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SANCTUARY NETWORKS

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ABSTRACT

The idea of “sanctuary” has headlined immigration law and policy debates for several years. To date, however, legal scholarship has focused almost exclusively on states and municipalities that limit participation in federal immigration enforcement. Accordingly, doctrinal and theoretical discussion has centered on sanctuary’s constitutional dimensions, with attention to Tenth Amendment and federalism concerns. But, always true, and ever more since the 2016 election, sanctuary has become a diverse phenomenon, incorporating a variety of public and private institutions and organizations. Local agencies, places of worship, employers, school districts, universities, private property owners, and social media groups are increasingly adopting policies that seek to mitigate federal enforcement efforts. This Article is the first to comprehensively describe and theorize these novel and wide-ranging sources of sanctuary. First, it details this breadth of sanctuary policies and institutions, noting their relative efficacy and differing legal justifications. Second, the Article contemplates how these varied sources of sanctuary work in context and in relation to each other. Borrowing from governance theories that emphasize the importance of networked public and private institutions, we argue that, as a practical matter, governance over immigration enforcement is characterized by a decentralized set of actors. This Article argues that this network of public and private institutions and organizations collectively can calibrate federal enforcement policy and instantiate a competing immigration enforcement regime. Ultimately, this emerging set of actors helps decenter the federal government as the sole locus and source of enforcement policy, and urges commentators and policymakers to move beyond federalism and sovereignty in debates over immigration enforcement policy.

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INTRODUCTION

“You’re going to have to go through us to deport Dreamers who work here.”¹ So announced Brad Smith, the President of Microsoft,² moments after President Trump rescinded the Deferred Action for Childhood Arrivals (DACA) program.³ Acknowledging that it has 39 workers who have received deferred action through DACA, Mr. Smith stated that Microsoft would “exercise its legal rights properly to help protect [its] employees.”⁴ In vowing to protect the Dreamers,⁵ Microsoft has joined other employers that, prior to the rescission of DACA, offered to create a safe haven for their workers. These employers include restaurant owners who are establishing “sanctuary workplaces” for their employees.⁶ In addition to prohibiting harassment of restaurant workers on the basis of immigration status and declaring their businesses as “sanctuary restaurants,”⁷ these employers would require federal immigration officers to produce a judicial warrant before they may enter their restaurants.⁸

This, and other novel forms of sanctuary, which emerged in response to President Trump’s immigration enforcement policies, has been under-theorized in both legal and political scholarship on “sanctuary.” Instead, discussion of the term continues to be obsessed with state and local rights.⁹

¹ Todd Haselton, *Microsoft to Trump: You’re Going to Have to Go Through Us to Deport Dreamers Who Work Here*, CNBC (Sep. 5, 2017), <https://www.cnbc.com/2017/09/05/microsoft-response-to-daca-will-defend-dreamers-in-court.html>.

² *Id.*

³ Memorandum from Elaine C. Duke, Acting Sec’y of the U.S. Dep’t of Homeland Sec. to James W. McCamien, Acting Director of U.S. Citizenship and Immigration Services et al., Rescission of the June 15, 2012 Memorandum Entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (Sep. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca>.

⁴ Haselton, *supra* note 1.

⁵ The “Dreamers” refer to individuals who would have benefitted from a proposed legislation, the Development, Relief, and Education for Alien Minors Act of 2011 (“DREAM Act of 2011”), that was intended to provide lawful permanent residency to immigrants who were unlawfully brought to the United States when they were children. S. 952, 112th Cong. (2011) (as introduced in the Senate, May 5, 2011) (different iterations of the DREAM Act have been proposed in Congress since 2001, see S. 1291, 107th Cong. (2001)). The bipartisan bill failed to pass Congress. Mariela Olivares, *Renewing the Dream: DREAM Act Redux and Immigration Reform*, 16 HARV. LATINO L. REV. 79, 82, 85-89 (2013) (discussing legislative history of DREAM act).

⁶ Joshua Sabatini, *San Francisco Restaurant Owners Offer Employees Sanctuary Workplace*, S.F. EXAMINER (Mar. 10, 2017), <http://www.sfexaminer.com/san-francisco-restaurant-owners-offer-employees-sanctuary-workplace/>.

⁷ *Id.*

⁸ *Id.*

⁹ See, e.g., *Cty. of Santa Clara v. Trump*, No. 3:17-CV-574-WHO, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017); *City and Cty. of S.F. v. Trump*, No. 3:17-CV-485-WHO, 2017 WL

When the term is invoked by a city or state,¹⁰ or derided by the current Administration,¹¹ they refer to governmental entities and agencies declining to participate in federal immigration enforcement.¹² The legal battle over sanctuaries has thus become a federalism contest, with the Tenth Amendment shielding state and local authorities from being conscripted in federal enforcement efforts.¹³ This defense depends heavily on the right of states to control their own affairs as independent, constitutional actors who maintain authority over community safety and residential policing.¹⁴ Accordingly, defending state and municipal sanctuary policies conjures the structural power allocation contests inherent in a federalist system, with emphasis on the hard lines that separate federal and sub-federal sovereigns.

The predominance of this conception is striking, given that providing “sanctuary” for immigrants is rooted in a rich history of non-governmental opposition to federal immigration policies.¹⁵ It emerged from religious organizations’ desire to provide refuge and places of physical sanctuary to Central American migrants in the 1980s.¹⁶ This prior conception of sanctuary

1459081 (N.D. Cal. Apr. 25, 2017); Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017); Ilya Somin, *Federalism, the Constitution, and Sanctuary Cities*, WASH. POST (Nov. 25, 2016), https://www.washingtonpost.com/news/volokh-conspiracy/wp/2016/11/26/federalism-the-constitution-and-sanctuary-cities/?utm_term=.08a2082d3ca6 (noting that the “fight over sanctuary cities is an example of how federalism and constitutional limitations on federal power can sometimes protect vulnerable minorities – in this case, undocumented immigrants.”).

¹⁰ Bradley Zint, *Glendale Police Vow Not to Enforce Federal Immigration Laws*, L.A. TIMES (Apr. 1, 2017), <http://www.latimes.com/local/lanow/la-me-glendale-police-20170401-story.html> (announcing the Glendale City Council’s resolution affirming police officers will “not enforce federal immigration laws.”).

¹¹ Elise Foley & Marina Fang, *White House, Trump Attack Judicial Branch Again by Misconstruing ‘Sanctuary City’ Ruling*, HUFFINGTON POST (Apr. 26, 2017), http://www.huffingtonpost.com/entry/trump-attacks-court-immigration-sanctuary-cities_us_590098e7e4b0af6d718a2d99 (criticizing sanctuaries as “cities...engaged in the dangerous and unlawful nullification of Federal law in an attempt to erase our borders.”).

¹² Foley & Fang, *supra* note 11, at 1; Zint, *supra* note 10, at 1.

¹³ *Printz v. United States*, 521 U.S. 898, 925 (1997) (holding “that the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs.”); *New York v. United States*, 505 U.S. 144, 157 (1992) (holding “the Tenth Amendment confirms that the power of the Federal Government is subject to limits that may, in a given instance, reserve power to the States.”).

¹⁴ Bill Ong Hing, *Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy*, 2 UC IRVINE L. REV. 247, 251 (2012) (arguing that local policy makers and law enforcement officials in sanctuary jurisdictions make “thoughtful and deliberate public safety decisions” in “do[ing] the right thing for the entire community. Th[e]se decisions are critical to principles of inclusion in our ever-growing diverse communities.”).

¹⁵ See *infra* Part II.A (discussing the history of the use of sanctuary in the United States).

¹⁶ To be sure, the concept of providing refuge in the United States to immigrants can be traced further back in history. For instance, the Catholic Church sought to provide a safe

was not based in sovereignty or structural power allocations. Instead of invoking federalism as the legal basis of their resistance, these non-governmental actors focused on the moral force of their religious motivation, and their rights grounded in the First Amendment, private property law and criminal law.¹⁷

But, as the workplace protections that Microsoft and restaurant owners illuminate, the dichotomous understanding of sanctuary—the concept of providing some form of protection or refuge for undocumented immigrants in either public or private forms—fails to capture our current reality. Perhaps always true, but ever clearer since the 2016 election and subsequent crackdown on immigration, resistance to federal immigration efforts has proliferated.¹⁸ Although these traditional manifestations of sanctuary remain loci of refuge, other types of public and private actions have gained important roles in the movement to resist federal enforcement efforts. Private sanctuaries have expanded beyond religious institutions to workplaces and personal homes. Meanwhile, public entities—entire states, city agencies and school districts—are considering, or have adopted, policies of non-cooperation with federal immigration enforcement. Further, several universities, both public and private, have declared themselves sanctuaries, committing to protecting all students regardless of immigration status. Finally, informal organizations of individuals and groups are using social media to create warning systems for immigration raids and galvanize efforts to aid affected noncitizens. In short, sanctuary can be everywhere.¹⁹

Most scholarship on the term “sanctuary” has primarily focused on its conventional public or private dimension.²⁰ Such explorations help

haven to Cuban refugees in the 1960s. OPERATION PEDRO PAN GROUP, INC., <http://www.pedropan.org/category/history> (last visited July 30, 2017). Europe’s destruction following World War II allowed 200,000 displaced Europeans to enter the United States. Displaced Persons Act of 1948, Pub. L. No. 80–774, 62 Stat. 1009 (1948).

¹⁷ See *infra* Part II.

¹⁸ See *infra* Part II.

¹⁹ It is worth noting that anti-sanctuary proposals and policies also seem to be on the rise. See, e.g., S.B. 4, 85th Leg., Reg. Sess. (Tex. 2017).

²⁰ See Barbara E. Armacost, *The New Immigration Federalism*, 2016 MICH. ST. L. REV. 1197, 1202 (2016) (arguing that sanctuary cities and policies reinforce federalism); Hing, *supra* note 14, at 278 (analyzing litigation between state actors and federal law); Huyen Pham, *Problems Facing the First Generation of Local Immigration Laws*, 36 HOFSTRA L. REV. 1303, 1304 (2008) (focusing on obstacles for public entities implementing anti-immigrant policies); Huyen Pham, *The Private Enforcement of Immigration Laws*, 96 GEO. L.J. 777, 778–79 (2008) (showing how federal laws shift the burden of immigration enforcement onto private parties like employers); Rose Cuison Villazor, *What is a “Sanctuary”?*, 61 S.M.U. L. REV. 133, 137 (2008) (defining ‘sanctuary’ with its public and private dimensions) [hereinafter Villazor, *What is a “Sanctuary”?*]; Rose Cuison Villazor, *“Sanctuary Cities” and Local Citizenship*, 37 FORDHAM URB. L.J. 573, 577–78 (2010) (detailing public tensions between San Francisco’s Mayor, Board of Supervisors, citizen ideologies, and federal immigration policies).

demonstrate the moral, legal and political significance of “sanctuary cities” and sanctuary churches. Yet, such examination through only a public or private lens leads to an incomplete picture because it misses all the other ways that individuals and entities provide sanctuary to immigrants today. Perhaps more importantly, it obscures how a myriad of public and private institutions and entities, in practice, exert governance and authority over noncitizens. To fully appreciate the meaning of sanctuary from a descriptive, theoretical, normative and policy perspective, it is necessary to explore not only their distinct forms but also how they relate to each other in a distributed network.

This Article is the first to provide such an analysis. Ultimately, we show that each type of sanctuary has an independent, normative value and legal justification, but the ability of each to protect undocumented immigrants is limited. Viewed in isolation, the ability of these broader manifestations of sanctuary to achieve their specific goals may be constrained by legal principles that govern public and private entities. Examined together, however, these public and private groups are forming what we call a “sanctuary network” that collectively exerts governance over immigration enforcement. In particular, adopting this network analysis more commonly deployed in political science and sociology,²¹ we show the extent to which various public, private and public/private forms of sanctuary are informally collaborating to collectively resist immigration laws and influence immigration law policies. The strength of any claim of sanctuary is thus contextual. It depends on an admixture of factors that include whether the sanctuary is public or private or both, and whether its existence depends on constitutional limitations, statutory authority, or only political will. In addition, some sanctuary policies, regardless of source, will largely remain symbolic expressions, whereas other forms provide more concrete immigrant protections.

We argue that this multi-faceted theoretical concept of sanctuary is impactful in three distinct ways. First, in states and municipalities that maintain government-level sanctuary policies, the variety of other institutional and individual sanctuary policies have reinforcing effects that can dictate, in significant ways, the overall enforcement regime. Although sanctuary cities are critical in their ability to reign in law enforcement actions, municipal non-cooperation policies work best when complemented by support from other sources. Creating a diverse and intertwined network of protective institutions and individuals help shore-up municipal policies, providing fuller political and legal cover to governmental resistance efforts.

Second, inherent in distributed and decentralized conceptions of

²¹ See R. A. W. RHODES, UNDERSTANDING GOVERNANCE, POLICY NETWORKS, GOVERNANCE, REFLEXIBILITY AND ACCOUNTABILITY (1997); R. A. W. Rhodes, *Policy Networks, A British Perspective*, 2 J. THEORETICAL POLITICS 293 (1990); see also *infra* Part III (discussing network analysis and applying it to sanctuary policies).

governance is the possibility that such networks might reify federal policy goals just as much as they might offer resistance to them. Such possibilities are manifest in states and jurisdictions that have taken “anti-sanctuary” stances, complementing and multiplying the federal executive’s enforcement capabilities. In such places, a variety of institutional, non-governmental, and grass-roots forms of sanctuary are especially important for immigrants. These public and private forms of sanctuary provide the only protection an immigrant is likely to receive. While such sanctuaries are necessarily limited in effectiveness, they maintain significant value as conspicuous points of resistance that are likely to influence political outcomes in the longer term. Further, they reinforce the notion that state actors are not the sole authors of societal norms and regulations. In other words, we argue that the possibility that some sub-federal actors might strengthen the federal government’s enforcement regime counsels for a more expansive conception of immigration enforcement governance, not less.

Third, and finally, sanctuary in all its forms informs our larger national discourse over the morality and legitimacy of immigration enforcement policy. Although federalism is traditionally conceived of as allocations of power between the federal government and states, more recent scholarship has focused on how networks of non-sovereign governmental institutions and even private networks contribute to both norm-creation and policymaking. So conceived, we suggest that because of the ties between enforcement actions and public and private institutions at all levels, these multi-faceted sanctuaries are all participating in calibrating national immigration policy. With or without sovereignty, local agencies, universities, employers and religious institutions are political actors in this sphere, and are actively challenging the legitimacy of federal enforcement policies. Those invested in immigration law and policy, particularly on the federal level, but as well as state and local level, would need to take into account these various points of resistance, either accommodating them or expending political capital to overcome them. Regardless, these atomized inputs are likely to dynamically influence and alter federal and state level lawmaking on immigration. By thus reconceiving the notion of sanctuary, we reimagine what these multiple invocations of sanctuary are doing. In dissenting from the federal executive’s immigration enforcement scheme, these various entities are influencing current and future decisions on immigration enforcement, while constituting themselves as powerful political actors who help author national immigration policy.

This Article proceeds in four parts. Part I sets the stage by explaining what we mean in this Article when we use the term “sanctuary.” As we emphasize in this Part, although there is no consistent meaning of the term “sanctuary,” we deploy a definition that focuses on public and private efforts to resist or shield against the federal enforcement of immigration law. Having provided our working definition of “sanctuary,” Part II maps out the different

categories of sanctuary that exist today. Here, we describe each type of sanctuary, detailing the scope of protection each might provide an undocumented immigrant. In addition, we assess the legal justification for each to analyze their strengths and weaknesses and examine any legal challenges that they have encountered. Part III examines the different types of sanctuary in relation to each other. Using network analysis as a theoretical framework, we demonstrate how overall, the significance of a type of sanctuary depends on many different contexts. In this Part, we begin by noting the mutually reinforcing effect of private sanctuaries in areas of public sanctuary. We then suggest the symbolic importance of local and sub-local sanctuaries in jurisdictions that have taken decidedly anti-sanctuary positions. Finally, Part IV explores the implications of these instances of sanctuary at all levels for immigration enforcement.

