

Memorandum

City of Lawrence

City Attorney's Office

TO: Toni Wheeler, City Attorney
FROM: Maria Garcia, Assistant City Attorney
DATE: March 2, 2017
RE: Sanctuary Cities

The term “sanctuary city” has often been used loosely to label communities providing certain protections for illegal immigrants against disclosure of their status to federal immigration officials.¹ However, there is no legal definition of sanctuary city, which creates some ambiguity when considering a request for a community to become one and a necessity to identify precisely what is being sought.

The purpose of this memo is to provide a general overview of the current law, including federal statutes and recent executive orders, as well as pending state legislation, to better understand what risks may exist for communities formerly declaring themselves a sanctuary city or initiating policies or practices to that effect.

Federal Law & Executive Orders

One federal statute, codified at 8 U.S.C.A. § 1373, addresses providing immigration information to federal officials and is directly on point. It states, in relevant part, that “Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.” The law was enacted in 1996, and has remained valid law since. It is attached to this memo.

That law is important because a recent executive order signed by President Trump cites to it several times. A president’s power to issue an executive order must stem from either the U.S. Constitution or an act of Congress. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585, 72 S. Ct. 863, 866 (1952). The executive order, signed January 25, 2017 and entitled “Executive Order: Enhancing Public Safety in the Interior of the United States,” indicates the new administration’s approach regarding sanctuary cities. Section 9 of the Executive Order states:

“It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

¹In a study by the Immigrant Legal Resource Center, it was determined that approximately 633 counties and 39 cities in the United States limit how much police cooperate with requests from federal authorities to hold immigrants in detention. See https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html?_r=0 (February 6, 2017).

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

The provision under subsection (a) is particularly relevant, as it threatens federal grant money received by jurisdictions for a violation of the new administration's initiative. The City of Lawrence spent approximately \$6.1 million of federal money in 2015,² and a breakdown of the numbers is attached to this agenda packet. Approximately \$3.7 million of that total supported the City's public transit system in 2015, while the City spent over \$1.3 million of grant money from the U.S. Department of Transportation on road construction. Nearly \$1 million was spent in 2015 on programs through the U.S. Department of Housing and Urban Development, including the Community Development Block Grant and HOME Investment Partnerships Program, Fair Housing Initiatives, and Emergency Solutions Grants. Lastly, the City spent about \$140,000 of federal dollars on police expenditures including a Special Traffic Enforcement Program, a program for bulletproof vests, and the Edward Byrne Memorial Competitive Grant. In 2015, City expenditures totaled approximately \$173.7 million.

Other cities that have previously publically proclaimed themselves sanctuary cities have differed in reaction to the new Executive Order, with some jurisdictions remaining steadfast and others scaling back from their declarations while they review the Executive Order.³ The City of San Francisco sued President Trump in late January over the Executive Order, claiming the Order violates the 10th Amendment by threatening the sovereignty of local governments. San Francisco also requests that the court declare the City of San Francisco already compliant with 8 U.S.C. § 1373. The case was recently filed, and the California federal district court in which the suit was filed has not yet rendered a final decision.

² The 2016 estimate is not yet available

³ https://www.washingtonpost.com/local/dc-politics/2017/01/25/65f15428-e315-11e6-a547-5fb9411d332c_story.html?utm_term=.346aaeeb1925 (D.C.'s mayor has stated it will remain a sanctuary city despite the Order's financial impact to the city remains "unclear;" Baltimore not referring to itself as a sanctuary city).

A second notable provision of the new Executive Order, found under Section 8, is a policy statement that the executive branch seeks to “empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.” The way to accomplish local law enforcement participation, under the Executive Order, is for the Secretary of Homeland Security to initiate communication with such officials and enter into agreements authorized by the Immigration and Nationality Act (INA). These agreements could authorize State and local law enforcement officials to perform certain functions of immigration officers where those officials would not ordinarily have the authority.

In a memo released February 20, 2017 and entitled “Enforcement of the Immigration Laws to Serve the National Interest,” the Department of Homeland Security, in its effort to implement the provisions of the new Executive Order, states that federal law allows state or local law enforcement officers to become “immigration officers” for purposes of enforcing federal immigration law. The authority given to those officers includes the power to investigate, identify, apprehend, arrest, detain, and conduct searches authorized by law. The memo directs the Director of ICE and the Customs and Border Patrol Commissioner to expand the program to include all qualified state and local law enforcement agencies that request participation in the program.

In a second memo also released February 20, 2017 and entitled “Implementing the President’s Border Security and Immigration Enforcement Improvements Policies,” the Department of Homeland Security again addresses expansion of the program to include local law enforcement agencies. It similarly refers to such participation as voluntary, however, stating that the ICE Director and Customs and Border Patrol Commissioner are to “engage immediately with all willing and qualified law enforcement jurisdictions that meet all program requirements...”

There are currently 37 law enforcement agencies across 16 states (Kansas is not one of them) that have entered into such agreements, and ICE claims to have trained and certified more than 1,822 state and local officers to enforce immigration law. The description of those existing agreements is “Jail Enforcement” on ICE’s website.⁴ The Lawrence Police Department does not operate the Douglas County Jail, as that is a function of the Douglas County Sheriff’s Office. The City has no control over how the jail responds to detainer requests from ICE.

