immigrants, whereas the historical-legal provides broader

54. See Motomura, *supra* note 1, at 451–55 (building on his prior work); see also HIROSHI MOTOMURA, AMERICANS IN WAITING: THE LOST STORY OF IMMIGRATION AND CITIZENSHIP IN THE UNITED STATES (2006); HIROSHI MOTOMURA, IMMIGRATION OUTSIDE THE LAW (2014).

55. See generally Villazor & Gulasekaram, *Sanctuary Networks*, *supra* note 1.

constitutional understanding of why state and local governance ought to be oriented around integration rather than restriction.

Since the late 1800s, the federal government has gained plenary powers over U.S. immigration law, and scholars have examined state and local power to pass polices related to immigration and immigrants within the context of federal exclusivity.⁵⁶ Alex Aleinikoff analyzes how the U.S. Constitution sets up different national and local governing relations, with a focus on who can and cannot exclude immigrants.⁵⁷ The plenary powers doctrine sets up exclusive federal control over immigration law, which Aleinikoff argues empowers only the federal government to restrict or exclude immigrants' right to enter or stay in the country.⁵⁸ Lacking this power, state and local governments, by contrast, are guided by a personhood framework that obligates them to providing immigrant residents similar rights to citizens.⁵⁹ Scholars refer to "personhood" with the idea that all individuals possess basic human rights, regardless of how federal, state, or local governments shape these rights.⁶⁰ Under the plenary power doctrine, federal immigration law is exempt from many of the obligations that personhood rights require, especially on questions of admission, exclusion, deportation, and naturalization.⁶¹ By contrast, states and localities are required to fully recognize personhood rights.⁶²

56. See GULASEKARAM & RAMAKRISHNAN, *supra* note 8 (providing a brief history of this transition to federal exclusivity in immigration law that emerges from the 1870s to the 2000s).

57. See T. Alexander Aleinikoff, *Citizens, Aliens, Membership and the Constitution*, 7 CONST. COMMENT. 9 (1990) [hereinafter Aleinikoff, *Citizens, Aliens, Membership and the Constitution*]; see generally T. ALEXANDER ALEINIKOFF, *SEMBLANCES OF SOVEREIGNTY: THE CONSTITUTION, THE STATE, AND AMERICAN CITIZENSHIP* (2002).

58. Aleinikoff, *Citizens, Aliens, Membership and the Constitution*, *supra* note 57, at 10–11.

59. *Id.* at 20–27.

60. LINDSEY N. KINGSTON, *FULLY HUMAN: PERSONHOOD, CITIZENSHIP, AND RIGHTS* 3 (2019) (referring to the United Nation's 1948 Universal Declaration of Human Rights (UDHR), which asserts that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world," lays the foundations for modern rights based on the concept of personhood).

61. See Aleinikoff, *Citizens, Aliens, Membership and the Constitution*, *supra* note 57, at 10–11 (arguing that "Congress acts essentially free from any constitutional limits when it defines the categories of aliens entitles to enter, designates categories of excludable aliens, establishes admissions and detention procedures at the border, mandates the deportation of aliens residing in the country, denies resident aliens benefits and federal employment, permits the interdiction on the high seas of aliens

Unlike the legal typologies developed by Lasch⁶³ and Motomura⁶⁴ that address the deep federalism conflict raised by sanctuary policies, Aleinikoff's reliance on plenary powers obscures these conflicts between levels of government rooted in the U.S. Constitution.⁶⁵ The personhood framework is also problematic, especially with regard to sanctuary policies, because it draws from natural rights of all persons rather than specific constitutional language and protections. As a result, Aleinikoff reveals tensions between plenary powers and personhood rights that miss the federalism conflict central to sanctuary policies.

By contrast, Hiroshi Motomura and Linda Bosniak explore immigrant integration policy within a citizenship framework for understanding rights.⁶⁶ This provides a different analytical lens for considering restrictive policies limited to the federal government under the plenary powers doctrine, with state and local governments obligated to uphold the constitutional rights of citizens and non-citizens alike. Highlighting the rationale applied in *Plyler v. Doe*, which invalidated the Texas statute allowing K-12 public schools to deny undocumented immigrant schoolchildren access or charge them tuition, Motomura shows the ways in which Fourteenth Amendment equal protection has been extended to undocumented immigrants.⁶⁷ Thus, constitutional safeguards serve to legitimate integration and sanctuary policies, while simultaneously establishing limits on what

seeking to come to the United States, and defines classes of aliens ineligible for U.S. citizenship”).

62. *Id.* at 19 (referring to “a notion of fundamental human rights that protects individuals regardless of their status” outside of the federal immigration law context).

63. See Lasch et al., *Understanding “Sanctuary Cities”*, *supra* note 1.

64. See Motomura, *supra* note 1.

65. See Aleinikoff, *Citizens, Aliens, Membership and the Constitution*, *supra* note 57.

66. See generally LINDA BOSNIAK, *THE CITIZEN AND THE ALIEN: DILEMMAS OF CONTEMPORARY MEMBERSHIP* (2006); MOTOMURA, *supra* note 54; Linda Bosniak, *Ethical Territoriality and the Rights of Immigrants*, 1 *AMSTERDAM L. F.* 1 (2008); Linda Bosniak, *Constitutional Citizenship Through the Prism of Alienage*, 63 *OHIO ST. L.J.* 1285 (2002); Linda Bosniak, *Universal Citizenship and the Problem of Alienage*, 94 *NW. U. L. REV.* 373 (2000); Linda Bosniak, *Citizenship Denationalized*, 7 *IND. J. GLOBAL LEGAL STUD.* 447 (2000); Linda S. Bosniak, *Immigrants, Preemption and Equality*, 35 *VA. J. INT'L L.* 179 (1994); Hiroshi Motomura, *The Curious Evolution of Immigration Law: Procedural Surrogates for Substantive Constitutional Rights*, 92 *COLUM. L. REV.* 1625 (1992); Michael Scaperlanda, *Partial Membership: Aliens and the Constitutional Community*, 81 *IOWA L. REV.* 707 (1995).

67. See MOTOMURA, *supra* note 54; see also *Plyler v. Doe*, 457 U.S. 202 (1982).

states and localities can do to discriminate against and restrict immigrants' rights and access public resources.⁶⁸

Linda Bosniak takes the logic of constitutional safeguards even further, arguing that no distinction should be made between citizens and non-citizens under state and local policy.⁶⁹ The defining question here is “whether government treatment of aliens *beyond* the border broadly construed — beyond questions of admission, exclusion, deportation, and naturalization — is itself to be viewed as an incident or extension of the immigration power.”⁷⁰ While Bosniak does not specifically address sanctuary policies, her broader treatment of state and local immigrant policy aligns with both the crimmigration analysis of Lai and Lasch and the sanctuary typology developed by Motomura.⁷¹ Immigration law, applied to the external border and in an outward-facing manner, should not overlap with state or local policies regulating the lives of residents.

Once undocumented immigrants are residing *in* the country, federal immigration law is no longer exclusive, and it overlaps with state and local laws. The Second Circuit, in *City of New York v. United States*, clarified the limits of sanctuary policies as a form of resistance to federal enforcement of immigration law.⁷² It held that states and localities could not directly prevent communication of information previously obtained about legal status to federal immigration officers, but it also preserved state and local power to not inquire about immigrant's legal status (“don't ask”) under the Tenth Amendment.⁷³ Recent challenges to the constitutionality of sanctuary policies under President Trump are reviewed in the Conclusion of this Article. Today, *City of New York v. United States* remains the only limit on sanctuary resistance; states and localities cannot actively obstruct federal enforcement, but they can sever their connection from immigration enforcement entirely.⁷⁴

Beyond questions about the separation of power, the enforcement of federal immigration law by state and local jurisdictions produces

68. See MOTOMURA, *supra* note 54; see also GULASEKARAM & RAMAKRISHNAN, *supra* note 8.

69. See Linda S. Bosniak, *Membership, Equality, and the Difference that Alienage Makes*, 69 N.Y.U. L. REV. 1047, 1058 (1994).

70. *Id.* at 1094.

71. See generally Lai & Lasch, *supra* note 1; Motomura, *supra* note 1, at 437–40; see also Section I.A.

72. See *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999).

73. See *id.*

74. See *id.*

constitutional violations against a range of rights of citizens and noncitizens.⁷⁵ In *Galarza v. Lehigh County*, the Third Circuit held that states and localities are not required to imprison people based on ICE detainees.⁷⁶ Since Lehigh County, Pennsylvania was free to disregard the ICE detainer, the ACLU interpreted the decision as suggesting that states and localities “shares in the responsibility for violating Galarza’s Fourth Amendment and due process rights.”⁷⁷ Following the case, the Lehigh County Board of Commissions ended its policy of imprisoning people on ICE detainees.⁷⁸ In *Miranda-Olivares v. Clackamas County*, the U.S. District Court of Oregon added that honoring ICE detainees without probable cause is a violation of the Fourth Amendment.⁷⁹

Legal scholarship on immigration law, together with recent typology work on sanctuary policies, provides broader context to the constitutional questions raised when states and localities regulate undocumented immigrants. The personhood framework is often disconnected from the federalism conflicts under the Constitution, because it envisions rights as being universal rather than bound to a specific level of government. Section I.C. and Section II of this Article explore how church-based sanctuary declarations and refuge are rooted in moral (similar to personhood), rather than constitutional, foundations. Unlike state and local government sanctuary policies, church-based sanctuary declarations are liable for violating federal immigration law and sanctuary workers have been prosecuted under Section 274 of the Immigration and Nationality Act (INA) for “bringing in and harboring of aliens.”⁸⁰ The moral origins of sanctuary policies by non-state actors still play a critical role, as churches become actors in spurring underground movements to avoid

75. See Lai & Lasch, *supra* note 1, at 543.

76. *Galarza v. Szalczyk*, 745 F.3d 634, 639–45 (3d Cir. 2014).

77. *Galarza v. Szalczyk*, ACLU, <https://www.aclu.org/cases/immigrants-rights/galarza-v-szalczyk> [<https://perma.cc/FN2N-MA44>]. See *Galarza*, 745 F.3d at 644–45. See also Lai & Lasch, *supra* note 1, at 547 (referencing the federal court decisions as “suggesting that jurisdictions that elected to hold people could be liable for violating their Fourth Amendment rights”).

78. See Res. 2014-36, 2014 (Lehigh Cty. Bd. of Comm’rs, Pa. 2014); see also Colbern, *Today’s Runaway Slaves*, *supra* note 37, at 61 (unpublished manuscript) (on file with author).

79. See *Miranda-Olivares v. Clackamas County*, No. 3:12-CV-02317-ST, 2014 WL 1414305, at *7–9 (D. Or. Apr. 11, 2014) (ruling that Clackamas county violated the Fourth Amendment by solely relying on the ICE detainer request to hold a noncitizen for two weeks).

80. See Villazor & Gulasekaram, *Sanctuary Networks*, *supra* note 1, at 1230. See *infra* Section II.A.2. See also 8 U.S.C. § 1324(a)(1) (2018).

federal prosecution, in expressing civil disobedience against federal policy, and in partnering with government officials to reform national, state, and local policies.⁸¹

The typological- and historical-legal approaches reviewed in Sections I.A. and I.B. offer important clarity to the constitutional substance that legitimize sanctuary policies. This goes well beyond the Tenth Amendment's separation of federal and state powers. States and localities are bound to uphold the Constitution's provision of rights to citizens and non-citizens. As a result, progressive states and localities can employ sanctuary policies as a mechanism for easing the harshness of the immigration system, sever the connection between criminal law and immigration law,⁸² and provide a more robust policy network to integrate immigrant residents, regardless of their legal status under federal law. Grassroots activism adds moral depth to the constitutional safeguards of progressive policymaking, which together provide a powerful counter to the "resistance only" narrative. Rather than focusing on the tensions between federal and state policy, they ground analysis of sanctuary policies in constitutional legitimacy and local prerogatives responding to specific demands within affected communities.

C. Historical-Moral Approach

The moral origins of sanctuary offer a powerful frame for contemporary debates around the protection of persecuted groups. Biblical, English common law, Greek, Roman, and Anglo-Saxon traditions all share in common the role of churches in providing a place of refuge to persons who were convicted of crimes and lacked legal protections for their defense under formal government policies.⁸³ In the United States, public and private entities gave sanctuary to runaway slaves, Jews escaping the Holocaust, civil rights workers fleeing mob violence in the South, draft resisters during the

81. See Colbern, *Today's Runaway Slaves*, *supra* note 37, at 25 (unpublished manuscript) (on file with author) (examining how churches in antebellum, Jim Crow, and contemporary America played a role in shaping activism in state and local government sanctuary movements).

82. See *supra* note 22 (reviewing crimmigration literature).

83. See Barbara Bezdek, *Religious Outlaws: Narratives of Legality and the Politics of Citizen Interpretation*, 62 TENN. L. REV. 899 (1995); Jorge L. Carro, *Sanctuary: The Resurgence of an Age-Old Right or Dangerous Misinterpretation of an Abandoned Ancient Privilege*, 54 U. CIN. L. REV. 747 (1986); Douglas L. Colbert, *The Motion in Limine: Trial Without Jury: A Government's Weapon against the Sanctuary Movement*, 15 HOFSTRA L. REV. 5, 38–48 (1986); Villazor, *What Is a Sanctuary*, *supra* note 1, at 138–39.

Vietnam War, Central American asylum seekers, and contemporary undocumented immigrants.⁸⁴

Despite this overlap between private and public spheres, scholarship on church movements remains largely disconnected from the constitutional analysis found in the first (typological-legal) and second approaches (historical-legal), and disconnected from the empirical analysis found in the fourth approach (policy-data).⁸⁵ The focus of the historical-moral approach has been on moral claims rooted to human rights critiques of national sovereignty. For example, Lane Van Ham connects churches to immigration activism, beginning with biblical calls for hospitality at the end of World War II to pressure the United States to admit displaced persons from Europe.⁸⁶ Advancing a theory of political discourse rooted in the moral “appreciation of global poverty as an oppressive force that challenges assumptions about the regulation of national boundaries,” Ham’s analytical approach focuses on challenging national sovereignty on moral grounds.⁸⁷ Much like the limits of Aleinikoff’s personhood framework, Ham’s analysis of the church movement is disconnected from constitutional and federalism concerns salient to the current sanctuary debate.