Ultimately, this project helps reorient our theoretical and legal approach to sanctuaries. By contextualizing and emphasizing other sanctuary providers along side state and local governments, we carve out conceptual space for the myriad institutions and networks, whether private or public, that govern the lives of undocumented noncitizens. This reorientation is critical in a regulatory sphere characterized by complexity and interdependence between multiple levels of government and the institutions of everyday life, like workplaces, schools, and religious organizations

I. DEFINING “SANCTUARY”

Google “what is a sanctuary” and you will get numerous hits.²² In the last six months alone, more than 96 articles raised this question.²³ These articles make evident that there is no precise definition of the term “sanctuary.” Indeed, no legal definition of “sanctuary” in the immigration law context exists, which leaves the term open to various meanings. As such, as we discuss below, its meaning is largely contested, particularly among those who have a stake in immigration law enforcement and policy.

A. Executive Branch’s Definition

One starting point for determining the meaning of the term sanctuary is to examine it from the federal government’s perspective. This vantage point admits of at least three definitions. The first is a general meaning that can be

²² What is a sanctuary city, GOOGLE, <http://google.com> (search “What is a sanctuary city”).

²³ What is a sanctuary city, GOOGLE NEWS, <http://news.google.com> (search “What is a sanctuary city”, limiting results from Feb. 1, 2017 to Jul. 31, 2017).

gleaned from President Trump’s Executive Order 13768.²⁴ E.O. 13768 aims to penalize sanctuary jurisdictions by denying them federal funds.²⁵ Stating that “sanctuary jurisdictions across the United States willfully violate Federal law in an attempt to shield aliens from removal from the United States,”²⁶ the executive order claims that the actions of sanctuary jurisdictions have “caused immeasurable harm” to the United States.²⁷ Accordingly, E.O. 13768 articulates that the policy of the federal government is to “[e]nsure that jurisdictions that fail to comply with applicable Federal law do not receive Federal funds.”²⁸ In particular, the executive order warns that, “jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal funds.”²⁹

Thus, E.O. 13768 strives to define “sanctuary jurisdictions” in general terms as places that are harming the country through their defiance of 8 U.S.C. 1373. “Sanctuary jurisdictions” in this context are law-breakers that are willing to protect “illegal” immigrants by thwarting the federal government’s ability to remove them from the country. As such, they are to be blamed for the harms caused by undocumented immigrants and punished accordingly through the withdrawal of federal monetary support. This broad definition invokes the political rhetoric during the presidential campaign in which then candidate Trump criticized “sanctuary cities” such as San Francisco, which he claimed was responsible for the death of Kate Steinle, a woman who was killed by an undocumented immigrant.³⁰ Thus, now as president, Trump demanded a “crackdown on sanctuary cities.”³¹ ICE authorities have called such cities “un-American” for “harboring illegal immigrants.”³²

²⁴ Exec. Order No. 13,768, 82 Fed. Reg. 8,799 (Jan. 25, 2017).

²⁵ It should be noted that one of the legal issues presented in the litigation over Executive Order 13768 is whether the President and the Executive Branch has the power to defund sanctuary jurisdictions. *City and Cty. of S.F.*, 2017 WL 1459081, at *1. The federal government’s “power of the purse” resides in Congress’s Spending Power, not the Executive Branch. *See* Kate Stith, *Congress’s Power of the Purse*, 97 YALE L.J. 1343 (1988) (discussing the Congress’s appropriation power).

²⁶ Exec. Order No. 13,768, § 1.

²⁷ *Id.*

²⁸ *Id.* § 2. As more fully explained in Part II, 8 U.S.C. § 1373 encourages federal, state and local government entities to cooperate with federal immigration laws by prohibiting such entities from preventing their employees from voluntarily reporting an individual’s immigration status to immigration authorities. *See infra* Part II.

²⁹ *Id.* § 9.

³⁰ Chris Nguyen, *Kate Steinle’s Family Speaks After Mention by Donald Trump at RNC*, ABC 7 NEWS (July 22, 2016), <http://abc7news.com/news/exclusive-kate-steinles-family-speaks-after-mention-by-trump-at-rnc/1439363/> (stating “where was sanctuary for Kate Steinle?”).

³¹ Tal Kopan, *Trump Administration Again Pressures Sanctuary Cities*, CNN (July 25, 2017), <http://www.cnn.com/2017/07/25/politics/trump-admin-sanctuary-cities/index.html>.

³² Paul Bedard, *ICE Chief Lists Worst Sanctuary Cities: Chicago, NYC, San Francisco, Philadelphia*, WASH. EXAM’R (Jul. 24, 2017), <http://www.washingtonexaminer.com/ice-chief->

It soon became evident, however, that the administration had to give a more specific definition of “sanctuary jurisdiction.” The executive order does not define specifically what constitutes non-compliance with 8 U.S.C. 1373.³³ (Indeed, as we discuss *infra* in Part II, what 8 U.S.C. 1373 may constitutionally require is legally contested.)³⁴ E.O. 13768 gives Attorney General Jeff Sessions power to determine which entities would be considered sanctuary jurisdictions.³⁵ In a memo clarifying the scope of the executive order,³⁶ Attorney General Sessions explains that the mandates of E.O. 13768 refer only to those jurisdictions that receive grants from the Department of Justice (DOJ) or Department of Homeland Security (DHS) through law enforcement programs to which the jurisdictions have applied.³⁷

In other words, the E.O. 13768 applies only to those entities that were required, as a condition of receiving federal funds for their programs, to confirm that they are following or adhering to 8 U.S.C. 1373. Failure to do so would render those entities “sanctuary jurisdictions.” From a definitional point of view, the terms “sanctuary” and “sanctuary jurisdictions” are those states and cities that receive federal funds from DOJ or DHS *and* refused to comply with 8 U.S.C. 1373. It is, in other words, a narrower meaning of “sanctuary.”

There is third and more specific definition of sanctuary city that the federal administration has espoused: those jurisdictions that do not honor civil detainer requests by Immigration and Customs Enforcement (ICE) officials.³⁸ ICE civil detainers are requests that the federal government makes to state or local authorities while they are holding non-citizens in jail.³⁹ ICE typically finds out about non-citizens in local jails after the state or local official has taken a non-citizen’s fingerprints and has shared them with federal officials.⁴⁰ ICE officers would then request the state or local entity to hold the non-citizens in jail for up to 48 hours after their scheduled release from the local jail to give ICE time to determine whether or not to take the non-citizens into custody.⁴¹ The current administration evidenced its view that it considers entities that

lists-worst-sanctuary-cities-chicago-nyc-san-francisco-philadelphia/article/2629466.

³³ Exec. Order No. 13,768, § 9a.

³⁴ See *infra* Part II.

³⁵ Exec. Order No. 13,768, § 9a.

³⁶ Memorandum from Office of the Attorney Gen. to all Department Grant-Making Components, Implementation of Exec. Order 13768 (May 22, 2017), <https://assets.documentcloud.org/documents/3728675/Implementation-of-Executive-Order-13768.pdf>.

³⁷ *Id.*

³⁸ *Cty. of Santa Clara v. Trump*, No. 3:17-CV-574-WHO, 2017 WL 1459081, at *4 (N.D. Cal. Apr. 25, 2017) (discussing ICE civil detainers).

³⁹ *Immigration Detainers: An Overview*, AM. IMMIGRATION COUNCIL (Mar. 21, 2017), <https://www.americanimmigrationcouncil.org/research/immigration-detainers-overview>.

⁴⁰ *Id.*

⁴¹ *Id.*

refuse to honor detainer requests as “sanctuary jurisdictions” through the publication of lists of “non-cooperation jurisdictions” that decline detainer requests.⁴² These lists include the number of detainer requests that the administration has issued and the underlying reasons why the jurisdictions are refusing to honor such requests.⁴³ Among the jurisdictions that were included in the list were those that require the federal government to obtain a warrant before they would agree to hold a non-citizen in custody after the non-citizen is required to be released under state or local law.⁴⁴

Similar to the two aforementioned definitions of “sanctuary,” this third meaning also comes from a law enforcement perspective that descriptively and normatively adopts a top-down approach to immigration law enforcement. That is, all three present conceptions of “sanctuary” and “sanctuary jurisdictions” as entities that violate laws and policies that are designed to encourage coordinated federal, state and local efforts in enforcing immigration law.

B. *Advocates’ Definition of Sanctuary*

Unsurprisingly, the meaning of “sanctuary” from the immigrants’ advocates’ perspective contrasts with the federal government’s views. Still, similar to the federal government’s conception of sanctuary, the advocates’ definitions of sanctuary vary. For some advocates, “sanctuary cities” are those cities that provide a “safe harbor for undocumented immigrants,”⁴⁵ “actions that make cities safer” because local law enforcement officers have the trust of the community,⁴⁶ and cities that are “safe for immigrants” or offer a “protective shield” that stand in the way of “federal efforts to pinpoint and deport people.”⁴⁷

Others analyzed the provision of sanctuary in the context of churches, mosques and synagogues that “provided space for people who are in fear of being deported”⁴⁸ or a “home” to those who are about to be removed.⁴⁹

⁴² *Enforcement and Removal Operations: Weekly Declined Detainer Report for Recorded Declined Detainers Feb 4 – Feb 10, 2017*, U.S. IMMIGRATION AND CUSTOMS ENF’T, https://www.ice.gov/doclib/ddor/ddor2017_02-04to02-10.pdf. These lists are required to be published by the Executive Order. Exec. Order No. 13,768, § 9(b).

⁴³ U.S. IMMIGRATION AND CUSTOMS ENF’T, *supra* note 42; Exec. Order No. 13,768, §9(b).

⁴⁴ U.S. IMMIGRATION AND CUSTOMS ENF’T, *supra* note 42, at 8-23.

⁴⁵ *What is a Sanctuary City? And What Happens Now?*, CBS NEWS (Jan. 25, 2017), <http://www.cbsnews.com/news/what-is-a-sanctuary-city-and-what-happens-now/>.

⁴⁶ Gabe Ortiz, *What is a ‘Sanctuary City’ Exactly? An Immigrant Rights Group Explains*, DAILY KOS (Apr. 28, 2017), <https://www.dailykos.com/stories/2017/4/28/1657149/-What-is-a-sanctuary-city-exactly-An-immigrant-rights-group-explains>.

⁴⁷ Amanda Sakuma & Jérôme Sessini, *No Safe Place*, MSNBC, <http://www.msnbc.com/specials/migrant-crisis/sanctuary-cities> (last visited July 30, 2017).

⁴⁸ Doug Stewart, *What is a Sanctuary Church and Is It Legal?*, FOX 61 (Jul. 21, 2017),

Universities too have declared themselves as “sanctuary campuses” and expressed their support for undocumented students, particularly those who are recipients of the Deferred Action for Childhood Arrivals (DACA)⁵⁰ program and their families.⁵¹ Others have used the “sanctuary framework” to encourage employers to not discriminate or retaliate against their employees based on their employees’ immigration status.⁵² By contrast, among those who are opposed to “sanctuary,” the definition has an obviously different tone.

The political and legal posturing against sanctuary has led to an ongoing and robust debate about whether the term helps or harms the goals of those who are interested in supporting immigrants. Some cities and universities have a positive conception of the term, openly adopting its use to mean the provision of a safe haven for undocumented immigrants.⁵³ Wesleyan University for example, within a couple of weeks after the November 2016 election, declared itself a “sanctuary campus.”⁵⁴ Others have shown less support for the use of the term⁵⁵ and have chosen to not use the word at all or

<http://fox61.com/2017/07/20/what-is-a-sanctuary-church-and-is-it-legal/>.

⁴⁹ *Churches Offer Sanctuary to Immigrants who Could Face Deportation*, CBS NEWS (Dec. 9, 2016), <http://www.cbsnews.com/news/donald-trump-undocumented-immigrants-deportation-churches-sanctuary/>; Sigal Samuel, *Mosques Want to Offer Sanctuary, but Will Anyone Accept?*, THE ATLANTIC (Feb. 10, 2017), <https://www.theatlantic.com/politics/archive/2017/02/mosques-want-to-provide-sanctuary-but-will-anyone-accept-the-offer/516366/>.

⁵⁰ Julia Preston, *Campuses Wary of Offering ‘Sanctuary’ to Undocumented Students*, N.Y. TIMES (Jan. 26, 2017), <https://www.nytimes.com/2017/01/26/education/edlife/sanctuary-for-undocumented-students.html>.

⁵¹ Rosanna Xia, *What Does It Mean to Be a ‘Sanctuary Campus?’ Two College Presidents Weigh in*, L.A. TIMES (Mar. 24, 2017), <http://www.latimes.com/local/education/la-essential-education-updates-southern-pitzer-panel-sanctuary-campus-1490381837-htmlstory.html>.

⁵² David Bacon, *Fighting for the Sanctuary Workplace*, U.S. SOLIDARITY ECONOMY NETWORK (Jun. 27, 2017), <https://ussen.org/2017/06/27/fighting-for-the-sanctuary-workplace/>.

⁵³ *E.g.*, City Coll. of S.F., CCSF Bd. of Tr. Res. 161215-IX-346 (Dec. 15, 2016) (stating that, “City College of San Francisco joins the City and County of San Francisco in affirming its sanctuary status for all people of San Francisco”), <http://www.ccsf.edu/BOT/2016/December/346r.pdf>; Portland, OR., Res. 37277 (Mar. 22, 2017), <http://efiles.portlandoregon.gov/Record/10774926> (declaring “the City of Portland a Welcoming City, Sanctuary City, and an Inclusive City for all”); Pres. Michael S. Roth & Bd. of Tr. Decl., WESLEYAN UNIV. (Nov. 20, 2016) (declaring Wesleyan University a sanctuary campus), <http://roth.blogs.wesleyan.edu/2016/11/20/wesleyan-university-a-sanctuary-campus/>.

⁵⁴ Pres. Michael S. Roth & Bd. of Tr. Decl., *supra* note 53, at 1; *see also* Pres. John R. Kroger, REED COLLEGE (November 18, 2016), http://www.reed.edu/reed_magazine/sallyportal/posts/2016/sanctuary-college.html (declaring Reed College a sanctuary college); Pres. Wim Wiewel, PORTLAND STATE UNIV. (Nov. 18, 2016), <https://www.pdx.edu/insidepsu/portland-state-is-a-sanctuary-university> (declaring Portland State University a sanctuary campus).

⁵⁵ *See* Preston, *supra* note 50, at 1 (noting that Janet Napolitano, President of the

deployed a different word.⁵⁶ For instance, the City of Chicago, Illinois adopted a “Welcoming City Ordinance,” which prohibits agencies from inquiring and releasing information about a person’s immigration status.⁵⁷ This “don’t ask, don’t tell” policy is similar to the policies of other cities, such as San Francisco’s, that openly calls its ordinance a “sanctuary ordinance.”⁵⁸

C. Our Definition

In this Article, we do not wade into the debate on what sanctuary is or should be about. We also do not seek to resolve whether the term “sanctuary” is an ideal or useful term to use by public and private individuals and groups. As the foregoing has illuminated, the meaning of “sanctuary” is fraught with various legal, social and political tensions and finding a common definition is beyond the scope of this Article. Critically, we note that political actors and the media might refer to certain jurisdictions as “sanctuary” even if places/institutions do not ascribe to the term.

For our purposes, we adopt a working definition of “sanctuary” that would allow us to map out the variegated forms of sanctuary in different contexts. Here, we use the term “sanctuary” to refer to a range of policies and programs adopted by public and private entities or organizations that decline or limit voluntary participation in federal immigration enforcement practices and/or seek to create inclusive environments for immigrants. Thus, we would include those public and private policies that have openly adopted the “sanctuary” label and have expressed that they would not cooperate with the federal government in enforcing immigration law unless law required them to

University of California, does not mention the word ‘sanctuary’ when describing what the school system could offer its DACA students if Donald Trump cancelled the program. “Sanctuary is such a vague term[.]”).

⁵⁶ CHI., ILL., MUN. CODE § 2-173 (2012) (adopting a “Welcoming City Ordinance” prohibiting agencies from requesting and disclosing immigration statuses unless required by law),

<https://www.cityofchicago.org/content/dam/city/depts/mayor/Office%20of%20New%20Americans/PDFs/WelcomeCityOrdinance.pdf>; *see also* Preston, *supra* note 50, at 1 (noting that Janet Napolitano, President of the University of California, does not mention the word ‘sanctuary’ when describing what the school system could offer its DACA students if Donald Trump cancelled the program. “Sanctuary is such a vague term[.]”).

⁵⁷ CHI., ILL., MUN. CODE § 2-173 (2012) (adopting a “Welcoming City Ordinance” prohibiting agencies from requesting and disclosing immigration statuses unless required by law),

<https://www.cityofchicago.org/content/dam/city/depts/mayor/Office%20of%20New%20Americans/PDFs/WelcomeCityOrdinance.pdf>.