Currently there are no agreements between the City of Lawrence and the Department of Homeland Security regarding local police officers performing the duties of immigration officers, and there are no plans for the City to seek such agreements.

It is worth noting that the Lawrence Police Department must comply with state statutes prohibiting racial or other biased-based policing, which is defined by statute as “the unreasonable use of race, ethnicity, national origin, gender or religion by a law enforcement officer in deciding to initiate an enforcement action. It is not racial or other biased-based policing when race, ethnicity, national origin, gender or religion is used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action.” K.S.A. 22-4606(d).

⁴ <https://www.ice.gov/factsheets/287g>

Officers are prohibited from using racial or other biased-based policing in determining the existence of probable cause to take a person into custody, arrest them, or search them, and they may not use racial or other biased-based policing in determining reasonable suspicion to detain a person on suspicion that a crime has been committed. *See* K.S.A. 22-4606 & K.S.A. 22-4609. These laws were reviewed with students from Lawrence High School (LHS) and the University of Kansas during meetings to discuss sanctuary cities. A summary of the meeting with a LHS student representative can be found in the attached table.

Pending State Legislation

Whether the City of Lawrence could or should declare itself a sanctuary city depends not only on federal law, however, but also state law. There is pending legislation in Kansas related to sanctuary cities, which states that no city shall enact or adopt a sanctuary policy and that any municipality doing so “shall be ineligible to receive any moneys that would otherwise be remitted to such municipality by a state agency. A municipality shall remain ineligible to receive such moneys until such time as the sanctuary policy is repealed or is no longer in effect.”

In 2015⁵, the City received \$25,563,595 in City sales and use taxes; \$10,510,321 in the City’s share of County sales and use taxes; \$1,609,899 in guest taxes; \$2,161,161 in alcohol taxes; \$2,653,941 in highway funds; \$42,542 in law enforcement trust property seizure; and \$154,881 in state grants.

The pending legislation, found in Senate Bill 158, defines a “sanctuary policy” as an order, ordinance, resolution, or law enforcement policy, whether formally enacted or informally adopted that:

- (A) “Limits or prohibits any municipality official or person employed by a municipality from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien within such municipality;
- (B) grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of a municipality in violation of federal law;
- (C) violates any provision of 8 U.S.C. § 1373;
- (D) restricts in any way, or imposes any conditions on, a municipality's cooperation or compliance with detainers or other requests from United States immigration and customs enforcement to maintain custody of any alien or to transfer any alien to the custody of United States immigration and customs enforcement;
- (E) requires United States immigration and customs enforcement to obtain a warrant or demonstrate probable cause before complying with detainers or other requests from United States immigration and customs enforcement to maintain custody of any alien or to transfer any alien to the custody of United States immigration and customs enforcement; or

⁵ The 2016 estimate is not yet available.

(F) prevents a municipality's law enforcement officers from inquiring as to the citizenship or immigration status of any person.”

Another bill, Senate Bill 157, requires the Kansas Highway Patrol superintendent to negotiate an agreement between the state of Kansas and the U.S. Department of Homeland Security concerning the enforcement of immigration laws, pursuant to 8 U.S.C.A. § 1357(g). It is unclear what effect, if any, this Bill would have on the Lawrence Police Department if it becomes law. This Bill, along with Senate Bill 158, will be of interest to the City of Lawrence this legislative session and one that the City Attorney's Office will monitor closely.

City Proclamation

In July 2015, the Lawrence City Commission proclaimed the City of Lawrence a “Welcoming City,” in which it was asserted that the City is “committed to building a welcoming and neighborly atmosphere in our community, where all people, including recent immigrants, are welcome, accepted, and integrated.” The Proclamation also states that “City efforts and policies that promote full access for all, including recent immigrants, are crucial to individual and community success,” that “policies that negate opportunities for contributions to our community in the fullest capacity hinder Lawrence's prosperity and compromises our commitment to the American values here stated;” and finally that “fostering a welcoming environment for all individuals, regardless of race, ethnicity or place of origin, enhances Lawrence's cultural fabric, economic growth, global competitiveness and overall prosperity for current and future generations.” The Proclamation is attached.

Proclamations do not have the effect of law, but instead serve as ceremonial or symbolic messages issued by the Office of the Mayor.

Sanctuary Outside Government

Finally, there are entities outside of government that may provide protection and services for illegal immigrants. For example, churches across the country are becoming newsworthy for providing refuge to illegal immigrants fleeing immigration officials.⁶ There are also restaurants that declare they will protect their undocumented workers.⁷

In October 2011, Immigration and Customs Enforcement (ICE) issued a memorandum explaining that immigration enforcement would not occur in “sensitive” areas like churches, schools, and hospitals, for example, unless there are exigent circumstances, law enforcement action has otherwise led ICE to the sensitive location, or prior approval is first obtained. This memo has likely been rescinded with the February 20, 2017 memos, however. The most recent memo states that “all existing conflicting directives, memoranda, or field guidance regarding the enforcement of our immigration laws and priorities for removal are hereby immediately rescinded . . .” It is unclear how rescinding the 2011 memo will dovetail with President Trump's backing for religious freedom.⁸

⁶ Joel Rose, Colorado Church Offers Immigrant Sanctuary From Deportation, NPR News, February 16, 2017.