The larger trend in the scholarship examining the 1980s Central American crisis connects social movements led by churches to national, rather than local, policy, with a focus on moral claims to refuge.⁸⁸ Part II of this Article reveals how the church movement of

84. See Colbern, *Today’s Runaway Slaves*, *supra* note 37, at 25 (unpublished manuscript) (on file with author); Villazor, *What Is a Sanctuary*, *supra* note 1, at 138–39; see generally ANN CRITTENDEN, *SANCTUARY: A STORY OF AMERICAN CONSCIENCE AND THE LAW IN COLLISION* (1st ed. 1988) (recounting the story of the Arizona sanctuary workers).

85. See CRITTENDEN, *supra* note 84, at 92–111; HILARY CUNNINGHAM, *GOD AND CAESAR AT THE RIO GRANDE: SANCTUARY AND THE POLITICS OF RELIGION* 84–202 (1995); RENNY GOLDEN & MICHAEL MCCONNELL, *SANCTUARY: THE NEW UNDERGROUND RAILROAD* 63–94 (2d ed. 1986); see, e.g., GARY MACEOIN, *SANCTUARY: A RESOURCE GUIDE FOR UNDERSTANDING AND PARTICIPATING IN THE CENTRAL AMERICAN REFUGEE STRUGGLE* (Gary MacEoin ed., 1st ed. 1985); ROBERT TOMSHO, *THE AMERICAN SANCTUARY MOVEMENT* 93–111 (1987).

86. See Lane Van Ham, *Sanctuary Revisited: Central American Refugee Assistance in the History of Church-Based Immigrant Advocacy*, 10 *POL. THEOLOGY* 621, 621–22 (2009).

87. See *id.* at 637.

88. See, e.g., MARIA CRISTINA GARCIA, *SEEKING REFUGE: CENTRAL AMERICAN MIGRATION TO MEXICO, THE UNITED STATES, AND CANADA* (1st ed. 2006); SUSAN BIBLER COUTIN, *LEGALIZING MOVES: SALVADORAN IMMIGRANTS’ STRUGGLE FOR U.S. RESIDENCY* 136–62 (2003).

the 1980s went beyond a moral appeal for national change by leading in policy activism at the national, state, and local levels.

D. Policy-Data Approach

Unlike the typological- and historical-legal approaches, the policy-data approach turns away from constitutional analysis and instead, tracks and explains the proposal, passage and failure of sanctuary policies. This method aligns more with the historical-moral approach, where analytical focus is placed on actors and organizations important to explaining the developing sanctuary movement. While often disconnected from constitutional analysis, the policy-data approach offers a distinctive contribution to the shared understanding of sanctuary policies as substantively justified local prerogatives. It provides a systematic way of identifying the causal effects of sanctuary policies on outcomes like crime.⁸⁹ Thus far, one of the primary empirical contributions from policy-data approaches has been to show that sanctuary policies are indeed good for improving local trust with immigrant communities and achieving lower crime rates.⁹⁰

Benjamin Gonzalez, Loren Collingwood, and Stephen El-Khatib find no statistical difference in violent crime, rape, or property crime across sanctuary and non-sanctuary cities.⁹¹ Using a dataset compiled by the National Immigration Law Clinic, which contained fifty-four local jurisdictions' sanctuary policies between 2002 and 2008,⁹² they

89. Scholars have also examined policy datasets to test theories of political behavior that offer an indirect (not direct) contribution to understanding sanctuary policies. The focus of those studies is to understand race relations and how various racial groups respond to immigrant threat, with sanctuary policies providing a proxy for threat. See Jason P. Casellas & Sophia Jordán Wallace, *Sanctuary Cities: Public Attitudes Toward Enforcement Collaboration Between Local Police and Federal Immigration Authorities*, URB. AFF. REV., May 2018, at 1; Loren Collingwood & Benjamin Gonzalez O'Brien, *Public Opposition to Sanctuary Cities in Texas: Criminal Threat or Immigration Threat?*, SOC. SCI. Q. (forthcoming); Kassra A. R. Oskooii et al., *Partisan Attitudes Toward Sanctuary Cities: The Asymmetrical Effects of Political Knowledge*, 46 POL. & POL'Y 951 (2018).

90. See Gonzalez et al., *supra* note 7, at 9; Lyons et al., *supra* note 7, at 604; WONG, THE EFFECTS OF SANCTUARY POLICIES, *supra* note 7, at 1.

91. They define sanctuary as a "city or police department that has passed a resolution or ordinance expressly forbidding city or law enforcement officials from inquiring into immigration status and/or cooperation with ICE." See Gonzalez et al., *supra* note 7, at 4.

92. See NAT'L IMMIGR. L. CTR., LAWS, RESOLUTIONS AND POLICIES INSTITUTED ACROSS THE U.S. LIMITING ENFORCEMENT OF IMMIGRATION LAWS BY STATE AND LOCAL AUTHORITIES (2008), <http://www.ailadownloads.org/advo/NILC-LocalLawsResolutionsAndPoliciesLimitingImmEnforcement.pdf>

compared criminal activity between sanctuary and non-sanctuary jurisdictions, and found no statistical difference.⁹³ Rather than tracking enacted policies and employing a matching strategy to compare sanctuary to non-sanctuary jurisdictions, as that study did, Tom Wong used data collected by Immigration and Customs Enforcement (ICE) that provides a total count per county jurisdiction of local compliance with ICE detainer requests.⁹⁴ That data allowed Wong to examine sanctuary policies' effects by comparing counties that do not assist federal immigration enforcement officials from counties that comply with immigration detainer requests.⁹⁵ Not only do sanctuary counties have lower crime rates, but they also have stronger economies than similarly situated pro-enforcement counties.⁹⁶

Policy-data is also used to construct datasets that combine pro- and anti-immigrant policies at the state and local level to measure the overall orientation of a state or locality towards undocumented immigrants. Huyen Pham and Pham Hoang Van developed the Immigrant Climate Index, which provides this type of general measure and combines sanctuary policies with other integrationist policies in order to identify broader shifts in a jurisdiction's protective

[<https://perma.cc/93XX-LMGJ>] [hereinafter LAWS, RESOLUTIONS, AND POLICIES]. For a discussion of how two categorically distinctive sanctuary policies emerge between 2001 and 2005 yet are often problematically conflated together into a single dataset, *see also* infra Section II. As we point out, this problem occurs with the National Immigration Law Clinic dataset, which is the primary dataset used by scholars examining sanctuary policies.

93. The fifty-four local jurisdictions in their dataset span twenty-one states, with a majority falling under states with pro-immigrant policies (thirteen of the policies are in California, and six of the policies are in Massachusetts). To test their claims about criminal activity, they collect city-level data from the U.S. Census, including population size, age, gender, education, income, ethnicity, and citizenship status, that might influence criminal activity or the selection decision by a city to become a sanctuary city. They then “genetically match” sanctuary policies in the same states to control for these variables and statistically test the differences between sanctuary and non-sanctuary jurisdictions on the matching variables, showing that there are no differences between the two. *See* Gonzalez et al., *supra* note 7, at 29.

94. Wong defines sanctuary counties “as counties that do not assist federal immigration enforcement officials by holding people beyond their release date on the basis of immigration detainers” and non-sanctuary counties as “those that comply with immigration detainer requests” based on this proxy. The ICE dataset codes 2,492 counties, 608 of which are defined by ICE as sanctuary jurisdictions according to their “Current Detainer/Notification Acceptance Status,” which Wong explains captures “92.2 percent of the total U.S. population and 95.3 percent of the total foreign-born population in the United States.” *See* WONG, THE EFFECTS OF SANCTUARY POLICIES, *supra* note 7, at 4.

95. *See id.* at 1.

96. *See id.*

inclusion or punitive exclusion of undocumented immigrants.⁹⁷ This use of policy-data parallels the network typology developed by Villazor and Gulasekaram,⁹⁸ but provides an even broader snapshot of the orientation each state and locality have towards undocumented immigrants by including all integration and sanctuary policies together.⁹⁹

Unlike the empirical works by Wong, and Gonzales, Collingwood, and El-Khatib, which focus on a causal relationship between sanctuary policy and crime, research designed to explain policy development can theorize causal mechanisms that disconnect sanctuary policies from their deeper constitutional foundations. This happens when the mechanism mirrors the resistance only narrative. For example, Pham and Van argue that a “Trump Effect” explains the dramatic rise in protective states and local policies.¹⁰⁰ However, arguing that the dramatic policy expansions made in 2017 were primarily driven by resistance to President Trump disconnects sanctuary policies from longer developments occurring in immigrant rights at the state and local levels, and places Tenth Amendment concerns front-and-center over the other constitutional concerns directly related to immigrant rights. This disconnection from immigrant rights results in a hollow understanding of sanctuary policies. Policy development explanations, like the legal typologies developed by Motomura,¹⁰¹ and Lasch, Chan, Eagly, Haynes, Lai, McCormick, and Stumpf,¹⁰² are more effective as a counter to the resistance only critique when they are historically and constitutionally grounded.

II. SANCTUARY POLICY DEVELOPMENT

This Part develops a periodization scheme to make sense of the origin and spread of sanctuary policies using an original dataset with more than 800 sanctuary policies.¹⁰³ To reveal finer-grained

97. See Huyen Pham & Pham Hoang Van, *Subfederal Immigration Regulation and the Trump Effect*, 93 N.Y.U. L. REV. (forthcoming 2019); see also *infra* Section II.

98. Villazor & Gulasekaram, *Sanctuary Networks*, *supra* note 1.

99. Pham & Van, *supra* note 97.

100. *Id.*

101. Motomura, *Arguing About Sanctuary*, *supra* note 1.

102. See Lasch et al., *Understanding “Sanctuary Cities”*, *supra* note 1.

103. See Colbern, *Today’s Runaway Slaves*, *supra* note 37 (unpublished manuscript) (on file with author); Allan Colbern, *Sanctuary Policy Dataset* (2019) (on file with author). To create our original dataset, we merged four existing databases that trace sanctuary policy enactments and conducted online research using

constitutional and federalism features, we place sanctuary policies into temporal categories, like the legal typologies,¹⁰⁴ from 1979 to 2018.¹⁰⁵ Our policy data focuses only on formally enacted sanctuary policies, similar to Gonzales, Collingwood, and El-Khatib's dataset,¹⁰⁶ but is constructed with different analytical goals. Their methodology treats all sanctuary policies enacted from 2002 to 2008 as homogenous in order to test for a causal effect on crime,¹⁰⁷ whereas our dataset is employed in this Article to reveal policy variation from 1979 to 2018.¹⁰⁸ We only include policies that we are able to identify, catalogue, and qualitatively categorize into distinctive periods based on variations between policies.¹⁰⁹

Our approach focuses on patterns in sanctuary policy development over large spans of time.¹¹⁰ For example, a Trump effect emerges in 2017.¹¹¹ Qualitative analysis showing the connection between jurisdictions passing multiple policies before and after 2017, however, grounds the Trump effect as endogenous to the immigrant rights

LexisNexis, ProQuest, and Google search engines to identify and download sanctuary policies. For the four databases that were merged together, see Bryan Griffith & Jessica M. Vaughan, *Maps: Sanctuary Cities, Counties, and States*, CTR. IMMIGR. STUD. (last updated Apr. 16, 2019), <https://cis.org/Map-Sanctuary-Cities-Counties-and-States> [<https://perma.cc/QGU7-7FVD>]; Lasch et al., *supra* note 1; LAWS, RESOLUTIONS, AND POLICIES, *supra* note 92; *Resolutions and Ordinances Critical of the USA PATRIOT Act and Other Laws and Policies that Diminish Civil Liberties*, OBSERVATORIO DE LEGISLACIÓN Y POLÍTICA MIGRATORIA (Oct. 26, 2004), http://observatoriocolef.org/_admin/documentos/Ordinances%20patriot%20act..pdf [<https://perma.cc/G5FA-DWC3>]. When merging the four existing datasets, we focused only on identifying policies enacted by governments and law enforcement agencies, included only accessible policies that could be downloaded and coded, and removed policies that were misclassified by the datasets as a sanctuary policy.

104. See, e.g., Lasch et al., *Understanding "Sanctuary Cities"*, *supra* note 1.

105. See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

106. See Gonzalez et al., *supra* note 7.

107. See *id.* at 33; see also Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

108. See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

109. *Id.*

110. *Id.*

111. See Pham & Van, *supra* note 97, at 2. Sixty-eight local government sanctuary policies were enacted in 2017, which far exceeded all other years from 1979 to 2018 by over forty-four policies (with twenty-four local government sanctuary policies enacted in 2006 being the second largest spread in a single year). See Colbern, *Today's Runaway Slaves*, *supra* note 37 (unpublished manuscript) (on file with author); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author). More policies were enacted under President Trump, but these emerged primarily from progressive jurisdictions that had previously enacted sanctuary and other integration policies, well before the national elections in 2016.

movement occurring within states and localities.¹¹² We argue that examining sanctuary policy development from historical and comparative vantage points ensures that theorized causal mechanisms are not simplified into a resistance-only explanation.¹¹³ Part II of this Article builds on immigration federalism scholarship to unpack how federalism dynamics, court decisions, political parties, and social movements combine together to shape sanctuary policy development.¹¹⁴

Our policy development approach provides a new framework for thinking about how existing typologies link to state and local immigrant rights movements. The two periods of immigration related sanctuary developments (1979–1995 and 1996–2018) fundamentally differ from sanctuary development period related to the USA PATRIOT Act (the “Patriot Act”) (2001–2005).¹¹⁵ The sanctuary movement first led by churches grew into an immigrant rights movement by the mid-1980s, with churches partnering with immigrant rights organizations and state and local officials to enact local and state sanctuary policies.¹¹⁶ An even more robust immigrant rights movement has emerged today that builds on many of the organizations that fought for immigrants in the 1990s and that began to gain legislative traction at the state and local levels after 2005.¹¹⁷ The Patriot Act-focused second sanctuary period is mostly unconnected to the focus on immigration law in the first and third periods of development.¹¹⁸ Sections II.A., II.B., and II.C. of this Article place sanctuary policies into distinctive periods and in dialogue with immigration federalism scholarship to explain their development.¹¹⁹

112. *See infra* Section II.C.