⁵⁸ *Sanctuary City Ordinance*, <http://sfgov.org/oceia/sanctuary-city-ordinance-0> (last visited Aug. 6, 2016); *see also* S.F., CAL., ADMIN. CODE §§ 12H.1-12H.6 (2016) (declaring city a “City and County of Refuge”).

do so. But it would also include those policies and actions that might not have the “sanctuary” moniker but nevertheless have the effect of limiting involvement with federal immigration enforcement or aim to establish a safe haven for immigrants. Accordingly, we would include in our definition the City of Austin Texas, which in 2014 declared itself a “Welcoming City” and affirmed its commitment to support the “long-term integration of immigrant communities.”⁵⁹

It is equally important for us to specify what we do not *mean* as sanctuary. We made the deliberate choice of not including those jurisdictions that have conferred rights to undocumented immigrants that are conventionally given only to U.S. citizens or authorized immigrants. Such rights might include the right to vote in local school board elections, right to obtain a driver’s license, right to obtain in-state tuition, or right to work (such as a lawyer). Further, we excluded those jurisdictions that confer municipal ID cards to their residents regardless of immigration status. These policies may arguably be described as broader examples of sanctuaries. However, we see such efforts as more about “rights-creation building” as opposed to those actions that are intended to or have the effect of defying or not cooperating with federal immigration enforcement.

Lastly, we note that our use of the term “sanctuary” does not necessarily suggest a highly-protective policy. However, using the term might have psychological benefits for certain constituencies who believe it to have talismanic power.⁶⁰

II. SANCTUARY EVERYWHERE

To say that the election of Donald Trump to the U.S. presidency has had a harmful impact on immigrants would be an understatement. Within days of his presidency, Donald Trump issued three executive orders⁶¹ that implemented his campaign promises regarding immigrants, including banning Muslims from entering the United States,⁶² defunding sanctuary cities,⁶³

⁵⁹ Austin, Tex., Res. 20140320-049 (2014) (declaring Austin a welcoming city), <http://www.austintexas.gov/edims/document.cfm?id=207652>.

⁶⁰ See Omar Martinez et al., *Evaluating the Impact of Immigration Policies on Health Status Among Undocumented Immigrants: A Systematic Review*, 17(3) J. IMMIGR. MINOR HEALTH, 947, 965 (2015) (“In particular, in localities and jurisdictions with anti-immigration policies, the prevalence of negative mental health outcomes is even higher when compared to locations and jurisdictions in the same country with neutral or welcoming policies towards immigrants, including “sanctuary cities.”)

⁶¹ Aidan Quigley, *All of Trump’s Major Executive Actions so Far*, POLITICO (Mar. 8, 2017), <http://www.politico.com/agenda/story/2017/01/all-trump-executive-actions-000288>.

⁶² Greg Sargent, *Is This a ‘Muslim ban’? Look at the History – and at Trump’s Own Words*, WASH. POST (Jan. 31, 2017), <https://www.washingtonpost.com/blogs/plum->

building a wall between the United States and Mexico⁶⁴ and removing undocumented immigrants.⁶⁵ Since Donald Trump became president, arrests of immigrants, including those who have not committed any crimes, have increased.⁶⁶ His administration eliminated all removal priorities,⁶⁷ including those that centered on non-citizens with criminal histories that were issued under the Obama administration.⁶⁸ Further, the Immigration and Customs Enforcement (ICE) agency had been making arrests in places that it previously did not traditionally arrest immigrants, including courthouses⁶⁹ and hospitals.⁷⁰ ICE has also been targeting undocumented parents of immigrants and U.S. citizen children.⁷¹ Through these various actions and policies, the current administration appears to be effectuating Trump's promise to remove "probably 2 million" or more undocumented immigrants once he is in office.⁷²

line/wp/2017/01/31/is-this-a-muslim-ban-look-at-the-history-and-at-trumps-own-words/?utm_term=.de05911173f4 (quoting Trump's 2015 campaign call for a "total and complete shutdown of Muslims entering the United States").

⁶³ Erin Durkin, *Here's How Trump's Plan to Defund Sanctuary Cities Could Play out*, N.Y. DAILY NEWS (Nov. 23, 2016), <http://www.nydailynews.com/news/politics/trump-plan-defund-sanctuary-cities-play-article-1.2885423> (quoting Trump's statement on sanctuary cities: "Cities that refuse to cooperate with federal authorities will not receive taxpayer dollars.").

⁶⁴ Fred Imbert, *Donald Trump: Mexico Going to Pay for Wall*, CNBC (Oct. 28, 2015), <https://www.cnbc.com/2015/10/28/donald-trump-mexico-going-to-pay-for-wall.html> ("We're going to do a wall. . . . Mexico's going to pay for it.").

⁶⁵ Alexandra Jaffe, *Donald Trump: Undocumented Immigrants 'Have to Go'*, NBC NEWS (Aug. 16, 2015), <http://www.nbcnews.com/meet-the-press/donald-trump-undocumented-immigrants-have-go-n410501> ("They have to go. [W]e either have a country, or we don't have a country.").

⁶⁶ Maria Sacchetti, *ICE Immigration Arrests of Noncriminals Double Under Trump*, WASH. POST (Apr. 16, 2017), https://www.washingtonpost.com/local/immigration-arrests-of-noncriminals-double-under-trump/2017/04/16/98a2f1e2-2096-11e7-be2a-3a1fb24d4671_story.html?utm_term=.a375e70e1694 (reporting that immigration arrests have gone up 32.6 percent in the first weeks of the Trump administration).

⁶⁷ Anna O. Law, *This Is How Trump's Deportations Differ from Obama's*, WASH. POST (May 3, 2017), https://www.washingtonpost.com/news/monkey-cage/wp/2017/05/03/this-is-how-trumps-deportations-differ-from-obamas/?utm_term=.ddce7fbd2952.

⁶⁸ Muzaffar Chishti, Sarah Pierce, & Jessica Bolter, *Obama Record on Deportations: Deporter in Chief or Not?*, MIGRATION POLICY INST. (Jan. 26, 2017), <http://www.migrationpolicy.org/article/obama-record-deportations-deporter-chief-or-not>.

⁶⁹ James Queally, *ICE Agents Make Arrests at Courthouses, Sparking Backlash from Attorneys and State Supreme Court*, L.A. TIMES (Mar. 16, 2017), <http://www.latimes.com/local/lanow/la-me-ln-ice-courthouse-arrests-20170315-story.html>.

⁷⁰ Barbara Demick, *Federal Agents in Texas Move Hospitalized Salvadoran Woman Awaiting Emergency Surgery to a Detention Facility*, L.A. TIMES (Feb. 23, 2017), <http://www.latimes.com/nation/la-na-hospital-seizure-20170223-story.html>.

⁷¹ Caitlin Dickerson, *Trump Administration Targets Parents in New Immigration Crackdown*, N.Y. TIMES (July 1, 2017), <https://www.nytimes.com/2017/07/01/us/trump-arrest-undocumented-immigrants.html>.

⁷² Bill Chappel, *Donald Trump Says He'll Deport 2-3 Million People Once In Office*, NPR (Nov.

Supporters and advocates of immigrants have reacted to the heightened enforcement of immigration law in various ways designed to resist such policies. Chief of these is the adoption or expansion of sanctuary policies. As we discuss below, the number of cities that became sanctuary cities or reiterated their sanctuary policies has increased. Churches and synagogues have actively announced their places of worship as sanctuaries. Notably, new forms of sanctuaries have emerged.

In this Part, we discuss these multiple types of sanctuaries. We detail the different categories of sanctuary, beginning with the more conventional types—churches and cities—and then analyze new ones that have emerged in more recent memory. In our discussion, we point out and assess the types of protection that each sanctuary is able to provide to undocumented immigrants. These types may include “welcoming” measures (such as the designation of a site as “inclusive”), “non-immigration law enforcement” policies (i.e., refusing to use resources, public or private, to enforce immigration law), “don’t ask” policies (such as refusing to inquire about a person’s immigration status or participating in E-verify), “don’t tell” policies (i.e., refusing to disclose known information), humanitarian acts (such as the provision of shelter and food), private property rights assertions (such as refusing entry to law enforcement officers without an administrative or judicial warrant), and “forewarning” actions (such as notifying undocumented immigrants about a raid). As we explain, the various categories of sanctuary have adopted one or more of each of these types of protective measures.

Crucially, each sanctuary’s ability to provide a safe haven is contingent on legal boundaries. Although they may be successful in providing a particular form of refuge, none constitute a complete barrier to federal enforcement. But, doing so would not only be an impossibility, it is also unnecessary. The key, as we discuss in Parts III and IV, is how they perform collectively and in relation to one another.

A. Church Sanctuaries

One of the more well-known uses of the term “sanctuary” is in the context of a church or synagogue. That perhaps should be unexpected given that the oldest usage of the term appears in the Bible. As used there, it refers to “cities of refuge, of asylum” that existed “for the narrow purpose of providing a mechanism for the adjudication of claims of involuntary manslaughter.”⁷³

13, 2016), <http://www.npr.org/sections/thetwo-way/2016/11/13/501921177/donald-trump-hell-deport-2-3-million-people-once-in-office>.

⁷³ *LaCroix v. Junior*, Nos. F17-376, F17-1770, 2017 WL 837477, at *4 (Fla. Cir. Ct. Mar. 3, 2017).

In the United States, the contemporary use of a religious entity's use of the term "sanctuary" originated in the 1980s and shares similar goals of providing refuge to individuals who were seeking a safe haven.⁷⁴ Escaping civil war, killings, social and civil unrest, an estimated one million individuals from El Salvador and Guatemala entered the United States between 1981 and 1990.⁷⁵ The federal government, however, routinely denied their asylum applications, stating that they were "economic migrants" and not eligible for political asylum.⁷⁶ Accordingly, the federal government processed them for deportation.⁷⁷

Believing that the asylum applicants would be killed if they were sent back to their home countries, members of Christian churches and synagogues borrowed the Biblical concept of "sanctuary"⁷⁸ and began what became known as the Sanctuary Movement.⁷⁹ Located at different parts of the country, there were an estimated 20,000 to 30,000 church members and more than 100 churches and synagogues that joined the movement.⁸⁰ Through this collective movement, members provided a range of assistance and protection including, shelter, clothing and other forms of support, including legal services.⁸¹ Other members also assisted Central Americans to enter the United States and

⁷⁴ To be clear, in the United States, individuals and groups had offered sanctuary to various groups historically, including slaves in the Nineteenth Century, Jews seeking to escape the Holocaust, civil rights advocates who sought protection from mob violence in the 1950s and 1960s, and those who resisted the draft. See Villazor, *What is a "Sanctuary"?*, *supra* note 20. Other examples of sanctuary include universities welcoming as students Japanese Americans who were subject to incarceration or internment under the E.O. 9066. See Paulina Arnold, et al., *Sanctuary Campus Toolkit/FAQs*, HARVARD LAW SCH. IMMIGRATION RESPONSE INITIATIVE (IRI), at 26 (Feb. 2, 2017), <https://today.law.harvard.edu/wp-content/uploads/2017/02/Sanctuary-Campus-Toolkit.pdf>.

⁷⁵ See Villazor, *What is a "Sanctuary"?*, *supra* note 20, at 139-140; Susan Gzesh, *Central Americans and Asylum Policy in the Reagan Era*, MIGRATION POLICY INST. (Apr. 1, 2006), <http://www.migrationpolicy.org/print/4621#.WMLVTU1-vcs>; see also Michael Barbaro, *The Daily: Tracing the Origins of the Sanctuary City*, N.Y. TIMES (Mar. 9 2017), <https://www.nytimes.com/2017/03/09/podcasts/the-daily/sanctuary-cities.html> (explaining that the sanctuary church and sanctuary city movement in the United States began in the 1980s when members of a Presbyterian Church in Arizona began to offer safe haven, protection and assistance to Central American migrants whose claims to asylum were rejected by the federal government).

⁷⁶ See Gzesh, *supra* note 76, at 2.

⁷⁷ *Id.* at 3.

⁷⁸ *Id.* at 4. In *LaCroix*, Judge Milton Hirsch explained that the term "sanctuary" in the Biblical context refers to "cities of refuge, of asylum" that existed "for the narrow purpose of providing a mechanism for the adjudication of claims of involuntary manslaughter." *LaCroix*, 2017 WL 837477, at *2 n.3.

⁷⁹ Kathleen L. Villarruel, Note, *The Underground Railroad and the Sanctuary Movement: A Comparison of History, Litigation, and Values*, 60 S. CAL. L. REV. 1429, 1433 (1987).

⁸⁰ *Id.*

⁸¹ *Id.*

helped them avoid detection and deportation.⁸²

Those involved with the Sanctuary Movement had both moral and legal reasons for providing safe havens to the Central American immigrants. At the outset, members of the movement believed that it was immoral and unconscionable to return the immigrants to their home countries.⁸³ To them, sending the immigrants back to their home countries was tantamount to issuing the asylum applicants death sentences. In addition to this moral argument, members of the Sanctuary Movement argued that their actions were exercises of their religious beliefs.⁸⁴ Grounding this argument on the First Amendment, the Sanctuary Movement members contended that their sanctuary work constituted their religious expressions.⁸⁵ That is, they reasonably interpreted the First Amendment as providing their actions with legal support for their humanitarian actions.⁸⁶

Although the federal government was at first dismissive of the Sanctuary Movement,⁸⁷ it eventually prosecuted those involved with the movement⁸⁸ under Section 274 of the Immigration and Nationality Act (INA), which prohibits the unlawful “bringing in and harboring of aliens.”⁸⁹ The prosecution of these sanctuary advocates illustrated competing legal interpretations regarding the provision of a safe haven for the Central American refugees. Whereas the Sanctuary Movement participants saw their actions as religious expressions, the government viewed the provision of sanctuary as “alien smuggling.”⁹⁰ Significantly, the government’s legal positions prevailed, revealing the limits of the Sanctuary Movement legal positions. In the notable prosecution of John Fife, one of the key founders of the Sanctuary Movement, and other members of the movement, the court found them guilty.⁹¹ Among other things, Fife and the other sanctuary workers—who were

⁸² *Id.*

⁸³ Pamela Begaj, Comment, *An Analysis of Historical and Legal Sanctuary and a Cohesive Approach to the Current Movement*, 42 J. MARSHALL L. REV. 135, 137-139, 142 (2008).

⁸⁴ *Id.* at 143.

⁸⁵ Villarruel, *supra* note 80, at 1430.

⁸⁶ Begaj, *supra* note 84, at 154.

⁸⁷ Barbara Bezdek, *Religious Outlaws: Narratives of Legality and the Politics of Citizens Interpretation*, 62 TENN. L. REV. 899, 902 (1995).

⁸⁸ Sophie H. Pirie, *The Origins of a Political Trial: The Sanctuary Movement and Political Justice*, 2 YALE J. LAW & HUMAN. 381, 383 (1990).

⁸⁹ 8 USCS § 1324(a)(1).

⁹⁰ Villarruel, *supra* note 80, at 1431.

⁹¹ See *United States v. Aguilar*, 883 F.2d 662, 666 n.1 (9th Cir. 1989). However, none of the participants ended up serving prison time but were rather placed on probation. See Clyde Haberman, *Trump and The Battle Over Sanctuary in America*, N.Y. Times, at A16 (Mar. 5, 2017) (stating that John Fife was convicted but did not serve time in jail), <https://www.nytimes.com/2017/03/05/us/sanctuary-cities-movement-1980s-political-asylum.html?mcubz=0>. Further, litigation a few years later, including a class-action lawsuit on

described as operating a “modern-day underground railroad”—were convicted of aiding and abetting the unlawful entry of immigrants to the United States.⁹² As the prosecution and conviction of the Sanctuary Movement members made evident, the ability of a church to provide a safe haven is circumscribed by the INA.