⁷ Octavio Blanco, Sanctuary Restaurants Vow To Protect Undocumented Workers, <http://money.cnn.com/2017/02/20/news/economy/sanctuary-restaurants/index.html>, CNN Money, February 21, 2017.

⁸ Joel Rose, Colorado Church Offers Immigrant Sanctuary From Deportation, NPR News, February 16, 2017.

Conclusion

In light of President Trump's Executive Order and pending state legislation, there may be risk to the City's federal and state funding if the City formerly declares itself a sanctuary city. However, it may be possible to draft a new Proclamation reiterating the City's desire to be a welcoming city to all people, including immigrants. A proposed Proclamation is attached.

We await direction from the City Commission and are prepared to conduct additional research upon request.

United States Code Annotated
Title 8. Aliens and Nationality (Refs & Annos)
Chapter 12. Immigration and Nationality (Refs & Annos)
Subchapter II. Immigration
Part IX. Miscellaneous

8 U.S.C.A. § 1373

§ 1373. Communication between Government agencies and the Immigration and Naturalization Service

Effective: September 30, 1996

[Currentness](#)

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities

Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2) Maintaining such information.
- (3) Exchanging such information with any other Federal, State, or local government entity.

(c) Obligation to respond to inquiries

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

CREDIT(S)

([Pub.L. 104-208](#), Div. C, Title VI, § 642, Sept. 30, 1996, 110 Stat. 3009-707.)

[Notes of Decisions \(10\)](#)

8 U.S.C.A. § 1373, 8 USCA § 1373

Current through P.L. 114-316. Also includes P.L. 114-318 to 114-321, 114-323 to 114-327, and 115-1 to 115-3. Title 26 current through 115-3.

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The White House

Office of the Press Secretary

For Immediate Release

January 25, 2017

Executive Order: Enhancing Public Safety in the Interior of the United States

EXECUTIVE ORDER

ENHANCING PUBLIC SAFETY IN THE INTERIOR OF THE UNITED STATES

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq.), and in order to ensure the public safety of the American people in communities across the United States as well as to ensure that our Nation's immigration laws are faithfully executed, I hereby declare the policy of the executive branch to be, and order, as follows:

Section 1. Purpose. Interior enforcement of our Nation's immigration laws is critically important to the national security and public safety of the United States. Many aliens who illegally enter the United States and those who overstay or otherwise violate the terms of their visas present a significant threat to national security and public safety. This is particularly so for aliens who engage in criminal conduct in the United States.

Sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States. These jurisdictions have caused immeasurable harm to the American people and to the very fabric of our Republic.

Tens of thousands of removable aliens have been released into communities across the country, solely because their home countries refuse to accept their repatriation. Many of these aliens are criminals who have served time in our Federal, State, and local jails. The presence of such individuals in the United States, and the practices of foreign nations that refuse the repatriation of their nationals, are contrary to the national interest.

Although Federal immigration law provides a framework for Federal-State partnerships in enforcing our immigration laws to ensure the removal of aliens who have no right to be in the United States, the Federal Government has failed to discharge this basic sovereign responsibility. We cannot faithfully execute the immigration laws of the United States if we exempt classes or categories of removable aliens from potential enforcement. The purpose of this order is to direct executive departments and agencies (agencies) to employ all lawful means to enforce the immigration laws of the United States.

Sec. 2. Policy. It is the policy of the executive branch to:

- (a) Ensure the faithful execution of the immigration laws of the United States, including the INA, against all removable aliens, consistent with Article II, Section 3 of the United States Constitution and section 3331 of title 5, United States Code;
- (b) Make use of all available systems and resources to ensure the efficient and faithful execution of the immigration laws of the United States;

- (c) Ensure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds, except as mandated by law;
- (d) Ensure that aliens ordered removed from the United States are promptly removed; and
- (e) Support victims, and the families of victims, of crimes committed by removable aliens.

Sec. 3. Definitions. The terms of this order, where applicable, shall have the meaning provided by section 1101 of title 8, United States Code.

Sec. 4. Enforcement of the Immigration Laws in the Interior of the United States. In furtherance of the policy described in section 2 of this order, I hereby direct agencies to employ all lawful means to ensure the faithful execution of the immigration laws of the United States against all removable aliens.

Sec. 5. Enforcement Priorities. In executing faithfully the immigration laws of the United States, the Secretary of Homeland Security (Secretary) shall prioritize for removal those aliens described by the Congress in sections 212(a)(2), (a)(3), and (a)(6)(C), 235, and 237(a)(2) and (4) of the INA (8 U.S.C. 1182(a)(2), (a)(3), and (a)(6)(C), 1225, and 1227(a)(2) and (4)), as well as removable aliens who:

- (a) Have been convicted of any criminal offense;
- (b) Have been charged with any criminal offense, where such charge has not been resolved;
- (c) Have committed acts that constitute a chargeable criminal offense;
- (d) Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency;
- (e) Have abused any program related to receipt of public benefits;
- (f) Are subject to a final order of removal, but who have not complied with their legal obligation to depart the United States; or
- (g) In the judgment of an immigration officer, otherwise pose a risk to public safety or national security.