113. *See infra* Part II.

114. *See infra* Part II.; *see also* COLBERN & RAMAKRISHNAN, *supra* note 8; GULASEKARAM & RAMAKRISHNAN, *supra* note 8; TAKING LOCAL CONTROL: IMMIGRATION POLICY ACTIVISM IN U.S. CITIES AND STATES (Monica W. Varsanyi ed., 2010).

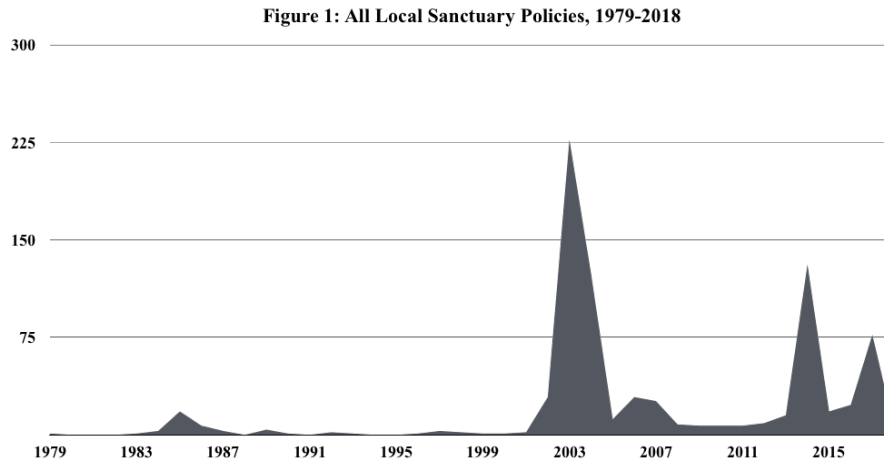
115. *See infra* Sections II.A., II.B., and II.C.

116. Norma Stoltz Chinchilla et al., *The Sanctuary Movement and Central American Activism in Los Angeles*, 36 LATIN AM. PERSPECTIVES 101, 101–03 (2009).

117. *See* COLBERN & RAMAKRISHNAN, *supra* note 8; Allan Colbern & S. Karthick Ramakrishnan, *Citizens of California: How the Golden State Went from Worst to First on Immigrant Rights*, NEW POL. SCI., Apr. 2018, at 1, 2; S. Karthick Ramakrishnan & Allan Colbern, *The California Package: Immigrant Integration and the Evolving Nature of State Citizenship*, 6 POL’Y MATTERS, no. 3, Spring 2015, at 10 [hereinafter Ramakrishnan & Colbern, *The California Package*].

118. *See infra* Section II.B.

119. *See infra* Section II.A., II.B., and II.C.



Local governments and local law enforcement passed 806 sanctuary policies between 1979 and 2018.¹²⁰ We merged four existing databases that trace sanctuary policy enactments along with additional policies through original research of online news article searches, which together were used to identify and catalogue all accessible sanctuary policies for qualitative coding using Nvivo software.¹²¹ Our coding of each sanctuary policy for this Article included determining: whether it was a resistance to immigration law or to the Patriot Act; which groups were being protected with a focus on United States citizens, all city residents, and specific immigrant sub-groups (e.g., asylum seekers, undocumented immigrants); and specific references to resisting or supporting federal and state policies.¹²²

Through this coding scheme, we are able to map the spread of three distinctive sanctuary policy developments: the first period (1979–1995) and third period (1996–2018) are temporally connected and similarly focused on resistance to immigration law; the second period (2001–2005) overlaps temporally with the third period, but is

120. 806 total sanctuary policies were enacted: 265 by local governments opposing immigration law, 180 by local law enforcement agencies opposing immigration law, and 361 by local governments opposing the USA Patriot Act. See Colbern, Today's Runaway Slaves, *supra* note 37 (unpublished manuscript) (on file with author); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

121. See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

122. *Id.*

focused on resistance to the Patriot Act (not immigration law).¹²³ It is important to note that protections afforded to undocumented immigrants by 2018 are far more robust than those given in 2006, but they are part of the same period.¹²⁴ The third period has three moments where major expansions in policy occur and evolves from prioritizing certain classes of undocumented immigrants to protecting all undocumented residents regardless of their criminal status.¹²⁵ Unpacking these evolutions in protection places our political development approach into conversation with already developed legal typologies.¹²⁶

A. Period 1: 1979–1995 Sanctuary from Immigration Law

The Refugee Act of 1980 brought U.S. law in line with international human rights standards, specifically with the 1951 United Nations Convention and the 1967 Protocol Relating to the Status of Refugees.¹²⁷ The growing refugee crisis¹²⁸ from Central

123. The temporal overlap of qualitatively distinctive sanctuary policy developments that we highlight has not yet been recognized by scholars using sanctuary policy-data. Yet, it has important consequences for how sanctuary policies are examined, especially explaining their timing and sequencing over time. For example, the Gonzalez dataset includes 2 sanctuary policies enacted in Alaska (Anchorage (2003) and Sitka (2003)) that resist the US Patriot Act, not immigration law. The language used in the sanctuary policy of Anchorage focuses on the rights of citizens, not asylum seekers or undocumented immigrants (“the Anchorage Assembly reaffirms its support of the government of the United States of America in its campaign against terrorism, and affirms its commitment that the campaign not be waged at the expense of essential civil rights and liberties of citizens of this country contained in the United States Constitution and the Bill of Rights”). See Res. No. 2003-223 (Anchorage Mun. Assembly, Alaska 2003); Res. No. 03-886 (City of Sitka, Alaska 2003). Our dataset places these two particular policies into the second period of development (2001-2005) as qualitatively distinct from immigrant rights movements and resistance to immigration law enforcement. See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

124. For further analysis on this particular period, see *infra* Section II.C.

125. See *infra* Section II.C.

126. See, e.g., Lai & Lasch, *supra* note 1; Villazor & Gulasekaram, *Sanctuary Networks*, *supra* note 1. For a greater discussion on these legal typologies, see also discussion *supra* Section I.A.

127. Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102 (1980) (codified in scattered sections of 8 U.S.C.); Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (entered into force Oct. 4, 1967); G.A. Res. 429 (V) (Dec. 14 1950).

128. The status of Central Americans and battle over asylum was politically animated, particularly over the distinction between refugees, asylum seekers, and unauthorized immigrants. Refugees largely reside in camps outside U.S. territory (for example, World War II’s Displaced Persons or today’s Syrian refugees), where they are vetted for an extended period of time. Asylees enter U.S. territory and seek

America in the early 1980s fit the newly enacted Refugee Act, which was modeled after the Convention's "well-founded fear of persecution" standard.¹²⁹ Despite this transformation in refugee policy, President Reagan's foreign policy goals in opposition to leftist revolutionary movements specific to Central America caused the administration to officially consider Central Americans as economic migrants, who were unlawfully residing in the United States.¹³⁰ Denying Central American migrants recognition as refugees was a foreign policy choice made by the Reagan administration intended to mask the link between the United States foreign military aid and the civil wars in Central America.¹³¹ Throughout the 1980s, the U.S. government continued to deny political asylum to Central American applicants on the basis that they were fleeing economic stagnation and generalized conditions of violence, not political persecution.¹³²

asylum as entrants making their claims on U.S. soil. Undocumented immigrants reside inside U.S. territory without authorization by the federal government. Throughout this Article, we use all three terms interchangeably to highlight the contentiousness of Central American's status inside the U.S. that was at the heart of the sanctuary movement, but mostly refer to them as refugees. Civil wars and violence in Nicaragua, El Salvador, Guatemala and Honduras led to large-scale migration, beginning slowly from 1970 to 1979 with an average of 7834 migrants entering the United States per year, which grew dramatically in the 1980s and peaked with 136,000 migrants entering unlawfully in 1990, with an estimated 450,000 undocumented migrants entering from 1980–1995. *See generally* Douglas S. Massey, *Children of Central American Turmoil and the U.S. Reform Impasse*, SCHOLARS STRATEGY NETWORK (Aug. 2, 2014).

129. *See* Refugee Act of 1980 § 101 (describing the "fear of persecution" standard).

130. *See* GARCIA, *supra* note 88, at 84.

131. Revolutions led to violent civil wars that devastated the economic infrastructure and displaced millions. In Nicaragua, the Sandinista Revolution of 1979, a leftist movement that overthrew a repressive Anastasio Somoza government, sparked a civil war. President Jimmy Carter sought to work with the Sandinista regime, but these efforts ended in 1981 when President Reagan aimed to overthrow the Sandinista regime by sending military aid and helping train the Contras, a right-wing militant group. The Reagan administration also funded right-wing leaders of El Salvador, Guatemala, and Honduras to prevent leftist revolutions from spreading, exacerbating civil wars in these countries. Central Americans in all four countries fled north to Mexico, the United States, and Canada to escape violence and economic catastrophe. *See id.*

132. A class action lawsuit was filed in 1981 on behalf of Salvadorans and Guatemalans detained at the INS facility at Los Fresnos, Texas, on the grounds that they were denied basic rights, including the right to legal counsel. The court issued an injunction in January 1982 prohibiting the INS from denying detainees their rights. *See Nunez v. Boldin*, 537 F. Supp. 578, 581 (S.D. Tex. 1982). Salvadoran plaintiffs initiated a nationwide challenge to the adjudication process and claimed that they had fled political persecution in hopes of finding refuge in the United States and were denied procedural and substantive rights, including the INS failing to advise detainees of their rights to counsel, to apply for asylum, to have a hearing before

The United States' church sanctuary movement to harbor and aid refugees and asylum seekers emerged as a reaction to federal policy, which preserved a temporary protected status almost exclusively for migrants fleeing communist regimes or governments viewed as hostile to United States interests.¹³³ On March 24, 1982, Southside Presbyterian Church in Tucson, Arizona and five churches in Berkeley, California, publicly declared themselves as sanctuaries for Central American refugees,¹³⁴ who the federal government deemed unlawfully present, and led the country into a new sanctuary movement.¹³⁵ Over the short span of a few years, the sanctuary movement developed into a national network of churches and synagogues that harbored and transported Central Americans, protecting them from deportation.¹³⁶ An estimated forty-five church sanctuaries were declared in 1983, which grew to over three hundred by 1987.¹³⁷

1. Church Sanctuary Movement

The church-based sanctuary movement originated in 1981 with Jim Corbett, a Quaker goat rancher in Tucson, Arizona, who assisted Central Americans in crossing the U.S. border unlawfully.¹³⁸ Federal officials routinely forced asylum-seekers, who lacked legal assistance, to sign voluntary departure forms, which led to their deportation back to Central America.¹³⁹ Corbett therefore sought to facilitate access to asylum by connecting with the Manzo Area Council in Tucson and forming the Tucson Ecumenical Council Task Force on Central America (TEC), both of which aided refugees detained by

deportation, and coercing them to accept "voluntary departure." The court issued a temporary injunction against the INS. *See Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 354 (C.D. Cal. 1982). In 1988, the court issued a permanent injunction against the INS. *See Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1505 (1988); *see also* Susan Bibler Coutin, *Falling Outside: Excavating the History of Central American Asylum Seekers*, 36 L. & SOC. INQUIRY 569, 574 (2011).

133. President Reagan and GOP allies in Congress considered Central Americans in the 1980s, specifically those fleeing Nicaragua, El Salvador, Guatemala, and Honduras, not as refugees welcomed under the Refugee Act of 1980, but rather, as economic migrants who unlawfully entered the U.S. and were subject to removal. *See* Coutin, *supra* note 132, at 576.

134. GARCIA, *supra* note 88, at 99.

135. *Id.*

136. *See id.* at 99–100.

137. Chinchilla et al., *supra* note 116, at 106–07.

138. GARCIA, *supra* note 88, at 98.

139. *See* PIERRETTE HONDAGNEU-SOTELO, GOD'S HEART HAS NO BORDERS: HOW RELIGIOUS ACTIVISTS ARE WORKING FOR IMMIGRANT RIGHTS 144–45 (2008).

Immigration and Naturalization Service (INS) at the border by posting bonds for their release, offering legal assistance in deportation hearings, and preparing asylum applications.¹⁴⁰

On June 26, 1981, Corbett had taken three Salvadoran refugees into the Tucson INS office to apply for political asylum, with the understanding that INS allowed asylum applicants to go free while their applications were being reviewed, if they were under the custody of a local minister.¹⁴¹ William Johnson, Tucson INS director, instead ordered them to be arrested and set their bail at \$3,000 each, a significant increase from previous bail amounts.¹⁴² Moreover, INS director Johnson said that he was under orders from the State Department not to grant asylum to Salvadorans and that all applicants in the future would be arrested and sent to El Centro, the local jail.¹⁴³ Realizing that he was unable to work with INS directly to fight for asylum under federal law, Corbett turned to a strategy of grassroots resistance.¹⁴⁴ This incident sparked the church sanctuary movement.¹⁴⁵

Corbett approached members of the Tucson community, including Southside Presbyterian minister John Fife, about building up a local network of safe houses, and began building contacts in Mexico to provide temporary housing and help aid in the illegal transportation of refugees across the Mexico-U.S. border.¹⁴⁶ In November 1981, the Church voted in favor of serving as a safe house for Central American refugees.¹⁴⁷ A few months later, in January 1982, Southside voted fifty-nine to two in favor of becoming a sanctuary by secret ballot, which shielded sanctuary workers from the anti-harboring provision of federal immigration law.¹⁴⁸ As part of its moral resistance to federal policy, Southside set March 24, 1982 as the date they would publicly declare themselves a sanctuary.¹⁴⁹ This date was symbolic because it was the second anniversary of the assassination of Oscar Romero, Archbishop of San Salvador and vocal critic of U.S. refugee

140. *Id.* at 144; see CHRISTIAN SMITH, RESISTING REAGAN: THE U.S. CENTRAL AMERICA PEACE MOVEMENT 64–65 (2010).