The prosecution of the Sanctuary Movement members did little to deter other churches and groups from assisting immigrants. Through the years, churches continued to provide shelter, food, and other resources to immigrants who lacked authorization to remain in the United States. The number of churches that have declared themselves sanctuaries have increased in the last few years and certainly since November 2016.⁹³ In 2013, there were 14 churches that provided sanctuary to undocumented families.⁹⁴ Today, there are over 800 churches and temples nationwide that have pledged that they would welcome undocumented immigrants and confer them with sanctuary.⁹⁵ In addition, mosques have also been sites of safe havens.⁹⁶

As the number of undocumented immigrants and families increased and the federal government ramped up deportation programs, the goals of churches to provide safe spaces to undocumented immigrants have shifted towards keeping families together. In particular, many immigrants who obtained sanctuary in churches were those who sought to avoid deportation so that they may continue to be with their U.S. citizen children.⁹⁷

The reasons for providing safe havens continue to be grounded on religious and moral grounds. Consider the story of Jeanette Vizguerra, the first undocumented immigrant to seek sanctuary after the election of President

behalf of the Central American migrants, led to a settlement that found that the federal government was indeed biased against the applicants and ordered reconsideration of the asylum applications of the class members. *See American Baptist Churches v. Richard Thornburgh*, 760 F. Supp. 796 (N.D. Cal. Jan. 31, 1991); *see also Orantes-Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990) (affirming findings by district court that the Immigration and Naturalization Service violated the rights of asylum applications by El Salvadorans and Guatemalans).

⁹² *Aguilar*, 883 F.2d at 666 n.1.

⁹³ Elizabeth Evans & Yonat Shimron, ‘Sanctuary churches’ vow to shield immigrants from Trump crackdown, RELIGION NEWS SERV. (Nov. 18, 2016), <http://religionnews.com/2016/11/18/sanctuary-churches-vow-to-shield-immigrants-from-trump-crackdown/>.

⁹⁴ *Id.*

⁹⁵ Ashley Archibald, *Mosques, Churches, Synagogues, and Temples Rekindle the Sanctuary Movement to Protect Refugees and Immigrants from Deportation*, REAL CHANGE NEWS (June 21, 2017), <http://www.realchangenews.org/2017/06/21/mosques-churches-synagogues-and-temples-rekindle-sanctuary-movement-protect-refugees-and>.

⁹⁶ *Id.*

⁹⁷ Transcript of Bob Abernethy et al., *See Children of Illegal Immigrants*, PBS (May 26, 2006), <http://www.pbs.org/wnet/religionandethics/2006/05/26/may-26-2006-children-of-illegal-immigrants/18834/>.

Trump.⁹⁸ When Vizguerra failed to obtain a stay of removal from ICE, she sought refuge from a church in Colorado to avoid being removed from the United States.⁹⁹ In providing sanctuary to her, the pastor of the church explained that “as a people of faith,” doing so was “sacred, faithful work.”¹⁰⁰ Indeed, the provision of sanctuary as based on Judeo-Christian beliefs continues to dominate much of the narrative deployed today among church members providing safe havens to undocumented immigrants. Citing the Book of Matthew, for example, a pastor in a Philadelphia church that declared itself a sanctuary stated a month after the election that, “Jesus said that we are to provide hospitality to the stranger.”¹⁰¹ Thus, similar to the churches involved with the Sanctuary Movement of the 1980s, religious groups offering sanctuary have invoked Biblical and theological grounds.

Importantly, once again, those involved with the sanctuary movement find themselves between the rule of faith and rule of law. As Reverend John Fife said earlier this year, “sometimes [] you cannot love both God and the civil authority. Sometimes you have to make a choice.”¹⁰² As in the past, religious groups today have expressed a different interpretation of the boundaries of federal immigration law enforcement as they impact the exercise of religious freedom. Indeed, some church leaders believe that providing sanctuary may constitute religious freedom under the Religious Freedom and Restoration Act (RFRA).¹⁰³

When not invoking the right to practice their religion, some churches have also relied on their rights as private property owners to protect the people seeking sanctuary in their buildings. Churches and other religious buildings

⁹⁸ Time Magazine later named Jeannette Vizguerra one of Time’s most influential people. See Jesse Paul, *Mom Living in Denver Church for Sanctuary Among TIME’s 100 Most Influential People*, DENVER POST (Apr. 20, 2017), <http://www.denverpost.com/2017/04/20/jeannette-vizguerra-sanctuary-time-magazine/>.

⁹⁹ Joel Rose, *Sanctuary Church Brace For Clash With Trump Administration*, NPR (Feb. 16, 2017), <http://www.npr.org/2017/02/16/515510996/colorado-church-offers-immigrant-sanctuary-from-deportation>.

¹⁰⁰ *Id.*

¹⁰¹ Laurie Goodstein, *Houses of Worship Poised to Serve as Trump-Era Immigrant Sanctuaries*, N.Y. TIMES (Dec. 27, 2016), <https://www.nytimes.com/2016/12/27/us/houses-of-worship-poised-to-serve-as-trump-era-immigrant-sanctuaries.html>.

¹⁰² See Clyde Haberman, *Trump and The Battle Over Sanctuary in America*, N.Y. TIMES, Mar. 5 2017, at A16 (stating that John Fife was convicted but did not serve time in jail), <https://www.nytimes.com/2017/03/05/us/sanctuary-cities-movement-1980s-political-asylum.html?mcubz=0>.

¹⁰³ Religious Freedom Restoration Act of 1993 (“RFRA”), 42 U.S.C. §§ 2000bb—2000bb-4 (1993). See also *An Introduction for Churches Considering ‘Sanctuary’ Ministries*, BAPTIST JOINT COMM. FOR RELIGIOUS LIBERTY, <http://bjconline.org/sanctuarymovement/> (last visited Aug. 30, 2017) (noting the RFRA as potential legal basis for the provision of sanctuary by churches).

constitute private property.¹⁰⁴ As such, the Fourth Amendment's warrant requirement¹⁰⁵ applies to searches of a church as it would to any other private property. Church leaders have demonstrated their understanding of the power of private property and the Fourth Amendment in providing sanctuary. For instance, Chicago Cardinal Blase Cupich explained to priests that they should always demand to see a warrant or refuse entry to immigration authorizes.¹⁰⁶ Some churches have even purchased have even purchased homes to provide a safe haven for immigrants.¹⁰⁷ For example, a church in Los Angeles has renovated and built homes that members stated would be specifically provided for undocumented immigrant families.¹⁰⁸ Placing the families there achieve a number of goals: the church was not only able to provide housing for the families but by putting them in private property, the families residing there may require a warrant before immigration authorities may enter.¹⁰⁹ As one of the members explained, they have "incorporate[ed] private homes, which offer a higher level of constitutional protection than houses of worship and an ability to make it harder for federal agents to find undocumented immigrants."¹¹⁰

To further bolster their legal argument for providing sanctuary, some churches assert that unlike their predecessors, they are not hiding undocumented immigrants from detection as prohibited by Section 274 of the INA. Church leaders have explained that immigration authorities are typically aware when undocumented immigrants have sought refuge in their church buildings.¹¹¹ Thus, they emphasize that ICE may enter their property as long as they have warrants to arrest the undocumented immigrants. Thus far, none of the churches that have offered sanctuary have faced legal challenges from

¹⁰⁴ See *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 573 (2d. Cir. 2002) (recognizing that the church is private property); see also *Youngblood v. State of Florida*, No. 3:01-CV-1449-J-16, 2006 WL 288248, at *5 (M.D. Fla. Feb. 6, 2006) (assuming church property is private).

¹⁰⁵ U.S. CONST. amend. IV.

¹⁰⁶ Manya Brachear Pashman, *Cupich to Priests: No Entry for Immigration Agents Without Warrants*, CHI. TRIB. (Mar. 1, 2017), <http://www.chicagotribune.com/news/local/breaking/ct-cardinal-cupich-immigration-directive-20170301-story.html> (explaining a church's policy to ask for a warrant before immigration authorities may enter the church).

¹⁰⁷ Kyung Lah, Alberto Moya & Mallory Simon, *Underground Network Readies Homes to Hide Undocumented Immigrants*, CNN (Feb. 26, 2017), <http://www.cnn.com/2017/02/23/us/california-immigrant-safe-houses/index.html>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Sarah Quezada, *How Churches Can Give Sanctuary and Still Support the Law*, CHRISTIANITY TODAY (Mar. 17, 2017), <http://www.christianitytoday.com/women/2017/march/how-churches-can-give-sanctuary-to-immigrants-and-still-sup.html>.

the Trump administration. As a policy matter, ICE does not enforce immigration law in sensitive locations such as churches.¹¹² Notably, staying in the church seems to have led to the type of relief sought by the congregants and immigrants. After 86 days of living in the church, Ms. Vizguerra received the news that she had sought: temporary relief from removal from the United States.¹¹³ It remains to be seen whether the administration will deploy INA § 274 as their predecessors did in the 1980s.

B. Sanctuary Cities

The other more common understanding of sanctuary is its association with cities. At around the same time that individuals and groups formed the Sanctuary Movement of the 1980s, some cities declared themselves as “sanctuary cities” for Central Americans. The City of Davis, California, for example, passed a resolution on March 5, 1986 “affirming the support of the City of Davis for efforts to provide sanctuary to refugees fleeing persecution in El Salvador and Guatemala.”¹¹⁴ Additionally, the Davis resolution stated that “no agency or employee of the City of Davis shall officially assist with investigations or arrest procedures” relating to alleged violations of immigration law by Central American refugees.¹¹⁵ Other cities enacted more specific policies that limited local involvement with immigration enforcement, particularly with respect to sharing information about the non-citizen’s status with federal officials. For instance, in 1989, the Mayor of New York City passed Executive Order 141, which limited their employees from “transmit[ing] information respecting any alien to federal immigration authorities” unless required by law, consented to by the non-citizen or the non-citizen is involved in a criminal activity.¹¹⁶

As the foregoing illuminates, there are various types of sanctuary city policies. While there are those that are more symbolic and seek to create a

¹¹² Memorandum from John Morton, Dir. of U.S. Immigration and Customs Enft to Field Officer Directors, Special Agents in Charge, and Chief Counsel of U.S. Immigration and Customs Enft, Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

¹¹³ Melissa Etehad, *Denver Mother is Granted Temporary Deportation Relief After 3 Months of Sanctuary in a Church*, L.A. TIMES (May 13, 2017), <http://www.latimes.com/local/lanow/la-na-denver-mother-relief-20170512-story.html>.

¹¹⁴ See Davis, Cal., Res. No. 5407, Series 1986, A Resolution Affirming the Support of the City of Davis for Efforts to Provide Sanctuary to Refugees Fleeing Persecution in El Salvador and Guatemala (Mar. 5, 1986), <http://documents.cityofdavis.org/Media/Default/Documents/PDF/CMO/Sanctuary-City/Resolution-5407-Establishing-Davis-as-a-Sanctuary-City.pdf>.

¹¹⁵ See *id.*

¹¹⁶ NEW YORK, N.Y., CITY POLICY CONCERNING ALIENS (Aug. 7, 1989), http://www.nyc.gov/html/records/pdf/executive_orders/1989EO124.PDF.

welcoming city, others are more proactive by establishing protocols designed to maintain the confidentiality of an individual's undocumented status and ensure open communication between residents and public employees, especially law enforcement officers.¹¹⁷

Sanctuary cities, like sanctuary churches, did not go unnoticed. Congress eventually enacted legislation intended to address these local non-cooperation policies and encourage state and local governments to participate in federal immigration enforcement.¹¹⁸ Subsequently codified as 8 U.S.C. §1373, this law prevents state and local governments from issuing “gag-orders” to their officers regarding communication with federal authorities about immigration and citizenship information.¹¹⁹ Specifically, 8 U.S.C. § 1373 reads in relevant part:

“(a) 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 [federal immigration enforcement agency] information regarding the...immigration status....of any individual.”¹²⁰

No doubt, despite the language of 8 U.S.C. § 1373 suggesting its terms are not compulsory, the statute seeks to impose limits on sanctuary cities. As such, the statute implicates the power of cities to operate their own governments without being subject to federal commandeering actions. Indeed, soon after the passage of 8 U.S.C. 1373, New York City, which was seeking to maintain its sanctuary city policy, challenged the constitutionality of the law on Tenth Amendment grounds¹²¹ but ultimately failed. In *New York City v. United*

¹¹⁷ Police chiefs in particular have framed their support for sanctuary policies along community safety goals.

¹¹⁸ See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Section 434, Pub. L. No. 104-193, 110 Stat. 2105 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Section 642, Pub. L. No. 104-208, 110 Stat. 3009 (1996). See H.R. Conf. Rep. No. 104-725, at 383 (1996) (stating that the “conferees intend to give State and local officials the authority to communicate with the [Immigration and Naturalization Services] regarding the presence, whereabouts or activities of” undocumented immigrants); S. Rep. No. 104-249, at 19-20 (1996) (stating that the “acquisition, maintenance, and exchange of immigration-related information by State and local agencies is consistent with” the Federal regulation of immigration”).

¹¹⁹ Martin Kaste, *As Trump Moves Forward on Immigration Plan, ‘Sanctuary Cities’ Push Back*, NPR (Jan. 27, 2017), <http://www.npr.org/2017/01/27/512047222/as-trump-moves-forward-on-immigration-plan-sanctuary-cities-push-back>.

¹²⁰ 8 U.S.C. § 1373(a) (2012).

¹²¹ *City of New York v. United States*, 179 F.3d 29, 33 (2d Cir. 1999) (explaining that New York City contended that Congress is “forbid[ding] state and local government entities from controlling the use of information regarding the immigration status of individuals obtained in

States, the Court of Appeals for the Second Circuit explained that Congress has not “compelled state and local governments to enact or administer” any federal programs.”¹²² As such, Congress did not violate the Tenth Amendment when it enacted legislation limiting state and local governments from forbidding all voluntary cooperation by state or local government employees with specific federal programs, including immigration enforcement.¹²³ At the same time, however, the court noted that 8 U.S.C. §1373 does not “affirmatively conscript[] states, localities, or their employees into the federal government’s service.”¹²⁴

Thus, the type of protection that sanctuary cities may provide to undocumented immigrants through their policies depends on how courts would interpret the scope of 8 U.S.C. § 1373, which remains unresolved. Indeed, the constitutionality of 8 U.S.C. § 1373 itself is contested. Also, the level of assistance that sanctuary cities may confer to its undocumented residents depends also on its resources. Recognizing a city’s limited resources, as well as aiming to punish them, President Trump issued E.O. 13768 to withdraw federal funds that sanctuary cities are receiving from the federal government.¹²⁵ However, as explained in Part I, E.O. 13768 failed to define what constitutes a sanctuary jurisdiction or what violation of 8 U.S.C. § 1373 means.

The vagueness of the language of E.O. 13768 and potential loss of federal funds compelled Santa Clara County and the City of San Francisco to file a lawsuit against President Trump days after he issued the executive order.¹²⁶ The amount of money they stood to lose was far from insignificant:

the course of their official business” in violation of the city’s Tenth Amendment rights).

¹²² *Id.* at 35.

¹²³ *Id.*

¹²⁴ *Id.* It should be noted that the constitutionality of 8 U.S.C. §1373 is itself contested. *Cty. of Santa Clara v. Trump*, No. 3:17-CV-574-WHO, 2017 WL 1459081 (N.D. Cal. Apr. 25, 2017) (challenging the constitutionality of 8 U.S.C. §1373); *Complaint for Declaratory and Injunctive Relief, City and Cty. of S.F. v. Trump*, No. 3:17-CV-485-WHO, 2017 WL 412999 (N.D. Cal. Jan. 31, 2017) (same). Further, although the U.S. Court of Appeals for the Second Circuit upheld the constitutionality of 8 U.S.C. §1373, *see City of New York v. United States*, 971 F. Supp. 789 (2d Cir. 1997), commentators have argued that the court erred in reaching its conclusion. Vikram David Amar & Michael Schaps, *How Strong is San Francisco’s “Sanctuary City” Lawsuit Against the Trump Administration?*, VERDICT: LEGAL ANALYSIS AND COMMENTARY FROM JUSTICIA (Feb. 10, 2017), <https://verdict.justia.com/2017/02/10/strong-san-franciscos-sanctuary-city-lawsuit-trump-administration> (raising the possibility that the decision was incorrectly decided because government employees “operat[e] as state government actors. The “voluntary” decision whether to cooperate is (or ought to be) located at the level of state or local government, not at the level of the individual state or local employees.”).

¹²⁵ Erwin Chemerinsky, *The Constitutionality of Withholding Federal Funds from Sanctuary Cities*, L. A. LAWYER 60 (Apr. 2017), available at <https://www.lacba.org/docs/default-source/lal-back-issues/2017-issues/april-2017.pdf>.