Sec. 6. Civil Fines and Penalties. As soon as practicable, and by no later than one year after the date of this order, the Secretary shall issue guidance and promulgate regulations, where required by law, to ensure the assessment and collection of all fines and penalties that the Secretary is authorized under the law to assess and collect from aliens unlawfully present in the United States and from those who facilitate their presence in the United States.

Sec. 7. Additional Enforcement and Removal Officers. The Secretary, through the Director of U.S. Immigration and Customs Enforcement, shall, to the extent permitted by law and subject to the availability of appropriations, take all appropriate action to hire 10,000 additional immigration officers, who shall complete relevant training and be authorized to perform the law enforcement functions described in section 287 of the INA (8 U.S.C. 1357).

Sec. 8. Federal-State Agreements. It is the policy of the executive branch to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law.

(a) In furtherance of this policy, the Secretary shall immediately take appropriate action to engage with the Governors of the States, as well as local officials, for the purpose of preparing to enter into agreements under section 287(g) of the INA (8 U.S.C. 1357(g)).

(b) To the extent permitted by law and with the consent of State or local officials, as appropriate, the Secretary shall take appropriate action, through agreements under section 287(g) of the INA, or otherwise, to authorize State and local law enforcement officials, as the Secretary determines are qualified and appropriate, to perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary. Such authorization shall be in addition to, rather than in place of, Federal performance of these duties.

(c) To the extent permitted by law, the Secretary may structure each agreement under section 287(g) of the INA in a manner that provides the most effective model for enforcing Federal immigration laws for that jurisdiction.

Sec. 9. Sanctuary Jurisdictions. It is the policy of the executive branch to ensure, to the fullest extent of the law, that a State, or a political subdivision of a State, shall comply with 8 U.S.C. 1373.

(a) In furtherance of this policy, the Attorney General and the Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary. The Secretary has the authority to designate, in his discretion and to the extent consistent with law, a jurisdiction as a sanctuary jurisdiction. The Attorney General shall take appropriate enforcement action against any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.

(b) To better inform the public regarding the public safety threats associated with sanctuary jurisdictions, the Secretary shall utilize the Declined Detainer Outcome Report or its equivalent and, on a weekly basis, make public a comprehensive list of criminal actions committed by aliens and any jurisdiction that ignored or otherwise failed to honor any detainers with respect to such aliens.

(c) The Director of the Office of Management and Budget is directed to obtain and provide relevant and responsive information on all Federal grant money that currently is received by any sanctuary jurisdiction.

Sec. 10. Review of Previous Immigration Actions and Policies. (a) The Secretary shall immediately take all appropriate action to terminate the Priority Enforcement Program (PEP) described in the memorandum issued by the Secretary on November 20, 2014, and to reinstitute the immigration program known as "Secure Communities" referenced in that memorandum.

(b) The Secretary shall review agency regulations, policies, and procedures for consistency with this order and, if required, publish for notice and comment proposed regulations rescinding or revising any regulations inconsistent with this order and shall consider whether to withdraw or modify any inconsistent policies and procedures, as appropriate and consistent with the law.

(c) To protect our communities and better facilitate the identification, detention, and removal of criminal aliens within constitutional and statutory parameters, the Secretary shall consolidate and revise any applicable forms to more effectively communicate with recipient law enforcement agencies.

Sec. 11. Department of Justice Prosecutions of Immigration Violators. The Attorney General and the Secretary shall work together to develop and implement a program that ensures that adequate resources are devoted to the prosecution of criminal immigration offenses in the United States, and to develop cooperative strategies to reduce violent crime and the reach of transnational criminal organizations into the United States.

Sec. 12. Recalcitrant Countries. The Secretary of Homeland Security and the Secretary of State shall cooperate to effectively implement the sanctions provided by section 243(d) of the INA (8 U.S.C. 1253(d)), as appropriate. The Secretary of State shall, to the maximum extent permitted by law, ensure that diplomatic efforts and negotiations with foreign states include as a condition precedent the acceptance by those foreign states of their nationals who are subject to removal from the United States.

Sec. 13. Office for Victims of Crimes Committed by Removable Aliens. The Secretary shall direct the Director of U.S. Immigration and Customs Enforcement to take all appropriate and lawful action to establish within U.S. Immigration and Customs Enforcement an office

to provide proactive, timely, adequate, and professional services to victims of crimes committed by removable aliens and the family members of such victims. This office shall provide quarterly reports studying the effects of the victimization by criminal aliens present in the United States.

Sec. 14. Privacy Act. Agencies shall, to the extent consistent with applicable law, ensure that their privacy policies exclude persons who are not United States citizens or lawful permanent residents from the protections of the Privacy Act regarding personally identifiable information.

Sec. 15. Reporting. Except as otherwise provided in this order, the Secretary and the Attorney General shall each submit to the President a report on the progress of the directives contained in this order within 90 days of the date of this order and again within 180 days of the date of this order.

Sec. 16. Transparency. To promote the transparency and situational awareness of criminal aliens in the United States, the Secretary and the Attorney General are hereby directed to collect relevant data and provide quarterly reports on the following:

- (a) the immigration status of all aliens incarcerated under the supervision of the Federal Bureau of Prisons;
- (b) the immigration status of all aliens incarcerated as Federal pretrial detainees under the supervision of the United States Marshals Service; and
- (c) the immigration status of all convicted aliens incarcerated in State prisons and local detention centers throughout the United States.