141. SMITH, *supra* note 140, at 64.

142. *See id.*

143. *Id.* at 65.

144. *See* GARCIA, *supra* note 88, at 98.

145. SMITH, *supra* note 140, at 59–86.

146. *Id.* at 98–99.

147. *Id.* at 99.

148. *Id.* at 67, 99; see also 8 U.S.C. § 1324(a) (1982) (establishing that bringing in, transporting, and harboring aliens in the United States is a violation of the law).

149. GARCIA, *supra* note 88, at 99.

policy.¹⁵⁰ This choice linked the church's declaration of sanctuary to an international movement opposing U.S. foreign policy, because Romero was a visible figure who urged Presidents Carter and Reagan to end their military aid to the Salvadoran army, which he considered to be responsible for the civil war.¹⁵¹

An effective sanctuary movement required a network of safe houses across the United States and international borders. Corbett and task force members sent "Dear Friend" letters¹⁵² to congregations and over five hundred Quaker meetings throughout the country, asking them to join the movement. Corbett wrote: "if Central American refugees' rights to political asylum are decisively rejected by the U.S. government or if the U.S. legal system insists on ransom that exceeds our ability to pay, active resistance will be the only alternative to abandoning the refugees to their fate."¹⁵³ Between January and March 1982, five churches in Berkeley, California, and a few churches in Los Angeles, California, Washington, D.C., and Lawrence, New York, agreed to declare sanctuary.¹⁵⁴ In addition to the growing church sanctuary movement, activists placed pressure on federal officials to change their asylum policy towards Central Americans. In a letter to U.S. Attorney General William French Smith, Fife explained:

We take this action because we believe the current policy and practice of the US government with regard to Central American refugees is illegal and immoral. We believe our government is in violation of the 1980 Refugee Act and international law by continuing to arrest, detain, and forcibly return refugees to terror, persecution, and murder in El Salvador and Guatemala.¹⁵⁵

Meanwhile, Tucson sanctuary leaders contacted media outlets to spread their statement against federal policy nationwide and to make the March 24 sanctuary declarations a national event.¹⁵⁶

The movement took on a new national presence in 1982 when the Chicago Religious Task Force on Central America (CRTFCA) joined

150. *See id.* at 20–23.

151. *See id.* at 21.

152. SMITH, *supra* note 140, at 63 (explaining that Corbett wrote a series of "Dear Friend" letters to over five hundred Quaker meetings explaining the plight of the refugees and criticizing INS practices of deporting refugees without legal counsel).

153. *Id.* at 63–64.

154. *Id.* at 67; GARCIA, *supra* note 88, at 99.

155. GARCIA, *supra* note 88, at 99.

156. *Id.*

and took over coordinating efforts to grow the movement.¹⁵⁷ In addition to coordinating the transportation and placement of refugees at churches and houses throughout the United States, the Chicago Task Force printed and distributed various “nuts-and-bolts” manuals for sanctuary organizers with detailed instructions on every phase of the process and how to use it as a political tool.¹⁵⁸ While church sanctuaries were decentralized and local in nature, the Chicago Task Force provided organization and a strategic roadmap for growing the number of churches from Southwestern to Midwestern states.¹⁵⁹

By early 1983, there were forty-five sanctuary churches and synagogues throughout the country and six hundred secondary sanctuary groups that endorsed the movement but were not actively involved in harboring.¹⁶⁰ This increased to 150 churches by mid-1984 with eighteen national religious denominations and commissions endorsing the movement.¹⁶¹ In 1985, 250 churches declared sanctuary and the Central Conference of American Rabbis endorsed the Sanctuary movement, including its civil disobedience strategies.¹⁶² By 1985, the movement had also grown from secular institutions to include universities and state and local governments.¹⁶³

2. Moral Activism Evolves into Federalism Conflict Over Policy

Concurrent to their grassroots efforts, sanctuary leaders built up a national coalition with U.S. Senators and Representatives in states that directly experienced the rise of Central American asylum seekers and where church sanctuaries had formed. Congressional leaders spearheaded efforts to reform national policy, first through pressuring the White House to grant Central Americans “extended voluntary departure,” followed by passing legislation to provide “temporary protected status.”¹⁶⁴ Sanctuary activism evolved into two distinctive national policy areas. On foreign policy, activists connected the international Central American Peace Movement through their

157. Chinchilla et al., *supra* note 116, at 106.

158. *Id.*

159. *See id.*

160. *Id.*

161. *Id.* at 107.

162. *Id.*

163. *Id.*

164. GARCIA, *supra* note 88, at 89, 112 (“Extended Voluntary Departure, or EVD, is a discretionary status given to a group of people when the State Department determines that conditions in the sending country make it is dangerous for them to return.”); *see also* 8 U.S.C. § 1229(c) (2018) (providing background on voluntary departure).

Democratic Congressional allies to pressure President Reagan's administration to end its policy of U.S. military involvement and aid in Central America.¹⁶⁵ On federal law, activists merged their local sanctuary cause with ongoing bipartisan efforts to pass comprehensive immigration policy. Until 1985, activists saw federal law as a viable and ideal option, but repeated failure to change presidential policy or pass legislation led them to reconsider local and state sanctuary policies.

The first federal reform effort began in April 1981. Representative Ted Weiss (D-NY), joined by 31 sponsors, introduced HR 126, "expressing the sense of the House of Representatives that extended voluntary departure status should be granted to El Salvadorans in the United States whose safety would be endangered if they were required to return to El Salvador."¹⁶⁶ One year later, Senator Dennis DeCocinni (D-AZ), introduced a Senate version of the resolution, SR 336, to the Senate Subcommittee on Immigration and Refugee Policy, along with co-sponsor Senator Daniel Patrick Moynihan (D-NY).¹⁶⁷ The two non-binding Congressional resolutions were a display of Democratic support for the sanctuary movement, with the goal of pressuring President Reagan to grant early voluntary departure (EVD) status to Salvadoran asylum seekers. Democratic allies of the sanctuary movement called on the Secretary of State, after passing the resolutions, to recommend to the Attorney General that asylum seekers from El Salvador be granted EVD status.¹⁶⁸

Reagan responded in 1981 by creating a Task Force that not only recommended the administration to continue resisting EVD, but also warned Reagan of the "demographic consequences" of Latin American immigration.¹⁶⁹ Representative John Joseph Moakley (D-MA) sent letters to President Reagan in 1982, challenging the President to change his policy on El Salvador. He referenced a United Nations Human Rights Commission report, estimating that over 9000 political murders had occurred in El Salvador in 1981 alone, and called U.S. foreign policy "unconscionable."¹⁷⁰ All non-

165. See GARCIA, *supra* note 88, at 93; SMITH, *supra* note 140, at 92.

166. H.R. Res. 126, 97th Cong (1981).

167. S. Res. 336, 97th Cong. (1982).

168. GARCIA, *supra* note 88, at 96.

169. *Id.* at 203 n.28.

170. Letter from John Joseph Moakley, Member, House of Representatives, to Ronald Reagan, President of the United States (Feb. 1, 1982) (on file with Suffolk University, Moakley Archive & Institute, Series 03.04 Legislative Assistant Files: Jim McGovern, Box 1 Folder 1 (shelf locator)).

binding efforts to pressure President Reagan into changing his stance failed, causing Democratic allies of the sanctuary movement to change strategy.

After failing to change presidential policy, Senator DeConcini and Representative Moakley introduced House Resolution 822 and Senate Bill 377 in 1985, both asking for Congressional review of the crisis and to grant Salvadoran asylum seekers temporary stay of deportation.¹⁷¹ DeConcini and Moakley's legislative efforts were not put up for a vote, but they were able to add EVD to the omnibus Immigration Reform and Control Act (IRCA).¹⁷² However, IRCA passed without a solution to the refugee crisis because President Reagan threatened to veto the bill in 1985 if a provision allowing for EVD status to Central Americans was not removed.¹⁷³ This further exacerbated the refugee crisis. The newly enacted immigration law created federal sanctions on employers for hiring undocumented workers, an amnesty program for undocumented immigrants who entered the country prior to January 1, 1982, a guest worker program, and funding for border enforcement.¹⁷⁴ Since the majority of Central Americans arrived in the United States after 1982, this made them ineligible for amnesty and employment in the United States.¹⁷⁵

Concurrent to the federal reform efforts, city governments with direct ties to church sanctuary began to get involved. On June 7, 1983, Madison, Wisconsin passed the first city resolution commending the local St. Francis House and associated congregation "for their compassion and moral courage in providing sanctuary to refugees from El Salvador and Guatemala."¹⁷⁶ The following year, in response to an immigration raid conducted by INS, San Jose, California moved to limit local officials including law enforcement from partnering with INS on raids or enforcing immigration laws.¹⁷⁷ The sanctuary policy

171. H.R. Res. 822, 99th Cong. (1985); S. 377, 99th Cong. (1985).

172. DANIEL J. TICHENOR, *DIVIDING LINES: THE POLITICS OF IMMIGRATION CONTROL IN AMERICA* 267 (2002); see generally Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986).

173. TICHENOR, *supra* note 172, at 267.

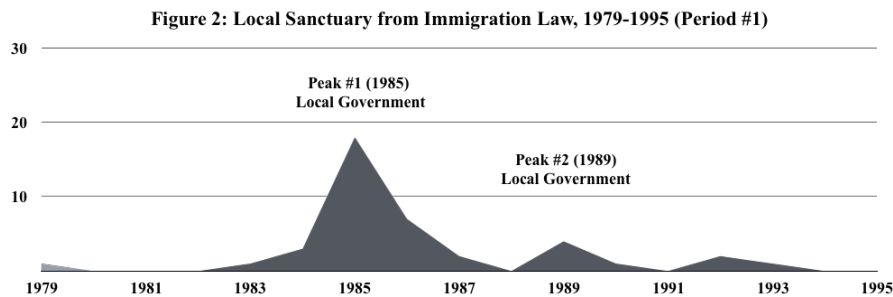
174. 100 Stat. at 3360, 3381, 3394 (1986); GARCIA, *supra* note 88, at 90.

175. GARCIA, *supra* note 88, at 91; Lydia Chavez, *Refugee Wave Creates a Crisis in Border City*, N.Y. TIMES (Feb. 28, 1987), <http://www.nytimes.com/1987/02/28/nyregion/refugee-wave-creates-a-crisis-in-border-city.html> [<https://perma.cc/3QPS-YRM2>].

176. Res. 39,105 (Madison, Wis. 1983); see also Colbern, *Today's Runaway Slaves*, *supra* note 37, at 176 (unpublished manuscript) (on file with author); Colbern, *Sanctuary Policy Dataset*, *supra* note 103 (on file with author).

177. See *Understanding "Sanctuary Cities" — Online Appendix*, WESTMINSTER LAW LIBRARY, <http://libguides.law.du.edu/c.php?g=705342&p=5009807>

movement spread and peaked in 1985, with eighteen cities in ten different states.¹⁷⁸ Between 1985 and 1987, four states passed a form of state-wide sanctuary that ended their cooperation with INS investigations or arrests of Central American refugees, pledged their support for the church moral sanctuary movement, and supported the end goal of national reform.¹⁷⁹ By the end of 1987, twenty-eight cities enacted sanctuary policies, some of which enacted more than one policy.¹⁸⁰



The growing federalism conflict explains the timing of this spread in local government sanctuary policies. It was a response in cities and states where church sanctuary were visible and INS raids were conducted, fueled by federal inaction on the refugee crisis and federal prosecution of sanctuary workers. In San Jose's motion, the city council refers to the possibility that the Immigration Reform Act of 1984 would provide national amnesty to Central Americans, but the provisions added by Senator DeConcini and Representative

[<https://perma.cc/XE3C-GN3E>] [hereinafter *Understanding "Sanctuary Cities" Appendix*] (containing San Jose's Motion concerning U.S. Immigration and Naturalization Service Enforcement Policies (Apr. 24, 1984)).

178. See Colbern, *Today's Runaway Slaves*, *supra* note 37, at 176 (unpublished manuscript) (on file with author); Colbern, *Sanctuary Policy Dataset*, *supra* note 103 (on file with author).

179. H.R. 2314, 64th Legis. Assemb. (Or. 1987); Exec. Order No. 257 (Mass., Oct. 4, 1985); *New Mexico Is Declared Sanctuary for Refugees*, N.Y. TIMES (Mar. 30, 1986), <https://www.nytimes.com/1986/03/30/us/new-mexico-is-declared-sanctuary-for-refugees.html> [<https://perma.cc/7EUA-LAXA>]; Res. No. 1457 (N.Y.S. Assembly, N.Y. 1986); *Inventory of the New Mexico Sanctuary Defense Committee Collection, 1986-1988*, ROCKY MOUNTAIN ONLINE ARCHIVES (2000), <https://rmoa.unm.edu/docviewer.php?docId=nmar1988-054.xml#idp1604624> [<https://perma.cc/5X3C-ZKH3>] (noting the establishment of the New Mexico Sanctuary Defense Committee in 1987).

180. GARCIA, *supra* note 88, at 107.

Moakley were removed in 1986 under Reagan's threat to veto the bill.¹⁸¹

The federal government also began to prosecute and criminally charge church sanctuary workers for illegally transporting and harboring Central Americans. The INS led a year-long covert investigation called Operation Sojourner from 1984 to 1985, where informants worked undercover with Arizona-based church sanctuaries in order to gather evidence and details about the workers.¹⁸² This operation led to the Tucson Trials in January 1985, where U.S. prosecutor Donald Reno successfully blocked all evidence relating to defendants' religious and humanitarian motives, U.S. foreign policy, human rights abuses, and the asylum process.¹⁸³ This ruling prevented the defense team from arguing that the sanctuary workers were aiding Central Americans in accessing asylum, and the court considered only their role in transporting and harboring illegal immigrants.¹⁸⁴ The federal prosecutor portrayed the sanctuary movement as a "criminal venture" rather than "church-based ministry."¹⁸⁵ This fueled church activists to turn their moral cause into a federalism conflict rooted in city sanctuary policies that were shielded under the Constitution.