¹²⁶ *Cty. of Santa Clara v. Trump*, 2017 WL 1459081 (see filing history on Westlaw);

Santa Clara County received \$1.7 billion, which is approximately “35 % of the County’s total revenues.”¹²⁷ San Francisco’s receives \$1.2 billion, which is about 12 percent of its \$9.6 billion annual budget.¹²⁸ Eventually, *Santa Clara County v. Trump* clarified the scope of E.O. 13768, including the context in which federal funds may be withheld from a “sanctuary jurisdiction.”¹²⁹ Specifically, as noted earlier, E.O. 13768 only applies to federal law enforcement programs that require compliance with 8 U.S.C 1373 as a condition for receiving federal grants.¹³⁰ Admitting that E.O. 13768 is “merely an exercise of the President’s ‘bully pulpit,’” the government acknowledged that E.O 13768 has a narrow scope and that it does not change existing law.¹³¹

At the end of 2008, sanctuary policies restricting local authorities from immigration enforcement existed in four states and nearly 70 cities and counties.¹³² By the end of 2013, California, Colorado, and Connecticut, and several localities passed laws limiting police assistance with immigration enforcement.¹³³ A year later, Rhode Island and over 300 counties and cities joined the movement.¹³⁴ Activists helped localities pass community trust policies in 2015, which over 350 counties and cities adopted.¹³⁵

Still, the precise number of sanctuary cities remains unclear and may have to do with the fact that there is no uniform definition of “sanctuary.”¹³⁶

Complaint for Declaratory and Injunctive Relief, *City and Cty. of S.F. v. Trump*, 2017 WL 412999; Exec. Order No. 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017).

¹²⁷ See Complaint for Declaratory and Injunctive Relief at ¶10, 3, *Cty. of Santa Clara*, 2017 WL 1459081.

¹²⁸ See *id.* at ¶80, 16.

¹²⁹ See *Cty. of Santa Clara*, 2017 WL 1459081, at *29 (enjoining Section 9(a) of the Executive Order, but leaving intact the Government’s lawful ability to enforce existing federal grant conditions and designate localities as “sanctuary jurisdiction[s].”)

¹³⁰ See State Criminal Alien Assistance Program (“SCAAP”), Edward Byrne Memorial Justice Assistant Grant (“JAG”) and Community Oriented Policing Services Grant (“COPS”).

¹³¹ Order Granting Injunction Against Exec. Order 13768, *Cty. of Santa Clara*, 2017 WL 1459081, at *9-10.

¹³² Laura Sullivan, *Enforcing Nonenforcement: Countering the Threat Posed to Sanctuary Laws by the Inclusion of Immigration Records in the National Crime Information Center Database*, 97 CAL. L. REV. 567, 568 (2009) (citing the National Immigration Law Center’s December 2008 report on local sanctuary laws. NAT’L IMMIGRATION LAW CTR., LAWS, RESOLUTIONS AND POLICIES INSTITUTED ACROSS THE U.S. LIMITING ENFORCEMENT OF IMMIGRATION LAWS BY STATE AND LOCAL AUTHORITIES (Dec. 2008), <http://www.aialdownloads.org/advo/NILC-LocalLawsResolutionsAndPoliciesLimitingImmEnforcement.pdf>).

¹³³ NAT’L IMMIGRATION LAW CTR., IMMIGRANT-INCLUSIVE STATE AND LOCAL POLICIES MOVE AHEAD IN 2014-15, at 19 (Dec. 2015), <https://www.nilc.org/wp-content/uploads/2016/02/pro-immigrant-policies-move-ahead-2015-12.pdf>.

¹³⁴ *Id.*

¹³⁵ *Id.* at 21.

¹³⁶ Compare Jasmine Lee, Rudy Omri & Julia Preston, *What are Sanctuary Cities?*, N.Y. Times, (Feb. 6, 2017), <https://www.nytimes.com/interactive/2016/09/02/us/sanctuary-cities.html?mcubz=3> (reporting that there are 633 counties in five states that have adopted

What is evident is that there are more sanctuary cities today, especially after the November 2016 election, and they have taken a more defensive stance. For example, as stated in Part I, some cities refuse to honor detainer requests from the federal government.¹³⁷ After the November 2016 election, many of these leaders reaffirmed this policy.¹³⁸ Thus far, there are over 600 jurisdictions that have non-detainer policies.¹³⁹ These local authorities assert that they are not required to honor detainer requests. As the court in *Santa Clara* has noted, courts have held that it is a violation of the Fourth Amendment to hold a non-citizen beyond the scheduled release because “civil detainer requests are not often supported by an individualized probable cause that a crime has been committed.”¹⁴⁰ Indeed, in a recent July 2017 decision, the Massachusetts State Supreme Judicial Court held that state and local authorities do not have authority under the common law to detain a non-citizen after his or her release from jail.¹⁴¹

Additionally, a number of cities have established policies that provide legal assistance to undocumented immigrants and children in removal hearings. The provision of legal services may perhaps be a quintessential form of safe haven. Although non-citizens have the right to a lawyer in removal hearings, the government does not provide legal services. Non-citizens must find and pay for their own lawyers. As such, most immigrants are unrepresented in removal hearings. A sanctuary city’s provision of legal services provides the necessary form of legal resistance to the power of the federal government to remove a non-citizen.

In sum, as they did in the 1980s, sanctuary cities today continue to provide safe havens to undocumented immigrants.

C. *New Sanctuaries*

Although the term sanctuary has been mainly understood along the private and public dimensions described above, there are innovative forms of

sanctuary policies that limit local interaction with federal immigration authorities) and Stephen Dinan, *The Number of Sanctuaries Nears 500*, WASH. TIMES (Mar. 14, 2017), <http://www.washingtontimes.com/news/2017/mar/14/number-sanctuary-cities-nears-500-report/>.

¹³⁷ U.S. IMMIGRATION AND CUSTOMS ENF’T, *supra* note 42, at 4-23; Exec. Order No. 13,768, §9(b).

¹³⁸ Many of these entities appeared on a “non-cooperation jurisdictions” list that the federal government released. *See* U.S. IMMIGRATION AND CUSTOMS ENF’T, *supra* note 42, at 4-23.

¹³⁹ Lee, Rudy & Preston, *supra* note 137.

¹⁴⁰ *Cty. of Santa Clara v. Trump*, No. 3:17-CV-574-WHO, 2017 WL 1459081, at *4 (N.D. Cal. Apr. 25, 2017)

¹⁴¹ *Lunn v. Commonwealth*, 477 Mass. 517 (2017).

sanctuary that have emerged, primarily since the election of President Trump. We describe at least two below: sanctuary campuses and sanctuary workplaces.

1. Sanctuary Campuses

Since the November 2016 election, universities have either declared themselves “sanctuary campuses” or issued policies that offer protection and support for Deferred Action for Childhood Arrivals (DACA) and other undocumented students.¹⁴² Thus far, students, faculty and advocates in more than two hundred universities have pushed for such non-cooperation policies and, to date, more than seventy-five universities have adopted such policies. Yet, what constitutes a “sanctuary campus” has varied. Some universities have openly embraced the “sanctuary campus” moniker. In announcing itself a sanctuary campus, for example, Wesleyan University stated that “[w]e would not cooperate with any efforts to round up people, unless we were forced to.”¹⁴³ Other universities, such as the University of California, have chosen not to adopt the “sanctuary campus” label but have issued policies that essentially provide the same type of support. Some, such as Columbia University, have pushed further and have announced that they will not allow immigration officials to enter their campuses without a warrant or share information with immigration officials the undocumented students’ information unless they are required to do so by a subpoena or a court order or authorized by a student.¹⁴⁴ No doubt, there is a spectrum of “sanctuary” policies among these campuses.¹⁴⁵

Sanctuary campuses and their desire to protect undocumented students raise legal questions that are distinguishable from public and private sanctuaries. To be sure, they implicate issues that concern both public and private dimensions. Because they provide housing to students, both public and private universities may be subject to the anti-harboring provision of the

¹⁴² For an informal list of “sanctuary campuses,” see https://docs.google.com/spreadsheets/d/1fHOHRFxzo_Pp85rR_58ug4rMv9WODPDmRLK0dP2FT-k/edit#gid=0.

¹⁴³ See Kathleen Megan, *Wesleyan Declares Itself a Sanctuary Campus for Undocumented Immigrants*, HARTFORD COURANT (Nov. 23, 2016), <http://www.courant.com/education/hc-college--trump-sanctuary-1123-20161122-story.html>.

¹⁴⁴ See Aaron Holmes, *University to Provide Sanctuary, Financial Support for Undocumented Students*, COLUMBIA SPECTATOR, (Nov. 21, 2016), <http://columbiaspectator.com/news/2016/11/21/university-provide-sanctuary-financial-support-undocumented-students>.

¹⁴⁵ Related to sanctuary campuses are sanctuary zones in school entrances. The goal of sanctuary zones is to help students feel safe and welcomed in their schools. See Mina Bloom, *Logan Square Schools Are Now 'Sanctuary Zones,' Declares Neighborhood Group*, DNAINFO (Feb. 17, 2017), <https://www.dnainfo.com/chicago/20170217/logan-square/logan-square-neighborhood-association-cps-schools-sanctuary-zones>.

INA. Further, public universities, as employees of a state or a city, may be bound by the restrictions of 8 U.S.C. §1373. Yet, at least two points about universities prompt distinct legal issues. First, universities, whether public or private, are educational institutions tasked with educating and protecting students. As such, courts have afforded them with discretion to regulate who may enter their premises in order to achieve their goals.¹⁴⁶

Second, universities are bound by federal privacy laws that serve to further protect the rights of students. Specifically, the Federal Education Rights and Privacy Act (FERPA) prohibit both public and private universities to reveal confidential student information to any third-party.¹⁴⁷ Such information that may not be disclosed (assuming the university obtained such information) arguably includes immigration status. Importantly, violations of these privacy laws can result in withdrawal of federal funds to universities.¹⁴⁸ Apart from the concern over raids or enforcement activities on campus, the primary concern for undocumented students (or other potentially removable noncitizens) is the security of their personal information that may be in the hands of university staff and databases.

Universities are generally not obligated to collect information about a student's undocumented status. Indeed, universities—whether public or private—are not prevented from enrolling undocumented students under federal law. Conversely, they are not obligated to admit undocumented students either, unless they are a state institution required to do so under state law. In the wake of this legal latitude, some states have passed laws determining that institutions of higher learning can admit undocumented students, and going further, that public institutions can offer them in-state tuition rates under some circumstances.¹⁴⁹

¹⁴⁶ *Souders v. Lucero*, 196 F.3d 1040, 1046 (9th Cir. 1999) (holding the university constitutionally fulfilled its duty to protect students on campus by excluding an alumnus for stalking behavior); *see Albright, ex rel. Albright v. Univ. of Toledo*, No. 01AP-130, 2001 WL 1084461, at *5 (Ohio Ct. App. Sept. 18, 2001) (citing *Wireman v. Keneco Distributors, Inc.*, 75 Ohio St.3d 103, 108 (1996)) (approaching the university's ability to exclude people from a property interest perspective).

¹⁴⁷ Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g (2013).

¹⁴⁸ 20 U.S.C. § 1234c(a)(1) (2017) (allowing the Secretary of Education to withhold funding for FERPA violations); *see United States v. Miami University*, 294 F.3d 797, 818–19 (6th Cir. 2002) (affirming the district court's discretionary grant of injunction against a university for violating FERPA as opposed to damages or withholding of federal funding).

¹⁴⁹ *See Plyler v. Doe*, 457 U.S. 202, 230 (1982) (affirming the Fourteenth Amendment's Equal Protection Clause protecting undocumented children's rights to guaranteed K-12 education); Stephen L. Nelson et al., *Reduced Tuition Benefits for Undocumented Immigrant Students: The Implications of a Piecemeal Approach to Policymaking*, 53 Santa Clara L. Rev. 897, 911 (2013) (discussing that in 2013, twelve states granted in-state tuition benefits to undocumented students, namely California, Connecticut, Illinois, Kansas, Nebraska, New Mexico, New York, Rhode Island, Texas, Utah, Washington, and Oklahoma). A more current list is here.

In other words, a university is in a unique position to provide protection for undocumented students in ways that differ and arguably stronger than sanctuary cities or churches and other private groups. Like “sanctuary cities,” however, this new form of sanctuary has garnered criticism from lawmakers. By early December 2016, lawmakers introduced a bill in Congress entitled “No Funding for Sanctuary Campuses Act,” which would deny “funding” to a university that the federal government determines to be a “sanctuary campus.”¹⁵⁰ State legislators have responded as well. In Alabama, for example, the House of Representatives passed a bill that would allow the state’s attorney general to pull state funds from sanctuary campuses.¹⁵¹

2. Sanctuary Workplaces

Another innovation in the sanctuary movement is the provision of safe havens in the workplace. Efforts conducted by a group, Restaurant Opportunity Centers United (ROCU) exemplify this nascent part of the sanctuary movement. ROCU, along with other supporters including other restaurants, have signed policies that are designed to support and provide resources to their workers.¹⁵² These workplace sanctuary policies include prohibiting harassment of an individual based on immigrant or refugee status, displaying prominently a “SANCTUARY RESTAURANTS: A Place At the Table for Everyone” sign in the establishment, and working with peer network

NATIONAL CONFERENCE OF STATE LEGISLATURES, TUITION BENEFITS FOR IMMIGRANTS (last visited Sept. 12, 2017), <http://www.ncsl.org/research/immigration/tuition-benefits-for-immigrants.aspx> (“Twenty states offer in-state tuition to unauthorized immigrant students, 16 by state legislative action and four by state university systems. Sixteen state legislatures—California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah and Washington—enacted laws to allow in-state tuition benefits for certain unauthorized immigrant students... At least four state university systems—the University of Hawaii Board of Regents, University of Michigan Board of Regents, Oklahoma State Regents for Higher Education and Rhode Island’s Board of Governors for Higher Education—established policies to offer in-state tuition rates to unauthorized immigrant students.”)

¹⁵⁰ No Funding for Sanctuary Campuses Act of 2017, H.R. 483, 115th Cong. (2017).

¹⁵¹ Bryan Lyman, *Alabama House Approves ‘Sanctuary Campus’ Bill*, MONTGOMERY ADVERTISER, MONTGOMERY ADVISER ((Feb. 14, 2017), <http://www.montgomeryadvertiser.com/story/news/politics/southunionstreet/2017/02/14/alabama-house-approves-sanctuary-campus-bill/97929404/>

¹⁵² *Sanctuary Restaurants’ Movement Launches to Promote Hate and Discrimination Free Workplaces*, RESTAURANT OPPORTUNITY CENTERS UNITED (Jan. 4, 2016), <http://rocunited.org/2017/01/sanctuary-restaurants-movement-launches-promote-hate-discrimination-free-workplaces/> (ROCU explains that its main purpose is to “offer[]support and resources to restaurant workers, employers and consumers impacted by hostile policies and actions, including immigrants, Muslims, LGBTQI people and others.”).

to assist workers that may be targeted by the administration.¹⁵³

There are currently 387 restaurants nationwide that have affirmed the principles of sanctuary workplace policies.¹⁵⁴ Additionally, the Golden Gate Restaurant Association, which represent about 1,000 restaurants in San Francisco (which in turn represents approximately 60,000 workers) have agreed to implement the anti-harassment components of the principles and other support policies.¹⁵⁵ Importantly, these private policies have been encouraged and supported by some municipalities. For instance, at least two cities in California—Oakland and Emeryville—have passed resolutions asking businesses to establish “sanctuary workplaces” that promote an environment free from harassment on the basis of immigration status.¹⁵⁶

Other employers have adopted more proactive and protective actions on behalf of their employees. In particular, those involved with the sanctuary restaurants movement have expressed that they will refuse entry to immigration law enforcement officers.¹⁵⁷ For example, when ICE officers showed up in a café in Ann Arbor, Michigan, to look for an individual, the owner of the café refused to allow the ICE agents to go walk through the kitchen.¹⁵⁸ As private property owners, restaurant owners have the right under the Fourth Amendment to demand to see a judicial or administrative warrant before ICE may constitutionally enter the property.¹⁵⁹ The right of restaurant owners to refuse entry is particularly helpful in the workplace in light of reports of incidents of ICE agents showing up at restaurants to arrest workers.¹⁶⁰

Workers and unions have also called for the protection of their members’ information, and urging their employers not to share them with

¹⁵³ *Id.*

¹⁵⁴ See SANCTUARY RESTAURANTS, <http://sanctuaryrestaurants.org>, (last visited Aug. 10, 2017) (scroll to the bottom for map).

¹⁵⁵ Joshua Sabatini, *San Francisco Restaurant Owners Offer Employees Sanctuary Workplace*, SF EXAMINER (Mar. 10, 2017), <http://www.sfexaminer.com/san-francisco-restaurant-owners-offer-employees-sanctuary-workplace/>.