Sec. 17. Personnel Actions. The Office of Personnel Management shall take appropriate and lawful action to facilitate hiring personnel to implement this order.

Sec. 18. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

- (i) the authority granted by law to an executive department or agency, or the head thereof; or
- (ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,
January 25, 2017.



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CITY OF LAWRENCE, KANSAS

Schedule of Expenditures of Federal Awards
For the Year Ended December 31, 2015

Federal Grantor/Pass-Through Grantor/Program Title	Federal CFDA Number	Expenditures
<u>U.S. Department of Transportation</u>		
Airport Improvement Program	20.106	\$ 27,497
Federal Transit Formula Grant	20.507	2,700,598
Passed Through Kansas Department of Transportation		
Highway Planning and Construction	20.205	976,905
DOT Federal Highway Administration	20.216	296,022
Federal Transit Capital Investment Grants	20.500	1,024,148
State and Community Highway Safety	20.600	<u>33,745</u>
Total U.S. Department of Transportation		<u>5,058,915</u>
<u>U.S. Department of Housing and Urban Development</u>		
Community Development Block Grant	14.218	394,701
HOME Investments Partnership Program	14.239	385,146
Fair Housing Initiatives Program	14.420	24,493
Passed Through Kansas Housing Resource Corp.		
Emergency Solutions Grant Program	14.231	<u>166,162</u>
Total U.S. Department of Housing and Urban Development		<u>970,502</u>
<u>U.S. Department of Justice</u>		
Bulletproof Vest Partnership Program	16.607	11,199
Edward Byrne Memorial Competitive Grant Program	16.738	<u>94,260</u>
Total U.S. Department of Justice		<u>105,459</u>
Total Expenditures of Federal Awards		<u>\$ 6,134,876</u>

West's Kansas Statutes Annotated
Chapter 22. Criminal Procedure
Article 46. General Provisions

K.S.A. 22-4606

22-4606. Racial and other profiling; definitions

Currentness

As used in this act:

- (a) “Governmental unit” means the state, or any county, city or other political subdivision thereof, or any department, division, board or other agency of any of the foregoing, except governmental unit shall not include the board of education of any school district employing school security officers.
- (b) “Law enforcement agency” means the governmental unit employing the law enforcement officer.
- (c) “Law enforcement officer” has the meaning ascribed thereto in [K.S.A. 74-5602](#), and amendments thereto, except law enforcement officer shall not include school security officers designated as school law enforcement officers pursuant to [K.S.A. 72-8222](#), and amendments thereto.
- (d) “Racial or other biased-based policing” means the unreasonable use of race, ethnicity, national origin, gender or religion by a law enforcement officer in deciding to initiate an enforcement action. It is not racial or other biased-based policing when race, ethnicity, national origin, gender or religion is used in combination with other identifying factors as part of a specific individual description to initiate an enforcement action.
- (e) “Enforcement action” means any law enforcement act, as described in [K.S.A. 22-4609](#), and amendments thereto, during a nonconsensual contact with an individual or individuals.
- (f) “Collection of data” means that information collected by Kansas law enforcement officers after each traffic stop.

Credits

[Laws 2005, ch. 159, § 1](#); [Laws 2011, ch. 94, § 1](#), eff. May 26, 2011.

K. S. A. 22-4606, KS ST 22-4606

Statutes are current through laws enacted during the 2017 Regular Session of the Kansas Legislature effective on or before January 18, 2017.

West's Kansas Statutes Annotated
Chapter 22. Criminal Procedure
Article 46. General Provisions

K.S.A. 22-4609

22-4609. Same; prohibited as basis for making stop, search or arrest

Currentness

It is unlawful to use racial or other biased-based policing in:

- (a) Determining the existence of probable cause to take into custody or to arrest an individual;
- (b) constituting a reasonable and articulable suspicion that an offense has been or is being committed so as to justify the detention of an individual or the investigatory stop of a vehicle; or
- (c) determining the existence of probable cause to conduct a search of an individual or a conveyance.

Credits

Laws 2005, ch. 159, § 4; Laws 2011, ch. 94, § 2, eff. May 26, 2011.

Notes of Decisions (3)

K. S. A. 22-4609, KS ST 22-4609

Statutes are current through laws enacted during the 2017 Regular Session of the Kansas Legislature effective on or before January 18, 2017.

Note: This matter began on December 2, 2016 when a group of Lawrence High School students organized a “walk out” and came to City Hall to meet with the City Manager. The matter was placed on a City Commission agenda the following Tuesday, and staff was directed to meet with the students, discuss the letter, and come to a mutually acceptable resolution. A summary of the students’ letter, staff’s response, and the agreed-to terms based upon several in-person meetings are summarized below.