3. Shared Features of Sanctuary Policies

In the 1980s, state and local sanctuary policies shared many features. They highlighted the United States' obligation to help *all* refugees under the Refugee Act of 1980, made explicit solidarity with churches and private citizens' sanctuary movements, and connected sanctuary to America's national heritage. The primary change that occurred from church sanctuary, which was largely underground in operation but highly publicized as a moral opposition to federal policy, was that government sanctuary policies at the state and local levels directly resisted enforcement of federal immigration law by limiting its capacity. Unlike church sanctuary, government sanctuary

181. *Understanding "Sanctuary Cities" Appendix, supra* note 177.

182. Kristina M. Campbell, *Operation Sojourner: The Government Infiltration of the Sanctuary Movement in the 1980s and its Legacy on the Modern Central American Refugee Crisis*, 13 U. ST. THOMAS L.J. 474, 480 (2017).

183. GARCIA, *supra* note 88, at 106.

184. *Id.* at 106–07.

185. Bill Curry, *8 of 11 Activists Guilty in Alien Sanctuary Case: Defiant Group Says 6-Month Trial Hasn't Ended Movement to Help Central American Refugees*, L.A. TIMES (May 2, 1986), <https://www.latimes.com/archives/la-xpm-1986-05-02-mn-3211-story.html> [<https://perma.cc/LFD8-EHG2>].

was considered a constitutionally legitimate form of resistance where government officials could provide services and aid to undocumented residents without the same threat of federal prosecution that was placed over church sanctuary workers.

Most city sanctuary policies included provisions prohibiting city employees and departments from requesting or sharing information on immigration status, and from using legal immigration status as a condition for receiving municipal benefits. Berkeley, California's 1985 resolution encouraged residents of the city to "work with the existing sanctuaries to provide the necessary housing, transportation, food, medical aid, legal assistance and friendship" to Central Americans.¹⁸⁶ Its policy also barred city officials and employees from partnering with INS to enforce federal immigration law and barred them from interfering in the work of church sanctuaries or provision of public services to "Central American refugees."¹⁸⁷ Similarly, Chicago's 1985 executive order encouraged "equal access by all persons residing in the City of Chicago, regardless of nation of birth or current citizenship, to the full benefits, opportunities and services, including employment and the issuance of licenses, which are provided or administered by the City of Chicago."¹⁸⁸ It also stated that "[n]o agent or agency shall request information about or otherwise investigate or assist in the investigation of the citizenship or residency status of any person," and that "[n]o agent or agency shall disseminate information regarding the citizenship or residency status of any person."¹⁸⁹ A few cities, including Duluth, Minneapolis, and Ithaca, New York, included requests that the INS notify advocacy organizations of any arrests of Central Americans made within their city.¹⁹⁰

186. Res. 52,596 (Cty. Council of Berkeley, Cal. 1985); *see also* Colbern, Today's Runaway Slaves, *supra* note 37, at 175, 177 (unpublished manuscript) (on file with author); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

187. Res. 52,596 (Cal. 1985); *see also* Colbern, Today's Runaway Slaves, *supra* note 37, at 175, 177 (unpublished manuscript) (on file with author); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

188. Exec. Order No. 85-1 (Chi. Ill., Mar. 7, 1985); *see also* Colbern, Today's Runaway Slaves, *supra* note 37, at 175 (unpublished manuscript) (on file with author); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

189. Exec. Order No. 85-1 (Chi. Ill., Mar. 7, 1985); *see also* Colbern, Today's Runaway Slaves, *supra* note 37, at 175 (unpublished manuscript) (on file with author); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

190. Res. 84-0485 (Cty. Council of Duluth, Minn. 1984); Res. 85R-042 (Cty. Council of Minneapolis, Minn. 1985); *see Understanding "Sanctuary Cities" Appendix, supra* note 177 (containing Ithaca's Resolution Sanctuary For Salvadoran

The significance of government sanctuary policies for the immigrant populations went well beyond severing local officials and resources from enforcing federal immigration law. They began to address issues of inequality and discrimination, and they expanded access to resources and public benefits. Sanctuary often meant an expansion of belonging by including all immigrants, regardless of their legal status. The policies also began to recognize the constitutional rights of immigrants, which would become much more pronounced in the second (1996–2018) and third (2001–2005) periods of sanctuary policy development.¹⁹¹ They alleged that the federal government violated the plaintiffs’ (the arrested sanctuary workers) First Amendment right to freely exercise their religion by infiltrating churches during Operation Sojourner, making the sanctuary workers’ arrests unlawful.¹⁹² They also alleged that the federal government’s discriminatory adjudication of Central Americans’ requests for asylum violated their Fifth Amendment rights.¹⁹³ The ABC case lasted six years before it was settled January 31, 1991, marking another important national victory for the sanctuary movement by reopening nearly 150,000 asylum cases and letting over 100,000 more Central Americans apply for new decisions.¹⁹⁴

INS v. Cardoza-Fonseca marked the first national success of the sanctuary movement, holding that an asylum applicant only needs to demonstrate a “well-founded fear” of persecution, which made the asylum process for Central American applicants more equal to that of applicants from other countries.¹⁹⁵ The Immigration Act of 1990 included a provision by Representative Moakley that offered eighteen months of Temporary Protected Status (TPS) to Salvadoran refugees and made them eligible to apply for asylum after TPS ended.¹⁹⁶ That same year, the federal government officially “agreed [to] stop detaining and deporting most [undocumented] immigrants

and Guatemalan Refugees dated July 10, 1985); *see also* Colbern, *Today’s Runaway Slaves*, *supra* note 37, at 30 (unpublished manuscript) (on file with author).

191. *See infra* Sections II.B. and II.C.

192. Carolyn Patty Blum, *The Settlement of American Baptist Churches v. Thornburgh: Landmark Victory for Central American Asylum Seekers*, 3 INT’L J. REFUGEE L. 327, 351 (1991).

193. *Id.*

194. Katherine Bishop, *U.S. Adopts New Policy for Hearings on Political Asylum for Some Aliens*, N.Y. TIMES (Dec. 20, 1990), <https://www.nytimes.com/1990/12/20/us/us-adopts-new-policy-for-hearings-on-political-asylum-for-some-aliens.html> [<https://perma.cc/P2U4-L8BJ>]; *see generally* *Am. Baptist Churches v. Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991).

195. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423–24 (1987).

196. TICHENOR, *supra* note 172, at 274.

from El Salvador and Guatemala and to adopt new procedures for their applications for political asylum.”¹⁹⁷ The Nicaraguan Adjustment and Permanent Central American Relief Act of 1997, which granted legal permanent residency to Nicaraguans and other foreign nationals so long as they were registered asylum seekers residing in the U.S. for at least five years since December 1995, marked the culmination of the sanctuary movement’s effort to reform U.S. policy by granting Central American refugees a pathway to legal permanent residency.¹⁹⁸

The enactment of sanctuary policies had generally died down as a result of reforms to the asylum process through *I.N.S. v. Cardoza-Fonseca* and federal reform to immigration law in 1990. After 1987, most new sanctuary policies were enacted by cities that had already passed a policy. Chicago passed a second executive order in 1989 that mirrored the provisions on equal access and non-enforcement of immigration law made in its first order in 1985.¹⁹⁹ Similarly, New York City’s Mayor Koch issued a second executive order in 1989 that reaffirmed his 1985 order prohibiting city officials and employees from providing information to INS about immigration status, with the exception of immigrants who had criminal records.²⁰⁰ Somerville, Massachusetts revised its 1987 sanctuary policy in 1989, adding a specific reference to the stalled federal bill, House Bill 618, proposed by its very own Congressman Moakley, which asked for an in-depth Government Accountability Office study of the conditions in Central America, especially in El Salvador, and urged Congress to apply the report’s findings in future policy reforms.²⁰¹

San Francisco passed multiple policies in the 1980s and 1990s in response to federal enforcement in the city, which expanded sanctuary in important ways. Its 1985 policy declared its support for church sanctuaries, made it clear that immigration law is a matter of federal and not local jurisdiction, and urged city officials and

197. Bishop, *supra* note 194.

198. Nicaraguan Adjustment and Central American Relief Act of 1997, Pub. L. No. 105–100, § 202, 111 Stat. 2160 (1997); *see also id.* §203.

199. Exec. Order No. 89-6 (Office of the Mayor of the City of Chi., Ill. 1989); *see also* Colbern, *Today’s Runaway Slaves*, *supra* note 37, at 176 (unpublished manuscript) (on file with author).

200. Exec. Order No. 124 (Office of the Mayor of the City of N.Y.C., N.Y. 1989); *see also* Colbern, *Today’s Runaway Slaves*, *supra* note 37, at 176 (unpublished manuscript) (on file with author).

201. Res. 150870 (Bd. of Aldermen, City of Somerville, Mass. 1989); *see also* Central American Studies and Temporary Relief Act of 1987, H.R. 618, 100th Cong. (1987).

employees not to discriminate based on immigration status, nor “jeopardize the safety and welfare of law-abiding refugees by acting in a way that may cause their deportation.”²⁰² Its 1989 policy went much further, declaring that “No department, agency, commission officer or employee . . . shall use any City funds or resources to assist in the enforcement of federal immigration law” and placed the city’s Human Rights Commission in charge of overseeing compliance with the sanctuary policy.²⁰³ Three years later, in 1992, San Francisco passed a third sanctuary policy highlighting that immigration raids and enforcement continued to be a problem for the city.²⁰⁴ It reaffirmed its sanctuary policies and added a requirement for the city police department and county sheriff’s department to provide a report to the city about its implementation of the policy and any persons they have reported to INS.²⁰⁵

B. Period 2: 2001–2005: Sanctuary from the Patriot Act

The spread of sanctuary policies between 2001 and 2005 neither focused on federal immigration law, nor intended to protect undocumented immigrants. Our dataset reveals that Period 2 is composed of 361 city government policies that far outnumber the cumulative 265 city government policies protecting Central American refugees and undocumented immigrants in the first and third periods combined.²⁰⁶ The large number of sanctuary policies emerged in a short span of time in part because of bipartisan local resistance movements against the federal government’s local orientation in fighting terrorism after September 11, 2001.²⁰⁷ The Patriot Act threatened citizens and non-citizens alike with federal surveillance

202. Res. 1087-85 (Bd. of Supervisors, S.F., Cal. 1985); *see also* Colbern, Today’s Runaway Slaves, *supra* note 37, at 189 (unpublished manuscript) (on file with author).

203. Res. 375-89 (Bd. of Supervisors, S.F., Cal. 1989); *see also* Colbern, Today’s Runaway Slaves, *supra* note 37, at 190 (unpublished manuscript) (on file with author).

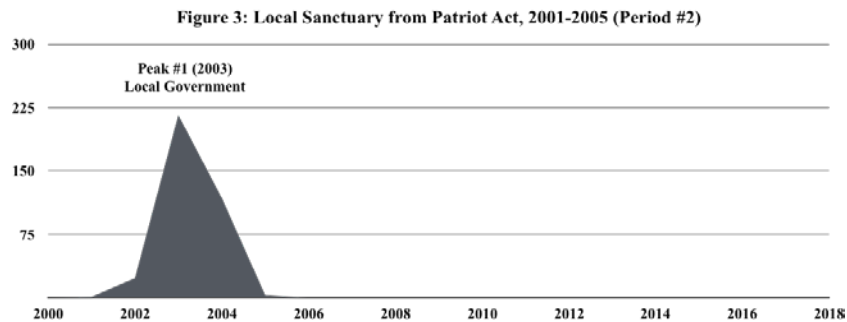
204. Res. 282-92 (Bd. of Supervisors, S.F., Cal. 1992).

205. Res. 282-92 (Bd. of Supervisors, S.F., Cal. 1992).

206. Note that a total of 445 sanctuary policies were enacted between Periods 1 and 3 to protect immigrants of varying legal statuses, when combining local government and local law enforcement policies together. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

207. Our dataset highlights that both Democratic and Republican controlled states and localities enacted sanctuary policies during the second period. This starkly contrasts with policies falling within the first and third periods, which originate from mostly Democratic states and localities. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

and local enforcement initiatives.²⁰⁸ Republican and Democratic states and cities across the country responded by enacting similar sanctuary policies as the 1980s, but tailored them towards resisting the Patriot Act.²⁰⁹ Some protected only U.S. citizens, while others protected all residents including undocumented immigrants, but the vast majority used vague language of protecting all local residents without the mention of citizenship or legal immigration status.²¹⁰



In the months after the 9/11 terrorist attacks, Congress unilaterally passed the Patriot Act with bipartisan support, with provisions that gave local law enforcement the ability to bypass alerting suspects of impending warrants or searches, and providing them easier access to warrants to search businesses and business records.²¹¹ This raised deep constitutional concerns over the rights of citizens and non-citizens alike. The Patriot Act also sought to increase information sharing between local law enforcement and federal government agencies and to enhance surveillance technology to fight against online threats.²¹²

Unlike the 1980s, the local response to the Patriot Act was not fueled by a church movement in the beginning. States and cities

208. *See generally* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

209. *See infra* Section II.B.2.

210. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

211. USA PATRIOT Act § 213 (authorizing delayed notice of the execution of criminal search warrants).

212. *See* U.S. DEPT. OF JUSTICE, THE USA PATRIOT ACT: PRESERVING LIFE AND LIBERTY (2003), <https://www.justice.gov/archive/ll/highlights.htm> [<https://perma.cc/MEAS-AERZ>].

across the country responded with pressure to change federal law and passed 361 local government sanctuary policies from 2001 to 2005.²¹³ The robust and quick spread of sanctuary policies was the result of a bipartisan movement and national crisis, mainly over the Tenth Amendment, but with profound implications for the constitutional principles that underpin all sanctuary laws.