¹⁵⁶ Riley McDermid, *Oakland Passes Resolution Asking Businesses to Create Sanctuary Workplaces*, SAN FRANCISCO BUS. TIMES (Apr. 19, 2017), <https://www.bizjournals.com/sanfrancisco/news/2017/04/19/oakland-immigration-sanctuary-workplaces.html>.

¹⁵⁷ Jessica Haynes, *Ann Arbor Restaurant Refused Kitchen Entry to ICE Agents, Owner Says*, Ann Arbor Bus. (Aug. 11, 2017), http://www.mlive.com/business/ann-arbor/index.ssf/2017/08/ann_arbor_restaurant_refused_k.html.

¹⁵⁸ *Id.*

¹⁵⁹ U.S. CONST. amend. IV; *Kentucky v. King*, 563 U.S. 452, 459 (2011).

¹⁶⁰ *ICE Agents eat Breakfast, Compliment Chef, then Arrest 3 Workers at Michigan Restaurant*, CHICAGO TRIB. (May 26, 2017), <http://www.chicagotribune.com/news/nationworld/midwest/ct-michigan-restaurant-immigration-arrests-20170525-story.html>.

immigration authorities unless required by law, such as I-9 requirements.¹⁶¹ Employers are required to verify that their employees have authorization to work.¹⁶² Using I-9 forms, employers ask their workers to submit documents such as their passport or Social Security as evidence of employment authorization.¹⁶³ Employers may also voluntarily participate in E-verify, which is an internet based program that allows those who use it to compare documents submitted to employers through the I-9 process with information available with the Department of Homeland Security.¹⁶⁴ In the event of an ICE raid, employees and unions have asked employers to demand to see a warrant before they may turn over any of their employees' documents.¹⁶⁵

Other unions have also provided workshops and trainings for their members regarding what to do when there is a raid.¹⁶⁶ Indeed, some are pushing employers to contact unions in case there is a raid so that the unions could inform their employees.¹⁶⁷ Lastly, the foregoing workplace protective measures, grounded on private property and Fourth Amendment rights, have not been limited in the restaurant industry. As explained *supra*, multi-million companies such as Microsoft have also promised to offer protections for their workers, particularly after the President rescinded DACA.¹⁶⁸

In sum, like campuses, workplaces have emerged as sanctuary sites that seek to not only create welcoming environments for immigrants but also pose challenges to the federal government's immigration enforcement actions. That

¹⁶¹ Tim Goulet, *We Are a Sanctuary Union*, SOCIALIST WORKER (June 28, 2017), <https://socialistworker.org/2017/06/28/we-are-a-sanctuary-union>. To provide verification for this article and sanctuary resolution, a link to this source was found on the Teamsters website at *This Week's Teamster News for June 24-30*, INT'L BHD. OF TEAMSTERS (June 30, 2017) <https://teamster.org/blog/2017/06/weeks-teamster-news-june-24-30>.

¹⁶² U.S. CITIZENSHIP AND IMMIGRATION SERVICES, INFORMATION FOR EMPLOYERS AND EMPLOYEES (2015), <https://www.uscis.gov/working-united-states/information-employers-employees/information-employers-and-employees> ("Employers must verify that an individual whom they plan to employ or continue to employ in the United States is authorized to accept employment in the United States.")

¹⁶³ U.S. CITIZENSHIP AND IMMIGRATION SERVICES, FORM I-9 ACCEPTABLE DOCUMENTS (2017), <https://www.uscis.gov/i-9-central/acceptable-documents/list-documents/form-i-9-acceptable-documents> (listing that passports establish identity and employment authorization, whereas Social Security cards or numbers only establish employment authorization).

¹⁶⁴ U.S. Citizenship and Immigration Services, Verifying New & Existing Employees on Form I-9 (2017), <https://www.uscis.gov/e-verify/federal-contractors/verifying-new-existing-employees-form-i-9> ("Employees must have a Social Security number (SSN) to be verified using E-Verify.")

¹⁶⁵ David Bacon, *Fighting for the Sanctuary Workplace: Unions Mobilize to Protect Undocumented Workers*, TRUTHOUT (June 24, 2017), <http://www.truth-out.org/news/item/40964-fighting-for-the-sanctuary-workplace-unions-mobilize-to-protect-undocumented-workers>.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Haselton, *supra* note 1.

is, regardless of the intent of public and private actors, these sanctuary campus and sanctuary workplace policies, as we have discussed, present obstacles to ICE and other law enforcement officers.

3. Other Types of Sanctuary

Importantly, the foregoing examples are only two of the new forms of sanctuary that have emerged since the election. Another burgeoning example is what may be described as “social media” sanctuary. Individuals and groups have used Twitter, Facebook and text messages to warn immigrants and communities about potential Immigration and Customs Enforcement (ICE) raids.¹⁶⁹ The effectiveness of social media sanctuary, however, is uncertain. On the one hand, social media sanctuary offers swift and effective means of frustrating immigration law enforcement. Additionally, there seem to be few legal limits on the transmission of such information. On the other hand, many social media warnings have turned out to be unreliable and have thus been criticized for stoking fears among immigrant communities.¹⁷⁰ Nevertheless, social media sanctuary has the potential to place robust limitations on immigration law enforcement. Indeed, developers are also working to create an app that would alert immigrants about “crowdsourced” and confirmed information about ICE raids.¹⁷¹

III. SANCTUARY NETWORKS

As Part II of this Essay details the variety and strengths of the individual types of sanctuaries, Part III tries to understand them in context. Here, we explain why the reframed and expansive conception called for in Parts I and II is useful.

The possibility of sanctuary emanating from multiple sources, some public and some private, with differing constituencies and foci allows new ingress into thinking about the utility of this form of resistance to federal immigration policy. Perhaps more importantly, it allows a new theoretical perspective on governance over noncitizens and immigration enforcement policy. Here, we apply the lessons of governance theories that emphasize the

¹⁶⁹ See Nicholas Kulish et al., *Reports of Raids Have Immigrants Bracing for Enforcement Surge*, N.Y. TIMES (Feb. 10, 2017), <https://www.nytimes.com/2017/02/10/us/immigration-raids-enforcement.html>.

¹⁷⁰ *Id.*

¹⁷¹ See Patrick Howell O’Neill, *Raid Alerts’ Wants to Warn Undocumented Immigrants With an App*, VICE (Feb. 18, 2017), https://motherboard.vice.com/en_us/article/xy7yzn/raid-alerts-wants-to-warn-undocumented-immigrants-with-an-app.

power of networks and non-state actors to meaningfully influence policy areas.¹⁷² The power that these myriad sanctuaries assert as government agencies, religious institutions, school and university campuses, and private groups showcases the decentralized and distributed nature of immigration enforcement. As stakeholders in the project of immigration regulation, the sanctuary policies generated by these varied institutions function as negotiations and contestations with the federal government's current enforcement regime. The ubiquity and multi-institutional nature of our reimagined sanctuaries provides opportunities for networked responses to federal programs, and for thinking about longer-term processes of defining immigration policy.

Emerging theories of governance argue that descriptively, governmental entities – and especially, a single level of government – do not hold a monopoly over the regulation of a subject area, or the proliferation of the social norms that govern that field. Instead, several types of actors, ranging from legislatures, government agencies, corporations, foundations, non-governmental organizations, and other more informal associations, exercise authority over particular fields in loosely connected networks.¹⁷³ Governance has morphed into this decentralized distributed system primarily because social and regulatory systems have become highly complex and interdependent. The upshot of these theories of network governance is that these traditionally unheralded and ignored institutions and groups have the potential to influence policy and change social norms by asserting their authority over their area of control, and coordinating that exercise with others who might also control some aspect of a regulatory area.¹⁷⁴

Immigration enforcement, in particular, appears to fit this theoretical perspective. As other scholars have noted, the federal immigration enforcement scheme already enmeshes multiple levels of government, as state crimes and local prosecutions become the basis for immigration

¹⁷² See generally Scott Burris et al., *Changes in Governance: A Cross-Disciplinary Review of Current Scholarship*, 41 AKRON L. REV. 1 (2008) [hereinafter *Changes in Governance*]; Scott Burris et al., *Nodal Governance*, 30 AUST. J. LEG. PHIL. 30 (2005) [hereinafter *Nodal Governance*]; R.A.W. Rhodes, *Policy Networks*, 2 J. THEOR. POL. 293 (1990).

¹⁷³ See *Changes in Governance*, *supra* note 175, at 12-19; *Nodal Governance*, *supra* note 175, at 31; see also Robert B. Ahdieh, *The Role of Groups in Norm Transformation: A Dramatic Sketch, in Three Parts*, 6 CHI. J. INT'L L. 231, 232-34 (2005) (arguing that legal scholars and economists are biased towards state actors and have paid inadequate attention to the role of other market participants in social ordering and norm-creation).

¹⁷⁴ *Nodal Governance*, *supra* note 175, at 39 (discussing ability of nodes to influence each other generally); *Changes in Governance*, *supra* note 165, at 20 (non-commercial NGOs are able to influence governance “through their capacity to mobilize and shape public opinion through the publication of reports and access to the world's media.”).

consequences.¹⁷⁵ And, local law enforcement and government agency cooperation in the form of information exchange and facilities-usage has become critical to actualizing federal enforcement possibilities.¹⁷⁶

But beyond inter-governmental cooperation or non-cooperation (the subject of most current legal analysis on sanctuaries), the sanctuary movement we describe in Part II illustrates the extent to which non-governmental entities also can and do influence the federal immigration scheme by actively undermining either the effectiveness or legitimacy of the federal program. They have done so by leveraging their sphere of influence over the unlawfully present population that might inhabit, use, depend upon, or be a member of, each of those atomized institutions and groups. By serving as physical shelter and protection, disseminating vital information, asserting constitutional rights on behalf of immigrants, and using media to present competing visions of the rule of law and human interest, these institutions too, are points of governance, with some authority over, and responsibility for, the relevant population.¹⁷⁷ Even if not explicitly contemplated in the background legal framework, the federal officials response to these efforts strongly suggests that the oppositional responses of such institutions – like the challenges by state

¹⁷⁵ See, e.g., Rachel E. Rosenbloom, *Policing Sex, Policing Immigrants: What Crimmigration's Past Can Tell Us About Its Present and Its Future*, 104 CALIF. L. REV. 149, 151 n.3 (2016)

(“Commentators have identified several interrelated phenomena that comprise crimmigration: the dramatic expansion of the immigration consequences of crimes, the increasing criminalization of immigration law violations, the growing use of immigration detention and other harsh enforcement techniques, and the growing involvement of state and local police in enforcing federal immigration laws.”); Allegra M. McLeod, *The U.S. Criminal-Immigration Convergence and Its Possible Undoing*, 49 AM. CRIM. L. REV. 105, 120-21 (2012) (discussing the convergence of immigration and criminal law and noting that the passage of the Anti-Terrorism and Effective Death Penalty Act of 1996 (“AEDPA”), Pub. L. No. 104-132, 110 Stat. 1214 (1996) and the Illegal Immigration Reform and Immigrant Responsibility Act (“IIRIRA”), Pub. L. 104-208, 110 Stat. 3009-546 (1996) greatly expanded the number of deportable crimes); Stephen Legomsky, *The New Path of Immigration Law: Asymmetric Incorporation of Criminal Justice Norms*, 64 WASH & LEE L. REV. 469, 472 (noting that “immigration law has been absorbing the theories, methods, perceptions, and priorities of the criminal enforcement model while rejecting the criminal adjudication model in favor of a civil regulatory regime” without affording immigrants adequate procedural and substantive safeguards)

¹⁷⁶ Maureen A. Sweeney, *Criminal Law: Shadow Immigration Enforcement and its Constitutional Dangers*, 104 J. CRIM. L. & CRIMINOLOGY 227, 234-35 (discussing that local communities facilitate immigration enforcement by sharing information and by detaining and transferring individuals); for an example of information sharing, see also David Alan Sklansky, *Crime, Immigration, and Ad Hoc Instrumentalism*, 15 NEW CRIM. L. R. 157, 220 (the Secure Communities program automatically forwards local arrestee information to Immigration and Customs Enforcement).

¹⁷⁷ Clifford Shearing & Jennifer Wood, *Nodal Governance, Democracy, and the New ‘Denizens’*, 30 J. LAW & SOC. 400 (2003) (using the concept of “denizen” to capture the idea of those who may not possess membership in the nation-state, but are nevertheless subject to the governance of several state and non-state actors in a given regulatory domain).

and local agencies – have real effect on the popularity, efficacy, speed, or cost of federal immigration enforcement.

Given the implicit interdependence between, and incorporation of, these myriad institutions into the governance of immigration enforcement,¹⁷⁸ our goal in Part III is illustrate the potency of these atomized nodes of immigration governance. In Part A, we argue that the robustness of the protection and integration available in a community to a vulnerable noncitizen is based on the strength of the network of sanctuary sites within that community. This network, when functioning in an ideal state, would coordinate functions and information across the myriad private, public, institutional, and individual efforts. Even irrespective of any coordination, our basic argument is that the full benefits of sanctuary are only achieved when multiple and variegated institutions and individuals in both the governmental and non-governmental sectors within a community articulate a vision of enforcement in opposition to the federal government. In short, if the goal is the maximize protection from federal enforcement, multiple actors across several sectors must work in concert. Here, we suggest that communities within the state of California or New York City might be able to exercise governance over immigration enforcement in a manner that can effectuate an enforcement regime vastly different from the federal administration’s stated vision.

Undoubtedly, our claim about the robustness of a sanctuary network leaves open the possibility the nodes in the enforcement system might reinforce and amplify federal goals. Indeed, such is the case in states or municipalities that have taken decidedly “anti-sanctuary” stances. In such instances, local agencies’ and private organizations’ immigrant-protective policies become more isolated and exert comparatively less influence over the governance network. Yet, in Part B, we argue that these “dissenting” or isolated sanctuaries remain important actors, despite their inability to coordinate with reinforcing state or local governmental policies.

The character and importance of these claims of sanctuary, however, are markedly different from the potency of networked systems. In this

¹⁷⁸ We think it is fair to consider religious institutions, colleges, school districts, workplaces, and other informal groupings to be participating in governance even through there are not all sites of democratic deliberation or institutions with formal links to the government. Some, like college campuses where students and faculty might have some say in a university’s position on a subject or can effectively lobby administrators, might be quasi-deliberative and participatory. Others, like workplaces or houses of worship, less so. Regardless, some group within those institutions is the locus of a majoritarian decision-process that seeks to take a definitive and oppositional stance on immigration enforcement policy. Although their varying degrees of leverage over federal policies make their stances more or less consequential, they nevertheless all exert some influence over the ultimate administration and governance of the enforcement system.

category, non-governmental sanctuaries take on greater importance, and concomitantly, legal defenses based on private property and statutory rights become more vital. Because these dissenting sites are still part of the overall system of immigration enforcement governance, their oppositional stances continue to matter. They do the long-term work of increasing the political and actual costs of governmental enforcement regimes, forcing federal and state agencies to expend the capital and resources to override the institution's influence. And, sanctuaries in this category might look trans-locally to like-minded institutions in other jurisdictions to amplify their network potential. Here, we highlight the cases of Travis County in Texas and various universities in anti-sanctuary states to showcase the potential of the "dissenting sanctuary."

Ultimately, Part III argues that the work that any sanctuary does, will vary depending on context. This leads to our final and related point in Part IV: every stakeholder institution, whether governmental, religious, or private and informal, participates in recalibrating the immigration enforcement to the level they deem legitimate and appropriate.

A. Collaborative Sanctuary

Based on our mapping exercise in Part II, our most basic point is that the impact and effectiveness of sanctuary policies is invariably contextual. Cities and large law enforcement agencies are powerful actors because they hold a virtual monopoly on coercive state enforcement powers and because local officials command bully pulpits and media attention. Even when cities make conspicuous refusals to cooperate with federal authorities, however, their ability to protect noncitizens within their jurisdiction is limited. Ultimately, to help fully actualize the notion of a protective community, law-enforcement non-cooperation policies must be paired with other government agencies, and non-governmental efforts to provide sanctuary to noncitizens. This networked effect of several "nodes" in a system working together produces a geographic area in which immigration enforcement policy in practice can be markedly different than that which the federal administration desires or might be reflected in federal statutes.