Lawrence High School Students Letter	City’s Response	Mutually Agreed Upon Terms
<p>“We ask for a more detailed letter to address the further safety of our community. Any statements made are to include the disabled, people of color, immigrants, native tribes, refugees, Muslims, LGBTQ persons, and all other marginalized groups.”</p>	<p>On September 7, 2016, the City Commission issued a statement “recogn[izing] and affirm[ing] that discrimination in any form is unacceptable and affirm our unanimous support of Black Lives Matter <i>and those who are oppressed.</i>”</p> <p>That letter professes support for all marginalized groups, including those of concern to the Lawrence High School students.</p> <p>Staff has drafted a new letter to our federal legislative delegation, encouraging it to uphold protections for marginalized groups and ensuring safety for everyone in our country.</p>	<p>Staff attaches a draft federal legislative delegation letter, and awaits direction from the City Commission.</p>
<p>“We ask that the Lawrence Police Department (LPD) also issue a statement of solidarity.”</p>	<p>The Lawrence Police Department is not an entity apart from the City. A letter in addition to the one drafted by the City Commission is not necessary.</p>	
<p>(1) “Chapter X, Article 1, Human Relations, “the practice or policy of discrimination against person by reason of race, sex, religion, color, national origin, age, ancestry, familial status, sexual orientation, disability or gender identity, is a matter of concern to the City of</p>	<p>Staff provided Viveca Price (the student representative) with a copy of Chapter 10, and reviewed some of its language with her during the second in-person meeting. The student representative previously raised concern with whether Chapter 10 protects those with gender</p>	

<p>Lawrence...” As addressed in this article, the City of Lawrence stands with the belief that discrimination is unlawful and puts those affected by it in danger. However, this section protects these groups only in career, education, business, and housing. In order to promote a safe city, changes will need to be made to this article and those related to it. We ask that the revisions made include the promotion of safety from the Police Department and the creation of a city wide safe zone.”</p>	<p>identity issues. Upon reviewing language from Chapter 10 at the second meeting, however, the student representative said she was satisfied with its protection for individuals in that group.</p> <p>Staff also provided the student representative with state statutes prohibiting police officers from engaging in racial or other bias based policing (K.S.A. 22-4606; 22-4609; 22-4610). Staff explained to the student representative that police must have at least reasonable suspicion to stop someone and that suspicion cannot be based on a person’s race, gender, national origin, etc. Staff also advised the student representative that the police department has a policy prohibiting racial or other bias based policing that officers must comply with, in addition to the state law.</p> <p>Staff discussed sanctuary cities with the student representative and asked how the student representative would define the phrase. She said it means not conducting surveillance on people under request #3 below, and not assisting in having people deported.</p> <p>Staff directed the student representative to review 8 U.S.C. § 1644 which states, in relevant part, that “no State or local</p>	
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	<p>government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.” There is another relevant federal law, 8 U.S.C. § 1373, which similarly states that “Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.”</p> <p>Finally, Chief Khatib states that in the normal course of business the Lawrence Police Department neither checks the immigration status of an individual, nor reports the immigration status of individuals it has contact with to immigration officials. Exceptions would be on a case specific basis and would normally involve a nexus to a criminal case and not just the immigration status of an individual.</p>	
<p>(2) Lawrence will not label Black Lives Matter and any groups which promote social justice as</p>	<p>The City does not maintain a list of participants or attach labels to Black Lives Matter.</p>	

criminal or terrorist organizations. The city will not attack any of these groups or those in attendance.		
(3) Lawrence will not assist, cooperate, or aid in the surveillance of persons belonging to the Muslim, immigrant, or refugees communities, in any way, shape or form.	The Lawrence Police Department may on occasion, in the performance of its law enforcement obligations, conduct surveillance on a suspected criminal who happens to be from one of the listed groups. The City cannot accept this demand as written, but recognized the concern and proposes alternative language.	The parties agree to insert the term “unlawful” in the demand so that it reads “Lawrence will not assist, cooperate, or aid in the <i>unlawful</i> surveillance of persons belonging to the Muslim, immigrant, or refugees communities, in any way, shape or form.”
(4) We request Lawrence lawmakers design legal strategies to resist federal policies which would put marginalized groups in danger.	Our Congressional delegation is in the best position to influence federal laws and policy. Staff recommended writing a letter to federal representatives and inviting KU and Haskell to sign the letter as well. Staff offered to draft the letter.	<p>A draft letter was provided to and approved by the student representative during the second meeting. The letter states that the undersigned have heard from people in the community concerning the safety of marginalized groups, and recognizes that the Lawrence High School students spoke about their concerns at a recent City Commission meeting.</p> <p>The letter encourages the delegation to “uphold protections for marginalized groups, ensuring safety for everyone in our country.” The letter states its hope that the delegation will work to make sure all people in our country are treated with dignity and respect and will not be treated unfairly or unjustly because they belong to one or more marginalized group.</p> <p>The letter is attached.</p>
(5) We request Lawrence Lawmakers to design	Planned Parenthood closed in Lawrence a few years ago.	The student representative rescinded the demand and acknowledged that Planned Parenthood is

legal strategies to resist any possible defunding of businesses and organizations that include and are similar to Planned Parenthood.		closed in Lawrence. There were no further demands on this matter.
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To: Senate Federal and State Affairs Committee
From: Eric B. Smith, Deputy General Counsel
Date: February 15, 2017
RE: SB 158
Neutral Testimony-- With Concerns

I want to thank Chairman LaTurner and the Committee members for allowing the League of Kansas Municipalities to provide neutral testimony and discuss our concerns with SB 158.