1. Constitutional Issues Raised in Sanctuary Policies

The Patriot Act raised a number of fundamental concerns over safeguarding Fourth and Fifth Amendment constitutional rights.²¹⁴ Minority groups, especially undocumented immigrants, were particularly vulnerable after 9/11 due to the government's expansion of immigration law by making it a powerful criminal justice tool and vehicle for expanding federal and local partnerships to apprehend, incarcerate, and deport noncitizens with criminal convictions and suspected terrorists.²¹⁵ It is important to note that the blurring of immigration enforcement and anti-terrorism efforts began much earlier, when the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) were passed in 1996.²¹⁶ AEDPA and IIRIRA together "criminalized" immigration law and set up the legal foundation for the Patriot Act to expand federal power in the interior of the country, marking a major shift in American federalism.²¹⁷

213. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author); see also USA PATRIOT Act § 203 (empowering law enforcement officials to share criminal investigative information that contains foreign intelligence or counterintelligence, including grand jury and wiretap information, with intelligence, protective, immigration, national-defense, and national-security personnel).

214. See generally John W. Whitehead & Steven H. Aden, *Forfeiting "Enduring Freedom" for "Homeland Security": A Constitutional Analysis of the USA Patriot Act and the Justice Department's Anti-Terrorism Initiatives*, 51 AM. U. L. REV. 1081 (2002) (analyzing the ways in which the aftermath of 9/11 and the creation of the Patriot Act have led to an erosion of civil rights and liberties through increased federal surveillance inside the United States and the Department of Justice's practice of denying counsel to its detainees). See also U.S. CONST. amend. IV, V.

215. See Teresa A. Miller, *Blurring the Boundaries Between Immigration and Crime Control After September 11th*, 25 B.C. THIRD WORLD L.J. 81, 85-86 (2005).

216. See *id.* at 83-84; see generally Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, § 101, 110 Stat. 1214 (1996) (limiting the power of federal courts to provide relief under habeas corpus); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (1996).

217. IIRIRA criminalized many aspects of immigrant lives, expanded border enforcement, enhanced penalties and enforcement against smuggling and document fraud, and heightened interior enforcement to deport unlawfully residing immigrants. Austin T. Fragomen, *The Illegal Immigration Reform and Immigrant Responsibility*

Formed in 2001, the Civil Liberties Task Force of the ACLU spearheaded the Bill of Rights movement across states and localities.²¹⁸ On the one hand, state governments were unclear as to whether the Patriot Act had fundamentally altered federalism to empower the federal government to deputize local law enforcement, or worse, to mandate these partnerships.²¹⁹ The traditional outward-looking role of the federal government was increasingly being turned inward to counter acts of terrorism.²²⁰ Concerns about federal encroachment on state power were combined with concerns about protecting individual civil liberty and due process, which led to sanctuary policies passed from 2001 to 2005 specifically referencing the First, Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments.²²¹

In 2003, a proposed Domestic Security Enhancement Act (DSEA) was leaked to the public and fueled the major spread of local sanctuary policies, which grew from 23 policies passed in 2002, to 216

Act of 1996: An Overview, 31 INT'L MIGRATION REV. 438, 438 (1997). AEDPA was a strongly anti-immigrant legislation concealed in anti-terrorism language, which severely limited the constitutional rights and protections formerly offered to legal immigrants. Lisa Solbakken explains, by getting rid of a “judicial review after a final deportation order premised upon an enumerated conviction” as well as extending the crimes eligible for a deportation order, AEDPA removed due process rights from both legal and undocumented immigrants. Lisa C. Solbakken, *The Anti-Terrorism and Effective Death Penalty Act: Anti-Immigration Legislation Veiled in an Anti-Terrorism Pretext*, 63 BROOK. L. REV. 1381, 1382–83 (1997).

218. Ion Bogdan Vasi & David Strang, *Civil Liberty in America: The Diffusion of Municipal Bill of Rights Resolutions After the Passage of the USA PATRIOT Act*, 114 AM. J. SOC. 1716, 1721 (2009).

219. See Susan Herman, *Introduction to Trager Symposium: Our New Federalism? National Authority and Local Autonomy in the War on Terror*, 69 BROOK. L. REV. 1201, 1225 (2004).

220. See *id.* at 1205–06.

221. Berkeley’s Resolution specifically refers to these all of these constitutional protections: First Amendment (right to the establishment of religion, freedom of speech, peaceably to assemble, and to petition the government for a redress of grievances), Fourth Amendment (right to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, and protection from warrantless arrest); Fifth Amendment (right to not be compelled in any criminal case to be a witness against himself); Sixth Amendment (right to a speedy, fair trial, amongst a public jury and with legal counsel); Eighth Amendment (right to not be subject to cruel and unusual punishment); Fifth and Fourteenth Amendment (right to due process and equal protection rights regardless of citizenship or immigration status). Minutes from the Peace and Justice Commission Regular Meeting, City of Berkeley (Nov. 2, 2003), <https://www.cityofberkeley.info/Commissions/peaceandjustice/2003peaceandjustice/pdf/110303M30.pdf> [<https://perma.cc/2C8L-RMFN>] [hereinafter Peace and Justice Commission Minutes]. Most of the sanctuary policies included similar constitutional references. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

policies passed in 2003.²²² The bill went beyond the Patriot Act's expansion of federal counterterrorism powers through FISA surveillance warrants, criminalizing materials supporting terrorism, and enhancing discretionary powers of law enforcement to remove unauthorized immigrants.²²³ Massive resistance at the local level, through sanctuary policies, was paired with a large bipartisan opposition in Congress that quickly defeated DSEA from even being proposed in the House or Senate.²²⁴ The newly formed coalition of conservative and progressive members of Congress turned their attention to amending provisions of the Patriot Act that threatened privacy and civil liberties, and led an education campaign in the House and Senate to ensure that reauthorization of the Patriot Act would better protect constitutional rights.²²⁵ With sunset provisions in the Patriot Act set to expire in 2005, the second period of sanctuary policy development had ended.²²⁶

2. Shared Features of Sanctuary Policies

Progressive cities like Berkeley, Santa Cruz, and Ann Arbor specifically crafted their resolutions to protect all residents, including non-citizens such as refugees and immigrants. Their sanctuary resolutions referred to specific provisions of the Patriot Act as infringing on civil liberties guaranteed by the U.S. Constitution and detailed the local government's commitment to the rights of all people.²²⁷ The language provided by Berkeley's sanctuary policy

222. Timothy Scahill, Comment, *The Domestic Security Enhancement Act of 2003: A Glimpse into a Post-Patriot Act Approach to Combating Domestic Terrorism*, 38 JOHN MARSHALL L. REV. 327, 328 (2004); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

223. *See* Scahill, *supra* note 222, at 346.

224. *Id.* at 341.

225. *Id.* at 341 n.99; *see also* USA PATRIOT Improvement and Reauthorization Act of 2005, H.R. 3199, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/house-bill/3199> [<https://perma.cc/RK9K-P3XM>].

226. The Patriot Act's "sunsets" are provisions that expire unless Congress re-authorizes them, which included Title II, the main vehicle permitting federal authorities to surveil, monitor and investigate Americans with fewer constitutional checks on abuse like warrants. While most of these sunsets were extended under reauthorization bills, the bipartisan sanctuary coalition largely dissolved by 2005 and civil liberty groups re-focused in national reforms to the U.S. Patriot Act. Scahill, *supra* note 222, at 337 (drawing the connection between the local sanctuary movement and US Patriot Act sunset provisions).

227. Berkeley's Resolution states that "the PATRIOT Act, directives from Attorney General Ashcroft, and particular executive orders seem to target foreign nationals and people of Middle Eastern and South Asian descent, and anyone who may legally speak or act to oppose government policy," and then goes on to state

from this period illustrates its distinctiveness from the first and third periods, making no mention of immigration law. Instead, its focus was on the detention of citizens and non-citizens under the Patriot Act and the deep constitutional concerns raised by interior enforcement related to anti-terrorism, including:

... freedom of speech, religion, assembly and privacy; the rights to counsel and due process in judicial proceedings; and protection from unreasonable searches and seizures, all of which are guaranteed by the Constitution of California, the United States Constitution and its Bill of Rights, and by United Nations Charter Article 55.²²⁸

Like Berkeley, California's policy, 361 policies enacted between 2001 and 2005 do not mention immigration law and were focused exclusively on the Patriot Act.²²⁹

Given the bipartisan nature of this second period of development, a clear trend emerged in which progressive cities included all residents or specifically referred to Muslims and immigrants, who were targeted under the Patriot Act and by vigilante groups after 9/11.²³⁰ Meanwhile, resolutions passed in more conservative jurisdictions used language in their policies limiting sanctuary to violations of the rights of U.S. citizens.²³¹ On October 7, 2003, for example, Princeton Borough, New Jersey, enacted a sanctuary policy referring to "the imperative to protect the fundamental rights and liberties of the American people," with no mention of immigrants or other minorities.²³² This policy's narrow focus on citizens helps to illustrate that sanctuary policies are not exclusive to undocumented immigrants, nor are they merely a type of resistance to federal law. Sanctuary provides a vehicle for cities to advocate for their residents'

that, the "City of Berkeley includes a diverse community of students and working families, including non-citizens, whose contributions to the community are vital to its character and function." See Peace and Justice Commission Minutes, *supra* note 221. See also Ann Arbor City Council, Res. R-295-7-03, 2003 (Mich. 2003); City Council of the City of Santa Cruz, Res. NS-26,032, 2002 (Cal. 2002); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

228. Peace and Justice Commission Minutes, *supra* note 221; Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

229. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

230. *Id.*; see, e.g., City Council of the City of Seattle, Res. 30578, 2003 (Wash. 2003).

231. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

232. Press Release, ACLU, ACLU of New Jersey Commends Princeton for Passage of Pro-Civil Liberties Resolution (Oct. 8, 2003), <https://www.aclu.org/press-releases/aclu-new-jersey-commends-princeton-passage-pro-civil-liberties-resolution?redirect=cpreirect/17708> [<https://perma.cc/32TM-DHWJ>]; see Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

constitutional rights, and the policy's level of inclusiveness is directly shaped by the city's relationship with its residents, including citizens, legal immigrants, and undocumented immigrants.

One year later, on October 12, 2004, the U.S. Department of Homeland Security's Bureau of Immigration and Customs Enforcement (BICE) gave the Princeton Borough Police Department notice that they were going to conduct an immigration raid to arrest and detain undocumented immigrants.²³³ During the raid, BICE officers presented themselves as police officers, which created mistrust between immigrant residents and local officials and police.²³⁴ Responding to the federal immigration raid, Princeton Borough passed another sanctuary policy, this time expanding its language to be inclusive of all residents.²³⁵ Notably, while the policy still refers specifically to the Patriot Act, it added that "the Borough of Princeton is comprised of immigrants from throughout the world who contribute to Princeton's social vigor, cultural richness, and economic vitality," and it emphasized that the city "respects the rights of and provides equal services to all individuals, regardless of race, ethnicity, national origin, or immigration status."²³⁶ This change from 2003 to 2004 by Princeton Borough helps to illustrate how sanctuary policies emerge and evolve. Specific developments in federal law and interactions with federal law enforcement raised constitutional concerns that altered the city's protection of its citizens and immigrants alike.

At least ten jurisdictions enacted more than one sanctuary policy between 2001 and 2005, often as a response to specific events that sparked increased resistance.²³⁷ Twenty-six sanctuary policies were enacted that focused specifically on federal immigration law, with five simultaneously focusing their opposition toward the Patriot Act.²³⁸ This meant that the second (2001–2005) and third (1996–2018)

233. Res. 2004-R271 (Borough Council of the Borough of Princeton, N.J. 2004); see Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

234. Res. 2004-R271 (Borough Council of the Borough of Princeton, N.J. 2004); see Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

235. Res. 2004-R271 (Borough Council of the Borough of Princeton, N.J. 2004); see Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

236. Res. 2004-R271 (Borough Council of the Borough of Princeton, N.J. 2004); see Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

237. More than one policy was enacted in: Washington, D.C. (2003, 2005); Philadelphia (2002, 2003); Seattle (2002, 2004, 2005); San Francisco (2002, 2005); Detroit (2002, 2002); Minneapolis (2002, April 2003, July 2003); Albuquerque (2000, 2004); St. Paul (2004, 2005); New York (2003, 2005); and Watsonville (2004, 2005). See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

238. *Id.*

periods of sanctuary policy development were not entirely disconnected, but they were very much distinct. The overlap between the second and third periods included 361 policies focused only on opposing the Patriot Act.²³⁹ Federal law after 9/11 had a profound impact on increasing the immigration enforcement power of federal and local officials, but federal immigration law itself was not the core concern mobilizing local resistance. The ACLU's Bill of Rights Movement was not connected specifically to the cause of resisting immigration law enforcement.²⁴⁰ Meanwhile, immigrant advocacy organizations were almost entirely focused on national level reforms in immigration law, not sanctuary, until 2006.²⁴¹ Moreover, the second movement focused on the Patriot Act was led by bipartisan groups and officials, at a time when partisanship divides were being forged over immigration.

C. Period 3: 1996–2018 Sanctuary from Immigration Law

Directly following the first period (1979–1995), a few cities passed sanctuary policies highlighting the harsh new immigration laws enacted by the federal government in 1996. Denver's policy in 1998 referenced the fundamental shift in federal law that denied legal immigrants from being able to access federal public benefits, and made it clear that this change was detrimental to its "children, senior citizens, and disabled residents" and fostered a "climate of intolerance and discrimination."²⁴² Similarly, Austin passed a resolution in 1997 referencing federal welfare reform and defended immigrant residents by stating that such residents generally were not dependent on welfare or public social services.²⁴³ While new jurisdictions joined the sanctuary movement after 1995, it was not until 2006 that the movement began to gain new momentum in response to harsh proposals for reforming federal immigration law.