That any claim of sanctuary cannot provide impenetrable and absolute protection from immigration enforcement should, by now, be clear. Indeed, under Trump Administration enforcement policies, even those who received deferred action under the Obama-era policy have been arrested and prosecuted for removal.¹⁷⁹ At every opportunity, current ICE leadership has

¹⁷⁹ Richard Gonzales, *DREAMer Deportation Case Raises Questions On Trump's Deferred Action Policy*, NPR (Apr. 19, 2017), <http://www.npr.org/sections/twotwo-way/2017/04/18/524610150/first-dreamer-protected-by-deferred-action-program-is-deported>; Jenny Jarvie, *Deportations of 'Dreamers' who've lost protected status have surged under Trump*,

clarified that its agents will seek to remove anyone who is unlawfully present, regardless of past criminal history or relationship to any established public safety priority system.¹⁸⁰ ICE and federal authorities, even without the aid and permission of state and local authorities can engage in immigration enforcement against any unlawfully present person. Our federalist system of dual sovereigns permits the federal government to use its agents to enforce federal law, even when those actions occur in states and localities unfriendly to such actions.

Importantly, not all parts of a governance system have the same power or influence, and some parts may have more coercive tools than the others.¹⁸¹ But, the fact that the federal government may override sanctuary policies through punitive federal laws, criminal sanctions, or bribes, does not diminish our argument that multiple institutions are participating in – and sometimes controlling – immigration enforcement. More to the point, our fundamental premise here operates in the shadow of the reality that no individual sanctuary policy is foolproof, but that working in conjunction, these sites of governance might amplify their overall effect to achieve something close to a viable, alternate immigration policy. Because even robust citywide sanctuary can, at most, limit the city’s role in enforcement, other forms of sanctuary are critical to maximizing the level of protection and inclusion offered to undocumented persons and their families.

One example of this nested and loosely connected system of sanctuaries are communities within California. At the state level, California policy attempts to reduce the state’s role in aiding federal immigration authorities to a significant extent. Sentences for certain state crimes have been modified to avoid triggering immediate immigration consequences.¹⁸² The state’s TRUST Act enacted in 2013 establishes a statewide minimum for the

L.A. Times (Apr. 19, 2017), <http://www.latimes.com/nation/la-na-daca-deportations-20170419-story.html> (“43 immigrants whose protection under the Deferred Action for Childhood Arrivals (DACA) program was terminated were deported during the first two months of the Trump presidency, from Jan. 20 to March 25.”).

¹⁸⁰ See Memorandum from Matthew T. Albence, Executive Associate Director, Enforcement and Removal Operations to All ERO Employees, Implementing the President’s Border Security and Interior Immigration Enforcement Policies (Feb. 21, 2017), <https://assets.documentcloud.org/documents/3891336/icememofeb21.pdf>; see also Elise Foley, *ICE Director To All Undocumented Immigrants: ‘You Need To Be Worried’*, HUFFINGTON POST (Jun. 13, 2017), http://www.huffingtonpost.com/entry/ice-arrests-undocumented_us_594027c0e4b0e84514eebfbe.

¹⁸¹ See *infra* Part B.

¹⁸² *Lara Bill Will Retroactively Correct Discrepancy in Federal and State Misdemeanor Sentencing Laws*, RICARDO LARA: ST. SENATOR FROM CALIFORNIA’S 33RD DIST. (Mar. 30, 2016), <http://sd33.senate.ca.gov/news/2016-03-30-lara-bill-will-retroactively-correct-discrepancy-federal-and-state-misdemeanor>. The statutory provision is codified at CAL. PENAL CODE § 18.5 (2017).

types of detainer requests to which any law enforcement agency within the state can respond.¹⁸³ As of this writing, the state is poised to pass the “California Values Act,” a state-sanctuary ordinance that significantly disentangles the state from immigration enforcement activities. These policies mitigate the aid that state and local law enforcement or agencies might provide to the federal government. In doing so, they serve an important role in reducing the chances of any individual within that community becoming the target of indiscriminate federal removal operations.

Despite the importance of these statewide policies in articulating a statewide norm and providing a floor for enforcement efforts, much of the sanctuary provided by the state could be undone or severely compromised by local policies and community practices that aid amplify or facilitate federal enforcement within specific localities and counties. Importantly then, the TRUST Act allows discretion for localities to create their own detainer response restrictions that are narrower than the statewide standards. Counties such as San Francisco and Santa Clara have done just that, articulating even broader detainer-resistance ordinances as part of their respective sanctuary laws.¹⁸⁴ In addition, several counties in the state – including the immigrant-heavy municipalities of San Francisco, Santa Clara, Los Angeles, and Alameda – include other non-cooperation policies including “don’t ask, don’t tell” protocols for their law enforcement officers.¹⁸⁵ These local efforts complement the statewide effort, doubling the legal constraints that local law officers and

¹⁸³ See CAL. GOV’T CODE § 7282.5 (2014) (The individual must have been convicted of a misdemeanor or felony).

¹⁸⁴ S.F., CAL., ADMIN. CODE §§ 12H.1-12H.6 (2016); Santa Clara Cty., Cal., Resolution of the Board of Supervisors of the County of Santa Clara Adding Board Policy 3.54 Relating to Civil Immigration Detainer Requests, Res. 2011-504 (Oct. 18, 2011), https://www.ilrc.org/sites/default/files/resources/santa_clara_ordinance.pdf.

¹⁸⁵ See, e.g., S.F., CAL., ADMIN. CODE §§ 12H.2(c)-12H.2(d) (2016); Robert Salonga, *Not our role: Santa Clara County Cops Reaffirm They Won’t be Deportation Force*, MERCURY NEWS (Mar. 14, 2017), <http://www.mercurynews.com/2017/03/14/santa-clara-county-law-enforcement-reaffirms-immigrant-protections/> (quoting Santa Clara County District Attorney Jeff Rosen that “Justice does not ask victims for their immigration papers, and neither do we.”); ALAMEDA CTY. SHERIFF’S OFF., GEN. ORD., ICE ENFORCEMENT, ARRESTS, DETENTION, REMOVAL, AND REQUEST FOR NOTIFICATIONS (July 6, 2015) http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_9_10_15/PUBLIC%20PROTECTION/Regular%20Calendar/ACSO%20General%20Order%201%2024_ICE%20enforcement%20arrests%20removal.pdf (“The Alameda County Sheriff’s Office will equally enforce laws and serve the public without consideration of immigration status.”); Jim McDonnell, *Sheriff Has a Promise for L.A.’s Immigrants: Jim McDonnell*, L.A. Daily News (Jan. 7, 2017), <http://www.dailynews.com/opinion/20170107/sheriff-has-a-promise-for-las-immigrants-jim-mcdonnell> (Jim McDonnell is the sheriff for Los Angeles County. He states that “[m]y deputies will not detain or arrest any individual solely on suspicion of illegal presence in the United States” and that the “Sheriff’s Department personnel do not participate in determining the immigration status of any inmate in our custody.”).

officials might face when deciding whether to cooperate with federal enforcement efforts.

A critical limitation to these state and local efforts, however, is that their impact is necessarily limited to those who come into contact with law enforcement agencies as arrestees, witnesses, and victims. By definition, they cannot change the prospects for the large majority of noncitizens who may never come into contact with law enforcement officers as part of a criminal investigation, or in the official course of law enforcement activity. Moreover, it is possible that this type of resistance might be overcome through federal bribes in the form of conditional spending policies that induce local conscription into immigration enforcement.¹⁸⁶ In short, state and local law enforcements' non-cooperation with federal authorities provides a necessary and powerful, but hardly sufficient, starting point for noncitizen protection.

Indeed, the primary, unintended benefit of state and local non-cooperation policies might be the ability of such a governmental policy to beget complementary responses from special purpose institutions and non-governmental organizations. If those institutions and organizations know their sanctuary practices – for example, insisting on judicial warrants before cooperating with ICE agents – would reflect local government positions, it might make it more likely that such institutions conspicuously articulate their policies. Thus, the city or police department non-cooperation policy might have cascading effects, even if the attitude of such local officials has no legal bearing on an institution's ability to maintain or articulate such a standard. This dynamic might also work in reverse, with multiple institutions in a jurisdiction emboldening local officials to act similarly.

Actualizing these knock-on effects is crucial to the project of noncitizen protection. To more fully insulate vulnerable noncitizens from unjust or harsh federal enforcement, sanctuary must extend into as many of the physical spaces and associations they inhabit on a regular basis. It is in this space where school districts, universities and colleges, places of worship, workplaces, and individual networks might fill in the gaps for large swathes of the undocumented population who may not themselves be the object of law enforcement activity. Taken together, they raise the cost and stakes of federal enforcement efforts to a degree that might be untenable within a jurisdiction, rendering immigration enforcement in that jurisdiction effectively dictated by the policy vision of this decentralized and distributed band of governors.

To return to the example of sanctuaries within California, a particularly immigrant-friendly California jurisdiction like Santa Clara County may have several forms of sanctuary nesting within it. At the statewide level, the TRUST

¹⁸⁶ Spencer E. Amdur, *The Right of Refusal: Immigration Enforcement and the New Cooperative Federalism*, 35 YALE L. & POLY REV. 87, 120 (2017) (exploring Congress's conditional spending powers).

Act provides a minimum floor of protection against detainers that might be used to hold individuals for ICE enforcement. The county detainer policy then reinforces the TRUST Act by making it even more muscular at the local level, under the theory that a non-cooperation policy might foster greater community trust in law enforcement and allow the county to focus on public safety without regard to immigration status.¹⁸⁷ In addition, the county is home to school districts for primary and secondary education, as well as state and private higher education campuses. Several of these units have enacted sanctuary policies, either by express adoption of the term, or in action and policy that mirror sanctuary protections without utilizing the specific label.¹⁸⁸ For many of the students who may never come into contact with law enforcement, campus provides an additional haven during their daily lives. Private institutions, like Santa Clara University, can provide even stronger assurance of non-cooperation, by maximizing their control over the private property that comprises its campus.

Beyond vulnerable noncitizen students, the county is also home to one of the largest immigrant labor forces in the nation, ranging from high tech Silicon Valley workers to agricultural, restaurant and construction workforces.¹⁸⁹ As discussed *supra*, some employers have taken sanctuary-like stances by assuring their employees – consistent with their constitutional and property rights – that they will respond to information, record, or search requests only pursuant to subpoenas, warrants, or court orders.¹⁹⁰ An employer

¹⁸⁷ See Mercury News Editorial Board, *Editorial: Sanctuary and Public Safety can be Compatible*, MERCURY NEWS (Mar. 20, 2017), <http://www.mercurynews.com/2017/03/20/editorial-sanctuary-and-public-safety-can-be-compatible-goals/> (quoting Santa Clara Cty. District Attorney Jeff Rosen, who stated that “maintaining trust between residents and police ‘can be a matter of life and death’ in solving and preventing crime.”).

¹⁸⁸ See, e.g., San Jose Unified Sch. Dist., Cal., Resolution of the Governing Board Supporting Immigrant Students and Families, Res. 2017-02-09-01, (Feb. 9, 2017), http://www.sjUSD.org/pdf/districtinformation/Resolution-Supporting-Immigrant_Students-and-Families-ENG.pdf; Santa Clara Unified Sch. Dist., Cal., Safe Environment for Students, Res. 16-46 (Dec. 8, 2016), <http://www.santaclaraschools.org/files/news/resolution%20%2316-46%20safe%20environment%20for%20students.pdf>; Rosanna Xia, *Cal State Will Not Help Deport Undocumented Students Under Trump, Chancellor Says*, L.A. TIMES (Nov. 16, 2016) (The California State University chancellor stated its campuses “will not enter into agreements with state or local law enforcement agencies, Homeland Security or any other federal department for the enforcement of federal immigration law” and university “police departments will not honor immigration hold requests.” Finally, “university police do not contact, detain, question or arrest individuals solely on the basis of being ... a person that lacks documentation.” California State University has a campus in San Jose, CA, which is in Santa Clara County).

¹⁸⁹ *Economy at a Glance, San Jose-Sunnyvale-Santa Clara, CA*, U.S. BUREAU OF LABOR STATISTICS, https://www.bls.gov/eag/eag.ca_sanjose_msa.htm (last visited Aug. 30, 2017).

¹⁹⁰ Joshua Sabatini, *San Francisco Restaurant Owners Offer Employees Sanctuary Workplace*, SF EXAMINER (Mar. 10, 2017), <http://www.sfbay.com/san-francisco-restaurant-owners-offer-employees-sanctuary-workplace/>. Notably, employers have taken critical positions

from Michigan recently illustrated the power of this simple and lawful insistence on proper documentation. Amidst a slew of immigration raids in the area, one Ann Arbor restaurant refused entry to ICE agents.¹⁹¹ As ICE routinely solicits enforcement aid without such court-issued documents,¹⁹² even a momentary refusal can provide significant notice to noncitizens affiliated with the employer.

Schools and workplaces, however, can mostly provide a limited form of protection, and only for the times during which a student or employee might be within their care. To extend protection beyond those circumstances, networks of private individuals and religious organizations have promised physical and emotional sanctuary to noncitizens within the community. In the wake of federal enforcement efforts, private individuals and networks of private individuals have devised systems to protect their fellow community members.¹⁹³ Informal groups can prepare with text alert systems to advise of any raids or enforcement efforts.¹⁹⁴ And, going one step further, Los Angeles is home to several private homeowners who have made known that their homes could be used for shelter and protection.¹⁹⁵

Finally, places of worship in the area have announced that they would harbor members of their congregation seeking refuge from enforcement.¹⁹⁶ In

against President Trump issued Executive Order 13780, which many refer to as the “Muslim-ban,” which we believe help to promote an inclusionary environment in the workplace. Matt Drange, *Facebook, Google, Apple Lead U.S. Business Charge Against Trump Travel Ban*, FORBES (Feb. 3, 2017), <https://www.forbes.com/sites/mattdrange/2017/02/03/silicon-valley-giants-joins-forces-again-to-oppose-donald-trumps-immigration-orders/#3a2b8c7a20c4>; Jonathan Schieber, *Apple CEO Tim Cook Sent an Email to Employees About the Immigration Ban*, TECHCRUNCH (Jan. 28, 2017), <https://techcrunch.com/2017/01/28/apple-ceo-tim-cook-sent-an-email-to-employees-about-the-immigration-ban/>.

¹⁹¹ Jessica Haynes, *Ann Arbor Restaurant Refused Kitchen Entry to ICE Agents, Owner Says*, MICH. LIVE (Aug. 11, 2017), http://www.mlive.com/business/ann-arbor/index.ssf/2017/08/ann_arbor_restaurant_refused_k.html.

¹⁹² *Without Warrants, Immigration Agents Often Pose as Police Officers*, NPR (Feb. 21, 2017), <http://www.npr.org/2017/02/21/516488396/without-warrants-immigration-agents-often-pose-as-police-officers> (All Things Considered with Audie Cornish).

¹⁹³ Kate Morrissey, *Organized Resistance is Forming to Trump's Immigration Crackdown*, THE SAN DIEGO UNION-TRIB. (Mar. 1, 2017) (<http://www.sandiegouniontribune.com/news/immigration/sd-me-deportation-resistance-20170301-story.html>).

¹⁹⁴ Charlie Sorrel, *This App Warns Undocumented Immigrants When Raids Are Coming*, FAST CO. (Feb. 22, 2017), <https://www.fastcompany.com/3068357/this-app-warns-undocumented-immigrants-when-raids-are-coming>.

¹⁹⁵ Lah et al., *supra* note 108.

¹⁹⁶ Devin Fehely, *San Jose Catholic Churches May Serve As Sanctuaries For Immigrants Under Trump*, CBS S.F. BAY AREA (Jan. 10, 2017), <http://sanfrancisco.cbslocal.com/2017/01/10/san-jose-catholic-churches-may-serve-as-sanctuaries-for-immigrants-under-trump/>; Tatiana Sanchez, *In Trump Era, Bay Area Churches Offer Sanctuary to Undocumented Immigrants*, Mercury News (Feb. 17, 2017),

doing so, they join the nationwide group of religious institutions that have opted to shelter those who might be the target of enforcement actions. Although they are not immune from criminal or other laws of general applicability, the special status of religion in the American constitutional order imbues their resistance with legal and moral heft. Moreover, by openly declaring their intentions and providing shelter, they offer a competing interpretation of federal law: One intended not as an act of civil disobedience, but rather as fidelity to, in their view, a more compassionate and just interpretation of the law than the one offered by federal authorities.¹⁹⁷ In addition, in some areas, the “church” has become a movable point of resistance untethered from a particular physical location.¹⁹⁸ The “Sanctuary in the Street” movement brings congregation members to enforcement loci, challenging enforcement agents to physically bypass them in order to effectuate removal.¹⁹⁹

Given these multiple sanctuary institutions and sites, it is likely that an undocumented individual living in a place like Santa Clara County would be an unlikely target for local law enforcement solely based on immigration status. If they did come into contact with law enforcement, it is unlikely in many cases that their immigration status would be advertised to federal authorities, or that local authorities would facilitate their transfer to federal custody. Meanwhile, that person would be able to obtain a driver’s license and move about freely, and while in the community might find some measure of insulation in their (or their family’s) educational institution or workplace.²⁰⁰ In the event of an ICE raid, they might be able to receive advance warning through informal information-sharing networks, and could likely access advocacy organizations and religious institutions that would be willing to provide them legal defense and physical shelter.²⁰¹

<http://www.mercurynews.com/2017/02/05/in-trump-era-bay-area-churches-offer-sanctuary-to-undocumented-immigrants/>.