The League appreciates that SB 158 has addressed the financial concerns we have had in the past with similar legislation; however, we still have concerns with this bill that warrant comment. Day-to-day operations and decisions of local agencies are dependent upon several factors including available personnel and budget constraints. SB 158 requires local officials to potentially violate the fourth amendment by incarcerating individuals without due process as required by the U.S. constitution.

SB 158 would require the attorney general to defend any litigation resulting from a municipality complying with a federal immigration hold; the League questions if the attorney general has sufficient staff to properly defend such litigation. SB 158 also indicates the costs associated with the litigation would be paid by the state general fund. With the current condition of the state general fund, the League is concerned the fiscal effect of SB 158 could be more than the state general fund could realistically absorb resulting in local municipalities being held responsible for the costs of litigation and resulting judgments.

SB 158 provides for the state to defend a municipality if there is litigation related to following this state mandate. The fact remains that SB 158 is a mandate to all municipalities in this state to potentially violate the fourth amendment of the Constitution of the United States. We have heard concerns from local municipalities that despite contacting ICE about an individual on a detainer hold, ICE never picks up the individual resulting in the individual being held on no charges for an indefinite period of time. The immigration issue is a federal concern that should be resolved by the federal government stepping up and enforcing the law, not by asking municipalities to circumvent the constitution.

SB 158 at subsection (g) indicates a municipality will have the ability to file a claim against the state for expenses incurred related to enforcing federal immigration laws but this is no guarantee the expenses will be paid by the state. The League is concerned the budget issues of the state could result in denial of claims leaving municipalities to suffer the financial burden of a state mandate.

The League, on behalf of our member cities, asks the committee to consider the concerns we have raised with SB 158 before any action taken.

SENATE BILL No. 158

By Committee on Federal and State Affairs

2-6

AN ACT concerning immigration; relating to sanctuary policies and the prohibition thereof; duty of law enforcement to cooperate in immigration enforcement; litigation against municipalities; defense by attorney general; claims against the state.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) As used in this section:

(1) "Law enforcement officer" means any person who, by virtue of office or public employment, is vested by law with a duty to maintain public order and to make arrests for violation of the laws of the state of Kansas or the ordinances or resolutions of any municipality thereof.

(2) "Municipality" means a county or a city.

(3) "Municipality official" means any person holding a municipal office either by election or appointment, or any law enforcement officer employed by a municipality.

(4) "Sanctuary policy" means any order, ordinance, resolution or law enforcement policy, whether formally enacted or informally adopted, that:

(A) Limits or prohibits any municipality official or person employed by a municipality from communicating or cooperating with federal agencies or officials to verify or report the immigration status of any alien within such municipality;

(B) grants to aliens unlawfully present in the United States the right to lawful presence within the boundaries of a municipality in violation of federal law;

(C) violates any provision of 8 U.S.C. § 1373;

(D) restricts in any way, or imposes any conditions on, a municipality's cooperation or compliance with detainers or other requests from United States immigration and customs enforcement to maintain custody of any alien or to transfer any alien to the custody of United States immigration and customs enforcement;

(E) requires United States immigration and customs enforcement to obtain a warrant or demonstrate probable cause before complying with detainers or other requests from United States immigration and customs enforcement to maintain custody of any alien or to transfer any alien to the custody of United States immigration and customs enforcement; or

(F) prevents a municipality's law enforcement officers from inquiring

1 as to the citizenship or immigration status of any person.

2 (5) "State agency" means any state office or officer, department,
3 board, commission, institution, bureau or any agency, division or unit
4 within any office, department, board, commission or other state authority.

5 (b) No municipality shall enact or adopt any sanctuary policy. Any
6 municipality that enacts or adopts a sanctuary policy shall be ineligible to
7 receive any moneys that would otherwise be remitted to such municipality
8 by a state agency. A municipality shall remain ineligible to receive such
9 moneys until such time as the sanctuary policy is repealed or is no longer
10 in effect.

11 (c) (1) The attorney general shall receive complaints regarding any
12 violation of this section. The complaints may be submitted by any resident
13 of this state, and shall be submitted in writing in the form and manner as
14 prescribed by the attorney general. In lieu of submitting a complaint, any
15 member of the legislature may request, at any time, that the attorney
16 general investigate and issue an opinion as to whether a municipality has
17 enacted or adopted a sanctuary policy in violation of this section.

18 (2) Upon receiving a complaint or request, the attorney general shall
19 investigate and determine whether a violation of this section has occurred.
20 The attorney general shall issue an opinion stating whether the
21 municipality that is the subject of the complaint or request has enacted or
22 adopted a sanctuary policy in violation of this section. Upon the issuance
23 of an opinion by the attorney general that a municipality has enacted or
24 adopted a sanctuary policy in violation of this section, the municipality
25 shall become ineligible to receive any moneys that would otherwise be
26 remitted to the municipality by a state agency. Such ineligibility shall
27 commence on the date the opinion is issued, and shall continue until such
28 time as the attorney general certifies that the sanctuary policy is repealed
29 or is no longer in effect.

30 (3) The attorney general shall send to the municipality that was the
31 subject of the investigation and to the director of accounts and reports a
32 copy of any opinion issued pursuant to this section and any certification by
33 the attorney general that a sanctuary policy is repealed or no longer in
34 effect.