Beyond the Patriot Act, the events of September 11, 2001 changed the course of immigration. Officials and news anchors debating immigration replaced "border security" with the term "border control" to emphasize the counter-terrorism link to immigration

239. *Id.*

240. Vasi & Strang, *supra* note 218, at 1721.

241. COLBERN & RAMAKRISHNAN, *supra* note 8, at 19; GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 81.

242. Exec. Order No. 116 (Office of the Mayor of the City of Denver, Colo. 1998); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

243. See *Understanding "Sanctuary Cities" Appendix*, *supra* note 177.

enforcement.²⁴⁴ This provided a new political frame for restrictionists²⁴⁵ to push for harsh immigration laws at the national, state, and local levels. The timing of policy enactments in immigration federalism, in terms of the activism for restrictive and pro-immigrant policies at the state and local levels, illustrates the distinction between the second and third sanctuary periods. Gulasekaram and Ramakrishnan trace the spread of policies as occurring in two waves across states and localities, with anti-immigrant policies spreading first, from 2004 to 2012, and pro-immigrant policies spreading much later, after 2010.²⁴⁶ Thus, while scholars have generally referred to the timeline of sanctuary as a single spread of policies beginning in 2001, insights from immigration federalism scholarship point towards a sanctuary movement with a distinctive focus on federal immigration law after 2005.²⁴⁷

The restrictionist wave that ushered in a new era of immigration federalism is rooted in key political actors that redirected policymaking away from the national level and towards the state and local levels. Kris Kobach led this effort of redirecting restrictionists to state and local policy.²⁴⁸ In 2002, while working in the Department of Justice, Kobach authored a memo seeking to change the DOJ's enforcement policy so that local police could make arrests for civil violations of immigration law, which was soon adopted by the Office of Legal Counsel.²⁴⁹ A few years later, in 2004, Kobach turned his sights on convincing major national organizations like FAIR and NumbersUSA, who had previously led in pushing for harsher federal immigration laws, to begin pushing anti-immigrant laws at the state

244. Jennifer M. Chacon, *Unsecured Borders: Immigration Restrictions, Crime Control and National Security*, 28 IMMIGR. & NAT'LITY L. REV. 613, 639 (2007).

245. "Restrictionists" are specific political actors seeking to spread a range of restrictive state and local policies, including those that deny immigrants access to state and local public benefits and services, ban them from renting apartments by requiring proof of legal status, and involve entering into federal partnerships to enforce immigration law. See GULASEKARAM & RAMAKRISHNAN, *supra* note 8.

246. *Id.* at 59–60.

247. Trevor Gardner and Benjamin Gonzalez O'Brien use the same National Immigration Law Center dataset to analyze sanctuary policies from 2001 to 2008. See Trevor G. Gardner, *The Promise and Peril of the Anti-Commandeering Rule in the Homeland Security Era: Immigrant Sanctuary as an Illustrative Case*, 34 ST. LOUIS U. PUB. L. REV. 313, 325–26 (2015); Benjamin Gonzalez O'Brien et al., *The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration*, 55 URB. AFF. REV. 4, 11 (2019).

248. GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 100.

249. *Id.*

and local levels of government.²⁵⁰ FAIR's legal wing, the Immigration Reform Law Institute (IRLI), began working together with Kobach to influence states like Arizona and localities like Hazelton, Pennsylvania, with legal counsel and model restrictive legislation.²⁵¹

Arizona's Proposition 2000, the "Arizona Taxpayer and Citizen Protection Act," was one of the first anti-immigrant laws passed in 2004, kick-starting the restrictive wave of policies.²⁵² FAIR had funded the signature-gathering campaign and then pushed the courts in the state to enforce the law broadly.²⁵³ The law changed voter registration in the state by requiring residents to prove U.S. citizenship prior to registering to vote and banned undocumented immigrants from access to public benefits by requiring state and local agencies to use strict identification standards that checked for legal immigration status.²⁵⁴ It also mandated that state and local officials report violations of federal immigration law, and made it a misdemeanor to not follow state law in reporting such violations.²⁵⁵ State laws grew exponentially, from fifteen in 2005, to forty-nine in 2006, and ninety-eight in 2007 — most of which were restrictive in nature and modelled after one another.²⁵⁶

1. Immigrant Rights Origin of Sanctuary Policy

The year 2005 marks a critical moment not just for the decline of the Second Sanctuary Period's policy development, when certain provisions of the Patriot Act reached their sunset, but also for the immigrant rights movement. The Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), also called the Sensenbrenner bill, was a harsh federal law that sought to criminalize both unlawful presence in the country and associating

250. *Id.* at 103.

251. *Id.*

252. *See* Arizona Taxpayer and Citizen Protection Act, Ariz. Rev. Stat. § 46-140.01 (through 2nd Reg Sess. 50th Leg. 2012) (verifying applicants for public benefits), <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/46/00140-01.htm> [<https://perma.cc/L64R-33G9>].

253. GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 111.

254. This provision was held unconstitutional. *See* Arizona v. Inter Tribal Council of Ariz., Inc., 570 U.S. 1 (2013).

255. GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 60.

256. *Id.* at 114.

with any person inside the country who was unauthorized.²⁵⁷ Section 202 of H.R. 4437 imposed criminal penalties on anyone who “assists, encourages, directs, or induces a person to reside in or remain in the United States . . . knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States.”²⁵⁸ Under this section of the law, “an American citizen child living with undocumented parents” would be subject to criminal penalties for “assisting” their parents to “reside in or remain in the United States.”²⁵⁹ Criminalizing U.S. children for being born and living with their immigrant parents escalated the immigration debate and immigrant rights movement. H.R. 4437 passed the House but was defeated in the Senate.²⁶⁰ The extreme nature of the immigration debate in 2005 and harsh measures in the proposed bill led to deep fissures across party and demographic lines, and sparked the immigrant rights movement.²⁶¹

Immediately following the failed attempt by Republicans to push through H.R. 4437, coordinated mobilizations occurred across the country, with an estimated 5 million people marching in over 300 demonstrations in 2006 alone.²⁶² Immigrants and their allies used these demonstrations to place pressure on Washington, D.C. to move towards a bipartisan reform to immigration law that would provide undocumented immigrants a pathway to citizenship.²⁶³ In May 2006, the U.S. Senate proposed S. 2611 which included a pathway to citizenship, as the alternative to H.R. 4437 that sought to criminalize U.S.-born children.²⁶⁴ A standstill over the pathway to citizenship

257. Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/house-bill/04437> [<https://perma.cc/6C5J-EGTB>].

258. TOM K. WONG, THE POLITICS OF IMMIGRATION: PARTISANSHIP, DEMOGRAPHIC CHANGE, AND AMERICAN NATIONAL IDENTITY 8 (2016) [hereinafter WONG, THE POLITICS OF IMMIGRATION].

259. *Id.*

260. Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/house-bill/04437> [<https://perma.cc/6C5J-EGTB>].

261. *Id.* at 7–16.

262. Irene Bloemraad et al., *The Protests of 2006: What Were They, How Do We Understand Them, Where Do We Go?*, in RALLYING FOR IMMIGRANT RIGHTS: THE FIGHT FOR INCLUSION IN 21ST CENTURY AMERICA 3, 3–7 (Kim Voss & Irene Bloemraad ed., 2011).

263. See WONG, THE POLITICS OF IMMIGRATION, *supra* note 258, at 7–16.

264. Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, H.R. 4437, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/house-bill/04437> [<https://perma.cc/6C5J-EGTB>]; Comprehensive Immigration Reform Act, S. 2611, 109th Cong. (2006),

between the Senate and House bills prevented comprehensive immigration reform from succeeding. Immigration federalism scholars explain that, while 2005 had mobilized demonstrations on a national scale, the immigrant rights movement and funders were largely focused on reforming federal law.²⁶⁵

The spread of sanctuary policies focusing on immigration law were directly connected to the debate happening in Washington, D.C. at the time. These policies were mostly symbolic declarations of support to immigrants and a strong signal to national officials of cities' positions on federal reforms. This first peak in policies was far smaller than what emerged after 2013, with immigration reform failures under President Obama, and was more symbolic in nature. Los Angeles, California, was the first city to pass a sanctuary policy in 2006, which was a symbolic policy to show the city's opposition to H.R. 4437 in the U.S. Senate, stating:

WHEREAS, H.R. 4437 could have a potential discriminatory impact because it would establish a mandatory eligibility verification system, expanding the voluntary "Basic Pilot" program that is currently available nationwide which would require a mandatory verification system to check a job applicants' immigration status. This will dramatically impact documented and undocumented workers and U.S. citizens alike, which could consequently disrupt the economy.²⁶⁶

Los Angeles's 2006 resolution did not change the city policy, but merely served to voice its opposition to the harsh federal bill up for consideration in U.S. Congress. It had already limited its enforcement of federal immigration law through the police department's Special Order 40 in 1979 and the city's sanctuary policy in 1985.²⁶⁷

Over the next two months, four cities passed similar resolutions to oppose H.R. 4437.²⁶⁸ On March 8, 2006, Boston passed a resolution

<https://www.congress.gov/bill/109th-congress/senate-bill/2611> [<https://perma.cc/F3TS-4FCF>].

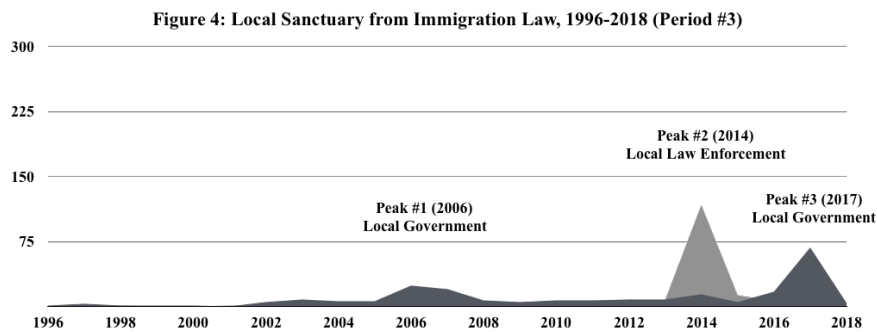
265. Allan Colbern & Karthick Ramakrishnan, *State Policies on Immigrant Integration: An Examination of Best Practices and Policy Diffusion* (U.C. Riverside School of Public Policy Working Paper Series, Feb. 2016) https://www.immigrationresearch-info.org/system/files/state-best-practices-report_0.pdf [<https://perma.cc/W7AX-EJWD>] [hereinafter Colbern & Ramakrishnan, *State Policies*].

266. See *Understanding "Sanctuary Cities" Appendix*, *supra* note 177. See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

267. L.A. Police Dep't, Cal., Special Ord. No. 40 (Nov. 27, 1979).

268. The following city policies directly reference their opposition to H.R. 4437: Res. 33-06 (S.F. Bd. of Supervisors, Cal. 2006); Res. 74723 (Grand Rapids City

that made its support for reform that would benefit undocumented immigrants very clear, declaring “its strong support for comprehensive immigration reform that combines a path to permanent status for immigrants already here and wider legal channels for those coming in the future with humane and effective enforcement at our borders.”²⁶⁹ Soon after, San Francisco enacted a resolution in support of the “Secure America and Orderly Immigration Act” (S. 1033 and H.R. 2330), which were bipartisan bills by Senator John McCain and Senator Edward Kennedy that provided a pathway to citizenship for undocumented immigrants.²⁷⁰



On March 1, 2007, San Francisco became one of the first cities after 2005 to legally resist entangling local law enforcement with immigration law.²⁷¹ The Office of the Mayor issued an executive order that reaffirmed its 1980s status as a sanctuary city, stating: “No department, agency, commission, officer or employee of the City and County of San Francisco may assist Immigration and Customs Enforcement (ICE) investigation, detention or arrest proceedings,”

Comm’n, Mo. 2006); Res. 342-06 (Council of the City of Cleveland, Ohio 2006); see *Understanding “Sanctuary Cities” Appendix*, *supra* note 177. See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

269. LAWS, RESOLUTIONS, AND POLICIES, *supra* note 92; Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

270. Secure America and Orderly Immigration Act, S. 1033, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/senate-bill/1033/all-info> [<https://perma.cc/NUU4-J43Y>]; Secure America and Orderly Immigration Act, H.R. 2330, 109th Cong. (2005), <https://www.congress.gov/bill/109th-congress/house-bill/2330> [<https://perma.cc/VWP6-CAMY>].

271. Exec. Directive 07-01 (City & Cty. S.F., Mar. 1, 2007); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

nor “require information about or disseminate information regarding the immigration status of an individual when providing services or benefits.”²⁷² A few policies mirroring San Francisco spread across the country from 2007 to 2011, after which a new focus on resisting immigration detainer requests began to define the sanctuary movement.²⁷³

In 2008, the U.S. Department of Homeland Security created a new collaborative information program, Secure Communities (S-Comm), that effectively co-opted local law enforcement and jails into automatically providing the federal government information on all arrested individuals.²⁷⁴ The program was slowly rolled out over six years on a county-by-county basis, dramatically increasing in 2012 and completed nationwide in 2013.²⁷⁵ When S-Comm first began to spread across the country, the National Day Laborer Organizing Network (NDLON) led the growing immigrant rights movement in how to resist through model-legislation.²⁷⁶ Sanctuary policies emerged that prevented local law enforcement from entering into 287(g) agreements or honoring ICE detainer requests.²⁷⁷ These sanctuary policies were very effective in constraining local law enforcement from honoring ICE detainer requests and decreasing deportations.²⁷⁸

Madison, Wisconsin passed a policy on June 1, 2010 that continued to urge the city’s police department to “continue its current practice of not entering into Section 287(g) Immigration and Nationality Act (INA) agreement with ICE” and asked the:

County Sheriff’s Office to end its current practice of contacting ICE at booking time for all cases involving processing of non-US citizen jail inmates and instead more narrowly tailor its policy by contacting

272. Exec. Directive 07-01 (City & Cty. S.F., Mar. 1, 2007).

273. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

274. See *Secure Communities: Overview*, U.S. IMMIGRATION & CUSTOMS ENFORCEMENT, <https://www.ice.gov/secure-communities> [<https://perma.cc/6VYU-M47W>].

275. See Thomas J. Miles & Adam B. Cox, *Does Immigration Enforcement Reduce Crime? Evidence from Secure Communities*, 57 J. L. & ECON. 937, 948 (2014).

276. See GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 129.

277. Res. 10-00530 (Common Council of the City of Madison, Wis. 2010); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

278. See GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 130.

ICE only for non-US citizen inmates who are being held on a possible felony charge.²⁷⁹

Aided by NDLO, Santa Clara County, California, passed a resolution in 2010 preventing local officials and resources from investigating, questioning, apprehending, or arresting any person for immigration purposes.²⁸⁰ The following year, it enacted a much more specific policy limiting local law enforcement from honoring ICE detainer requests.²⁸¹ Over the next few years, anti-detainer sanctuary policies began to spread across cities and counties, and local law enforcement agencies began to issue similar sanctuary policies as public statements or official department policies.