35 (d) The governing body of each municipality, or the chief law
36 enforcement officer thereof, shall provide each law enforcement officer
37 with a printed copy of this section and written notice of the officer's duty
38 to cooperate with state and federal agencies and officials on matters
39 pertaining to the enforcement of state and federal laws governing
40 immigration. Each state agency vested with law enforcement authority
41 shall provide each law enforcement officer employed by the agency with a
42 printed copy of this section and written notice of the officer's duty to
43 cooperate with state and federal agencies and officials on matters

1 pertaining to the enforcement of state and federal laws governing
2 immigration.

3 (e) No state agency shall enact or adopt a sanctuary policy.

4 (f) If a city or county is a defendant in litigation arising from
5 enforcing the federal immigration laws to the full extent permitted by
6 federal law, the attorney general shall, at the request of the city or county,
7 defend the city or county in the litigation. All costs incurred by the
8 attorney general to defend a city or county as provided in this subsection,
9 including payment of court costs, shall be paid from the state general fund.

10 (g) If a city or county incurs liability for enforcing the federal
11 immigration laws to the full extent permitted by federal law, the city or
12 county responsible for the costs incurred shall be reimbursed for such costs
13 by filing a claim against the state pursuant to article 9 of chapter 46 of the
14 Kansas Statutes Annotated, and amendments thereto.

15 (h) On or before January 1, 2018, the attorney general shall adopt
16 rules and regulations necessary to implement the provisions of this section.

17 Sec. 2. This act shall take effect and be in force from and after its
18 publication in the statute book.

SENATE BILL No. 157

By Committee on Federal and State Affairs

2-6

1 AN ACT concerning the Kansas highway patrol; dealing with an
2 agreement with the federal department of homeland security regarding
3 enforcement of immigration laws.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. (a) The superintendent of the Kansas highway patrol shall
7 seek to negotiate the terms of a memorandum of agreement between the
8 state of Kansas and the United States department of homeland security, as
9 provided in 8 U.S.C. § 1357(g), concerning the enforcement of federal
10 immigration laws, detentions and removals, and related investigations in
11 the state of Kansas by certain Kansas highway patrol officers designated
12 by the superintendent.

13 (b) Any memorandum of agreement negotiated pursuant to
14 subsection (a) shall be signed on behalf of this state by the superintendent
15 of the Kansas highway patrol or as otherwise required by the United States
16 department of homeland security.

17 (c) On or before January 1, 2018, the superintendent of the Kansas
18 highway patrol shall submit a report to the governor and the legislature on
19 the status of the superintendent's attempts to enter into the memorandum of
20 agreement described in subsection (a).

21 Sec. 2. This act shall take effect and be in force from and after its
22 publication in the statute book.

Office of the Mayor

Proclamation

Lawrence, Kansas

WHEREAS: *The City of Lawrence recognizes that cities that proactively welcome immigrants and take steps to ensure their successful integration will be strategically positioned as globally competitive, 21st century leaders; and*

WHEREAS: *The City of Lawrence is committed to building a welcoming and neighborly atmosphere in our community, where all people, including recent immigrants, are welcome, accepted, and integrated; and*

WHEREAS: *City efforts and policies that promote full access for all, including recent immigrants, are crucial to individual and community success; and*

WHEREAS: *Policies that negate opportunities for contributions to our community in the fullest capacity hinder Lawrence's prosperity and compromises our commitment to the American values here stated; and*

WHEREAS: *Fostering a welcoming environment for all individuals, regardless of race, ethnicity or place of origin, enhances Lawrence's cultural fabric, economic growth, global competitiveness and overall prosperity for current and future generations;*

NOW, THEREFORE, BE IT RESOLVED, *the City of Lawrence, Kansas, does hereby proclaim that the City of Lawrence, Kansas is a*

"WELCOMING CITY"

Jeremy Farmer Mayor

July 28,

2015

Office of the Mayor

Proclamation

Lawrence, Kansas

WHEREAS: *The City of Lawrence has previously declared itself a “Welcoming City,” recognizing that it is an inclusive community that values immigrants and the diversity they bring to Lawrence’s cultural fabric, economic growth, and global competitiveness; and*

WHEREAS: *The City of Lawrence continues its commitment to building a welcoming and neighborly atmosphere in our community, where all people, including immigrants, are welcome and accepted; and*

WHEREAS: *City efforts and policies that promote the safety of all is crucial to individual and community success; and*

WHEREAS: *Policies that negate opportunities for contributions to our community in the fullest capacity hinder Lawrence’s prosperity and compromises our commitment to the American values here stated; and*

WHEREAS: *Fostering a welcoming and safe environment for all individuals, regardless of race, ethnicity or place of origin, enhances the overall prosperity for current and future generations.*

NOW, THEREFORE, BE IT RESOLVED, *the City of Lawrence, Kansas, does hereby proclaim that the City of Lawrence, Kansas continues to be a “Welcoming City,” and that it is an inclusive community that thrives on the diversity of backgrounds that inhabit it, and that the safety of all people should be protected regardless of their background, race, religion, or country of origin.*

Leslie Soden, Mayor

March, 7, 2017