A robust state and local pro-immigrant policy movement was underway by 2010 and 2011, fueled by the failure of the federal DREAM Act in 2010.²⁸² California in particular was the front-runner, passing laws to grant financial aid to undocumented workers in 2001,²⁸³ limiting the use of the federal E-Verify in 2011,²⁸⁴ granting driver's licenses for DACA recipients in 2012 and for undocumented residents in 2013,²⁸⁵ and passing a range of other integration and sanctuary measures.²⁸⁶ In 2013, California passed the Transparency

279. Res. 10-00530 (Common Council of the City of Madison, Wis. 2010); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

280. Res. No. 2010-316 (Santa Clara Bd. of Supervisors, Cal. 2010); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

281. Res. No. 2011-504 (Santa Clara County, Cal. Oct. 18, 2011); Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

282. Ramakrishnan & Colbern, *The California Package*, *supra* note 117, at 9–10; GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 120.

283. A.B. 540, 2001-02 Gen. Assemb., Reg. Sess. (Cal. 2001), https://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=200120020AB540 [<https://perma.cc/BGT4-RPX8>].

284. A.B. 1236, 2011-12 Gen. Assemb., Reg. Sess. (Cal. 2011) (added Article 2.5 (commencing with Section 2811) to Chapter 2 of Division 3 of the Labor Code), http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1201-1250/ab_1236_bill_20110331_amended_asm_v98.pdf [<https://perma.cc/644R-VCTY>].

285. See Ramakrishnan & Colbern, *The California Package*, *supra* note 117, at 3–4; Laura E. Enriquez et al., *Driver's Licenses for All? Racialized Illegality and the Implementation of Progressive Immigration Policy in California*, 41 L. & POL. 34 (2019).

286. See generally COLBERN & RAMAKRISHNAN, *supra* note 8, at 112–96 (analyzing California's evolution from regressive to progressive state citizenship); Colbern & Ramakrishnan, *supra* note 88 (analyzing California's policies and historical shift on immigrant rights and advancing a theory of how California's progressive state citizenship crystallized in 2014); Colbern & Ramakrishnan, *State Policies*, *supra* note 265 (providing an overview of various state-level policies that aim towards integration, and arguing that California has led the way in passing the most far-reaching laws intended to assist with immigration integration); Ramakrishnan &

and Responsibility Using State Tools (TRUST) Act, providing that officers can only enforce immigration detainers issued by ICE for persons convicted of serious crimes.²⁸⁷ In 2014, when California's TRUST Act went into effect, the city of San Francisco and counties of Contra Costa, Alameda, and San Mateo announced that they would no longer cooperate with any ICE detention requests of possible unauthorized immigrants in local jails.²⁸⁸ California's state and local sanctuary policies resulted in a major decrease in deportations by ICE after 2014 and caused President Obama, under the direction of Homeland Security Secretary Jeh Johnson, to end S-Comm that same year.²⁸⁹ Democratic control of the state, and partnerships between officials and immigrant rights organizations, have paved the road for California to expand its sanctuary-type protections exponentially since 2014, including passing the TRUTH Act in 2016 and Values Act in 2017.²⁹⁰

2. Sanctuary as More than Resistance-Only

Immigration federalism had a profound impact on where sanctuary policies were emerging. California cities were responsible for the enactment of 33% of the 108 sanctuary policies from 2014 to 2018.²⁹¹ California police and sheriff's departments were responsible for 27% of the 147 sanctuary policies enacted during this same period.²⁹² In both cases, city government and local law enforcement policies built

Colbern, *The California Package*, *supra* note 117 (analyzing the "California package" of immigrant integration policies).

287. The Trust Act of 2013, A.B. 4, 2013-2014 Gen. Assemb., Reg. Sess. (Cal. 2013).

288. See *San Francisco Joins Neighboring Counties in Suspending Undocumented Immigrant Jail Holds*, CBS SAN FRANCISCO (May 29, 2014), <http://sanfrancisco.cbslocal.com/2014/05/29/san-francisco-joins-neighboring-counties-in-suspending-undocumented-immigrant-jail-holds/> [<https://perma.cc/249B-LCQ9>].

289. See GULASEKARAM & RAMAKRISHNAN, *supra* note 8, at 130.

290. California lowered state crimes and convictions to prevent immigration implications from happening (AB 813 and SB 1242 passed in 2016; SB 180 passed in 2017), banned new immigrant detention center contracts from being made with the federal government (passed in the 2017 budget), protected immigrant workers from preventable worksite raids (AB 450 passed in 2017), provided due process rights to detained immigrants by requiring ethical representation and confidentiality from attorneys (passing AB 60 in 2015), provided financial assistance to aid immigrants in obtaining legal counsel (passing AB 1476 in 2014, and passing SB 78 in 2015), and established a Deportation Defense Services Fund of \$15 million in 2017. See also Colbern & Ramakrishnan, *supra* note 88, at 14.

291. California Cities were responsible for 36 out of the 108 policies from 2014 to 2018. See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

292. See Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

on and cited California's state laws, often passing new laws in order to align local policy with state policy. Our dataset shows similar patterns in the sanctuary policies of other states and localities as well. For example, local government and law enforcement policies spread after Connecticut's TRUST Act passed in 2013,²⁹³ after Illinois's TRUST Act passed in 2017,²⁹⁴ after Oregon's sanctuary policy passed in 2017,²⁹⁵ and after New Jersey's Governor issued his executive order in 2018 reversing the state's stance to "pro-sanctuary."²⁹⁶

Understanding state-level patterns in enacting sanctuary policies is critical for understanding the nature of resistance through sanctuary policies in the Trump era, as policy expansions emerged in 2017 mostly in states like California, Massachusetts, and Illinois.²⁹⁷ While Trump-era politics may have fueled new states and cities to enact sanctuary policies for the first time, a pro-immigrant policy movement at the state and local level had laid the constitutional groundwork for sanctuary policies. Post-2017 sanctuary policies were part of a two-decade movement to reform federal law to provide a pathway to citizenship for all undocumented immigrants. Within this movement, sanctuary policies developed in direct response to harsh federal bills that denied this pathway, as well as harsh immigration enforcement through S-Comm from 2008 to 2014. By the time President Trump took office in 2017, immigrant rights organizations in progressive states had issued blueprints outlining their policy successes on immigrant rights and protections that could be used by jurisdictions beginning to build a more welcoming state or city for immigrants.²⁹⁸

293. H.B. 6659, 2013 Gen. Assemb., Reg. Sess. (Conn. 2013), <https://www.cga.ct.gov/2013/act/pa/2013PA-00155-R00HB-06659-PA.htm> [<https://perma.cc/328V-KZQX>].

294. S.B. 0031, 100th Gen. Assemb. (Ill. 2017), <http://www.ilga.gov/legislation/billstatus.asp?DocNum=31&GAID=14&GA=100&DocTypeID=SB&LegID=98874&SessionID=91> [<https://perma.cc/3TV2-HBFT>].

295. H. B. 3464, 79th Gen. Assemb., Reg. Sess. (Or. 2017), <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB3464/Enrolled>. [<https://perma.cc/45L4-UH8Z>]

296. Office of the N.J. Attorney General, Attorney General Law Enforcement Directive No. 2018-6 (2018), <https://www.nj.gov/oag/dcj/agguide/directives/ag-directive-2018-6.pdf> [<https://perma.cc/55JJ-7KUB>].

297. Colbern, Sanctuary Policy Dataset, *supra* note 103 (on file with author).

298. *See generally* Colbern & Ramakrishnan, *State Policies*, *supra* note 265 (discussing the research and policy advocacy of immigration policy advocacy organizations); GABRIELA VILLAREAL, *THE CALIFORNIA BLUEPRINT: TWO DECADES OF PRO-IMMIGRANT TRANSFORMATION* (2015), <https://ncg.org/sites/default/files/resources/The-California-Blueprint-1.pdf> [<https://perma.cc/U9W8-AJFG>]; NEW YORK IMMIGRATION COALITION, *BLUEPRINT FOR IMMIGRANT NEW YORK* (2017), <https://d1jikt90t87hr.cloudfront.net/323/wp->

This history reveals that sanctuary policies crafted from immigrant rights movements were far more than a resistance to President Trump.

III. A HOLISTIC FRAMEWORK FOR UNDERSTANDING SANCTUARY POLICIES

Reconsidering sanctuary policies as three distinctive periods of development provides legal, empirical, and theoretical advantages. Our periodization scheme contributes a more nuanced set of cases for analyzing causal relations between sanctuary and crime. The holistic framework reconciles the intricacies of social movements with legal movements, by analyzing them through distinct periods in the evolution of sanctuary policy.

Diverse areas of scholarship have treated sanctuary policies as a single development that originated in 1980 and continues to evolve today. Yet, federal laws over the past four decades have changed dramatically, thereby shaping the ways in which sanctuary policies are constructed. Immigrant rights movements have also evolved and restructured sanctuary policies to better resist the federal government and uphold constitutional rights. Indeed, a range of sanctuary policies are now emerging from states, counties, cities, local law enforcement agencies, churches, and colleges, as a reaction to the federal push for local immigration enforcement and to the increasingly restrictive immigration policies of the federal government.

This Article provides an important synthesis of typological-legal, historical-legal, historical-moral, and policy-data approaches to studying sanctuary, to show that sanctuary is much more than a resistance movement. Importantly, it establishes a framework that identifies three sanctuary periods, which track federal and sanctuary laws through three significant moments in U.S. history. It also consolidates the creation of immigrant-rights and church-based movements. Importantly, this Article recognizes an important truth: Social movements underpin the specific legal and constitutional principles that make sanctuary policies a cornerstone for immigrants' rights.

CONCLUSION

After the President's anti-sanctuary executive order was issued in January 2017, Santa Clara filed a motion for a preliminary injunction, arguing that "the Executive Order has created a cloud of financial uncertainty so overwhelming that it irreparably harms the Country's ability to budget, govern and ultimately provide services to the residents it serves."²⁹⁹ Santa Clara was not alone. Four other cities filed lawsuits challenging the executive order.³⁰⁰ On April 25, 2017, a federal judge joined the Santa Clara and San Francisco motions, ruling that the executive order likely violated the Spending Clause by removing federal funding from sanctuary jurisdictions and ordered a nation-wide preliminary injunction.³⁰¹ On August 1, 2018, the United States Court of Appeals for the Ninth Circuit, in *City and County of San Francisco v. Trump*, lifted the nation-wide injunction and allowed President Trump's anti-sanctuary order to go into effect.³⁰²

Importantly, the Ninth Circuit preserved the injunction on the executive order for California, because the court considered there was sufficient evidence of federal intent to injure the state and its localities.³⁰³ According to the Ninth Circuit, "the district court noted that California and its cities, especially San Francisco, were visible targets of the Administration's intent to defund sanctuary jurisdictions."³⁰⁴ It then found that there was not sufficient evidence that other states and localities would be similarly targeted and injured in order for a nation-wide injunction to be justified.³⁰⁵ Despite the federalism conflicts they raise, sanctuary policies stand on deep constitutional grounds, which is why California remains shielded from

299. See Motion for Preliminary Injunction at 23–24, County of Santa Clara, No. 17-cv-00574 (N.D. Cal. Feb. 3, 2017); see also Lai & Lasch, *supra* note 1.

300. See generally Complaint, City & County of San Francisco v. Donald J. Trump, 275 F. Supp. 3d 1196 (N.D. Cal. Jan. 31, 2017) (No. 3:17-cv-00485); Complaint, County of Santa Clara v. Donald J. Trump, 250 F. Supp. 3d 497 (N.D. Cal. Feb. 3, 2017) (No. 5:17-cv-00574); Complaint, City of Chelsea & City of Lawrence v. Donald J. Trump (D. Mass. Feb. 8, 2017) (No. 1:17-cv-10214); Complaint, City of Richmond v. Donald J. Trump, 2017 WL 6945397 (N.D. Cal. Feb. 22, 2017) (No. 3:17-cv-01535); Complaint, City of Seattle v. Donald J. Trump, 2017 WL 4700144 (W.D. Wash. Mar. 29, 2017) (No. 2:17-cv-00497).

301. See County of Santa Clara v. Donald J. Trump, 250 F. Supp. 3d 497 (N.D. Cal. 2017) (order granting the County of Santa Clara's and City and County of San Francisco's Motions to Enjoin Section 9(a) of Exec. Order 13768).

302. See City & County of San Francisco v. Donald J. Trump, 897 F.3d 1225, 1231 (9th Cir. 2018).

303. See *id.* at 1344–45.

304. *Id.* at 1238.

305. See *id.* at 1244.

the executive order. Consistent with the Ninth Circuit ruling, the United States District Court for the Eastern District of California denied a motion to strike down California's TRUST Act, stating that the state sanctuary law was not an "obstacle" to federal enforcement.³⁰⁶ California's former State Senator and leader on immigrant rights, Kevin de León, responded to the ruling to uphold sanctuary, stating: "California is under no obligation to assist Trump tear families apart."³⁰⁷ Current litigation has upheld sanctuary policies' constitutional legitimacy.

As this Article shows, President Trump's narrative that sanctuary policies violate federal law and challenge core American values ignores their critical place in American history. Sanctuary policies became less connected to the specific struggles of Central American refugees and assumed broader goals related to civil rights and immigrant rights that span the basic functions of state and local governance. Sanctuary today provides a moral and constitutionally legitimate form of integration and protection with regard to undocumented residents.

306. *United States v. California*, 314 F. Supp. 3d 1077, 1104 (E.D. Cal. 2018).

307. Thomas Fuller, *Judge Rules for California over Trump in Sanctuary Law Case*, N.Y. TIMES (July 5, 2018), <https://www.nytimes.com/2018/07/05/us/california-sanctuary-law-ruling.html> [<https://perma.cc/B67R-LGPM>].