¹⁹⁷ See Bezdek, *supra* note 88, at 912-15 (Discussing how sanctuary participants engage in a normative process to interpret immigration law based on conceptions of morality).

¹⁹⁸ See Harry Bruinius, *New Twist for Deportation Opponents: Sanctuary in the Streets*, CHRISTIAN SCI. MONITOR (Mar. 17, 2017), <https://www.csmonitor.com/USA/Politics/2017/0317/New-twist-for-deportation-opponents-sanctuary-in-the-streets>.

¹⁹⁹ *Id.*

²⁰⁰ A.B. 60, Chap. 524 (Ca. 2013) (requiring the California Department of Motor Vehicles to issue an original driver’s license to a person unable to prove lawful presence in the United States if he or she satisfies all other qualifications); see also Benjamin Oreskes and Ruben Vives, *Giving Driver’s Licenses to Those Here Illegal Transformed Many Lives. Then Came Trump*, L.A. TIMES (Apr. 22, 2017), <http://www.latimes.com/local/lanow/la-me-ln-ab60-drivers-licenses-20170422-story.html> (noting that state law forbids police officers from discriminating against an AB-60 license holder).

²⁰¹ A small glimpse of the practical effect of these enmeshed protective networks was evident in the immediate wake of the Trump election victory in November 2016. Students at

Undoubtedly, this web of overlapping and multi-faceted sanctuary sites exists in its most robust form in select few places, where public and private institutions exercise their authority in like-minded ways. But even in such places, much work can still be done for greater effectiveness. Indeed, in any network, maximal benefits and efficiencies are gained only through coordinated activity.²⁰² While some cities and states have created offices for immigrant integration and the like,²⁰³ it is not clear how much coordination

Santa Clara University organized a rally to protest then President-Elect Trump's rhetoric on immigration and immigrants. The rally was organized by the Undocumented Students and Allies Association, and featured speakers who were themselves undocumented students.²⁰¹ Putting themselves in a highly visible and vulnerable position, one after another, undocumented students took the microphone to announce their status and ask if their peers and the University would help protect them if immigration authorities came from them. It was an emotional and highly charged scene, one replicated at campuses across the state and the nation. Notably, the SCU rally took place at a private, Jesuit institution. The rally attendants did not seem overly concerned that the institution itself or those affiliated with it would actively seek to report or imperil them. That is to say, the very presence of the students and the possibility of the rally occurred because, at some level, the institution provided opportunities, space, and protection for the students, their allies, and the message about resistance to federal enforcement. Perhaps even more noteworthy, the campus sits directly across the street from one of the larger local metropolitan police offices in the county. Yet, no students or faculty seemed concerned that a march of hundreds of people – many of whom were undocumented – would cause local officers to take notice, let alone cross the street to notify or otherwise provide information to federal authorities. The rally loudly called for the university to adopt a sanctuary designation to help students feel safe while on campus. Tatiana Sanchez, *Santa Clara University students walk out in solidarity with undocumented immigrants*, MERCURY NEWS (Nov. 18, 2017), <http://www.mercurynews.com/2016/11/17/santa-clara-university-students-walk-out-in-solidarity-with-undocumented-immigrants/>.

This context to the rally – one small moment of resistance to anticipated federal enforcement efforts – reveals the practical import of the networked sanctuary system. The risks associated with openly declaring undocumented status and loudly asking for institutional and individual assistance were more readily mitigated in an environment that could provide multiple sites and sources of refuge. Worth noting too was the reaction to the students' speech. Those in attendance were a mix of students, faculty, administrators, and community advocates. Already predisposed to the rally's message and the cause of undocumented students, they vocally agreed to protect undocumented students if ICE came looking for them. The terms of such protection were not clarified, but the emotion and feeling of the moment were that those in attendance would unquestioningly resist federal enforcement efforts within the bounds of their legal ability to do so. The university responded by issuing statements about the integrity of the campus and its commitment to protecting its students regardless of immigration status. In addition, in a statement joined by other Jesuit institutions, SCU invoked its religious roots, grounding its position not only on its first amendment rights to speech but the moral legitimacy of an institution founded to achieve social justice.

²⁰² J. Kenneth Benson, *The Interorganizational Network as a Political Economy*, 20 ADMIN. SCI. Q. 229, 235–36 (1975) (arguing that interorganizational networks are equilibrated when work coordinated between multiple organizations is “geared into each other with a maximum of effectiveness and efficiency”).

²⁰³ MANUEL PASTOR ET AL., OPENING COMMUNITIES: CITIES LEADING FOR IMMIGRANT

they facilitate between sanctuary providers. Moreover, coordination might be difficult in the case of sanctuaries, where institutions and agencies might have extremely varied reasons for their policies. Some law enforcement agencies may be vary of the “pro-immigrant” bent of sanctuary policies, preferring to justify their stances on the use of local resources or federalism principles. Some universities and employers might similarly be concerned about federal response and couch their resistance in more general policies with regards to information-sharing and access. As such, some of the institutions and organizations comprising the overlapping and complementary sanctuaries might resist any formalized coordination and association with other sanctuary sites.

Currently there are incipient signs of cooperation and coordination in some places. In Denver, church officials worked with elected officials to help secure relief for an undocumented immigrant.²⁰⁴ New York City’s newly released budget creates a public-private partnership so that undocumented immigrants can receive legal defense against removal prosecutions.²⁰⁵ Similar cooperation between non-profits, educational institutions, and government officials is taking place in Connecticut.²⁰⁶ These instances provide models for greater coordination among governance points in the immigration enforcement network, amplifying the ability to control resources, share information, and overcome restraints that might constrain any one, isolated institution.

B. Dissenting Sanctuary

INTEGRATION, AM. SOC’Y/COUNCIL OF THE AM. (AS/COA), WELCOMING AM., & CTR. FOR THE STUDY OF IMMIGRANT INTEGRATION (CSII) AT USC, OPENING MINDS, OPENING DOORS, OPENING COMMUNITIES: CITIES LEADING FOR IMMIGRANT INTEGRATION, at 5 (Dec. 15, 2015), http://dornsife.usc.edu/assets/sites/731/docs/USC_ASCOA_WelcomingUSC_Report_WEB.PDF (There were at least 26 cities with integration offices in 2015).

²⁰⁴ See Etehad, *supra* note 114, at 3 (“Vizguerra’s legal team said that this time her stay of removal was granted by Immigration and Customs Enforcement because of private bills introduced on her behalf by three Colorado Democrats in Congress – Sen. Michael Bennet and Rep. Jared Polis and Ed Perlmutter.”)

²⁰⁵ Liz Robbins & J. David Goodman, *De Blasio and Council Agree, and Disagree, on Immigrants*, N.Y. TIMES (Jun. 6, 2017), <https://www.nytimes.com/2017/06/06/nyregion/de-blasio-and-council-agree-and-disagree-on-immigrants.html?mcubz=0> (discussing that the city has earmarked funds for undocumented immigrant representation since 2013, despite internal debate on which immigrants will be eligible to receive support).

²⁰⁶ Mary O’Leary, *Undocumented Immigrant who Took Sanctuary in Connecticut Church Granted Stay of Deportation*, REGISTER CITIZEN (Jul. 26, 2017), <http://www.registercitizen.com/general-news/20170726/undocumented-immigrant-who-took-sanctuary-in-connecticut-church-granted-stay-of-deportation> (showing coordination and support between Connecticut Gov. Dannel P. Mally, Lt. Gov. Nancy Wyman, and U.S. Sen. Richard Blumenthal, D-Conn. in the case of Nury Chavarria).

In many communities, the political, legal, and financial costs of conspicuously declaring sanctuary sites can be high, if not outright prohibitive. This is one of the costs of distributed and decentralized governance networks. It is possible, given unified political party control or capture by policy activists or local preference, that expanding our conception of the loci with authority over immigration enforcement might mean echoing and amplifying the federal enforcement regime. This is evident in the states, counties, and educational systems have taken decidedly “anti-sanctuary” stances.

Texas, Mississippi, and the Georgia higher education system provide ready examples.²⁰⁷ Texas’ SB 4 is an omnibus anti-sanctuary law that virtually compels local law enforcement agencies and localities to comply with federal immigration enforcement programs. It forces local agencies to comply with ICE detainer requests under threat of criminal and financial penalties, as well as loss of office.²⁰⁸ And, the law purports to include campuses and campus safety officers in addition to police departments.²⁰⁹ Similarly, bills in Mississippi and Georgia have targeted sanctuary policies, and specifically sanctuary campuses. Although those states’ policies are more vaguely worded than Texas’, both attempt to crack down on the ability of post-secondary institutions to adopt sanctuary policies.²¹⁰ Georgia’s SB 37, enacted in response to movements at Emory University and other Georgia colleges to adopt formal sanctuary policies, directly targets private institutions.²¹¹ It threatens them with loss of state funding if they declare themselves sanctuaries and adopt policies that materially interfere with communication or investigation about immigration status with federal authorities.

Returning to our theoretical framework of networked governance, in these jurisdictions, two major players in the network – the federal government and the state legislature or agency – have used the levers under their control to tamp down on oppositional policy expressions. Moreover, as the two sovereign entities in the regulatory field, they possess monopolistic control over both hard law and the hard sanctions that come with it, including use of force and criminal liability. In addition, because state governments are not constrained by the same federalism limits as the national government, their policies fill-in the constitutional gaps where federal regulation may not be able

²⁰⁷ H.B. 37, 2017-18 Leg., Reg. Sess., (Ga. 2017); S.B. 4, 85th Leg., Reg. Sess. (Tex. 2017); S.B. 2710, 2017 Leg., Reg. Sess. (Miss. 2017)

²⁰⁸ S.B. 4, 85th Leg., Reg. Sess. (Tex. 2017).

²⁰⁹ *Id.*

²¹⁰ H.B. 37, 2017-18 Leg., Reg. Sess., (Ga. 2017); S.B. 2710, Reg. Sess. (Miss. 2017).

²¹¹ Jeremy Redmond, *Georgia Lawmaker Seeks to Ban “Sanctuary Policies” at Private Colleges*, ATLANTA J.-CONST. (Jan. 11, 2017), <http://www.ajc.com/news/state--regional-govt--politics/georgia-lawmaker-seeks-ban-sanctuary-policies-private-colleges/7cH6bAVO2q6nw9n08ArzJI/>.

to reach, complementing federal enforcement prerogatives and providing more complete regulatory control.²¹² These methods of coercion and norm-instantiation are undoubtedly powerful and, initially, are likely to influence behavior and attitudes in ways that other institutions in those networks might find difficult to match or counteract. For example, sheriffs, county officers, and public university administrators who previously were undecided or silent on the issue, might be emboldened and incentivized to take enforcement-heavy stances, given the support and encouragement from their state and federal counterparts and party officials. As such, these anti-sanctuary jurisdictions illustrate the inescapable reality that distributed governance with multiple stakeholders does not mean equal distribution of power.²¹³ Further, state-level and other powerful actors might reinforce and multiply the effect of central government policies rather than presenting an alternative vision.

Yet, just because the other stakeholder institutions in jurisdictions like Texas do not have the same resources or coercive levers as the federal and state governments, does not mean they lack all power. Indeed, the very point of decentralized governance over immigration enforcement of a myriad of actors is that power over the regulatory field is diffused, to varying degrees, to many actors. Thus, even if only relatively less well-resourced and powerful institutions and organizations are left to instantiate certain policies, those willing to either bear the cost of federal and state sanctions or willing to voice loud disagreement with the federal and state policy decision can still affect the stability of the dominant policy outcome over time.

An example of this weakened, but still viable, sanctuary site in a network is Travis County, Texas. The county is home to Austin, the relatively liberal-leaning state capitol, in a state that is overwhelmingly red.²¹⁴ There, the locally elected sheriff instituted a policy of non-cooperation with ICE.²¹⁵ Although Sheriff Hernandez's policy had some local support,²¹⁶ it garnered

²¹² Unlike the federal government, state governments are not constrained by limitations on congressional authority to legislate, the Tenth Amendment, or other federalism limitations. Therefore, their ability to control local governments, agencies, and private actors is more robust and complete.

²¹³ *Nodal Governance*, *supra* note 175, at 39-40 (discussing how differences in resources, efficiency, and accessibility among nodes results in varied amounts of power between nodes).

²¹⁴ Harold Meyerson, *Op-Ed: Blue Cities, Red States*, L.A. TIMES (Mar. 7, 2016), <http://www.latimes.com/opinion/op-ed/la-oe-0307-meyerson-city-state-divisions-20160307-story.html>.

²¹⁵ TRAVIS CTY. SHERIFF'S OFFICE, TRAVIS COUNTY SHERIFF'S OFFICE POLICY ON COOPERATION WITH U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (Feb. 1, 2017), https://www.tcsheriff.org/images/ICE_Policy.pdf.

²¹⁶ See TRAVIS CTY. DEMOCRATIC PARTY, Resolution in Support of Sheriff Sally Hernandez's ICE Policy (Feb. 17, 2017), <http://www.traviscountymocrats.org/2017/02/17/tcdp-passes-resolution-in-support-of-sheriff-sally-hernandezs-ice-policy/>.

immediate backlash at the state level. Soon after the policy was instituted, the state's Governor denounced her actions, and then withheld \$ 1.5 million in state grant funds from the county.²¹⁷ A few months later, with the Governor's resounding approval, the legislature passed SB 4, the state "anti-sanctuary" law.²¹⁸ While Texas's highly publicized anti-sanctuary efforts have focused on disciplining local and campus law enforcement agencies, other laws have attempted to crack down on individual or private organizations' resistance to immigration enforcement. For example, Arizona has attempted to apply state anti-harboring anti-smuggling laws to individuals or groups that provided assistance to undocumented citizens.²¹⁹ Recent cases out of Texas also illustrate similar attempts to use state criminal prohibitions to target those who might shelter or even drive around those without formal legal status.²²⁰ Thus far, courts have mostly rejected these attempts at getting at private, individual forms of protection for noncitizens.²²¹ Still it is evident that institutions in these jurisdictions face a decidedly hostile state-level policy climate.

Under such circumstances, the importance of non-governmental and private sanctuaries in recalibrating immigration policy grows. Of course, municipal agencies like the Travis County Sheriff's Department still remain vital sites of policymaking, but their power is greatly diminished under threat of financial loss and criminal prosecution by federal and state authorities. Thus far, the Sheriff's office has maintained its non-cooperation policy despite losing significant state funding and serving as the rhetorical punching bag for the state's Governor and federal officials. And, currently, Texas SB 4 is under litigation, so it remains unclear whether the state level sanctions will necessarily apply. Regardless, the county's ability to instantiate a robust non-cooperation policy is under extreme pressure. At minimum, its continued vitality will remain tenuous and contingent on its ability to withstand state-level funding

²¹⁷ Patrick Svitek, In "Sanctuary" fight, Abbott Cuts Off Funding to Travis County, TEX. TRIB. (Feb. 1, 2017), <https://www.texastribune.org/2017/02/01/sanctuary-fight-abbott-cuts-funding-travis-county/>; Mary Tuma, Sheriff Sally Hernandez Continues to do "What's Right", AUSTIN CHRON. (July 7, 2017), <https://www.austinchronicle.com/news/2017-07-07/sheriff-sally-hernandez-continues-to-do-whats-right/>.

²¹⁸ See S.B. 4, 85th Leg., Reg. Sess. (Tex. 2017) (signed into law May 5, 2017). S.B. 4 is currently under litigation from various advocacy groups including MALDEF and the ACLU. *City of El Cenizo v. Texas*, No. SA-17-CV-404-OLG (W.D. Tex. Aug. 30, 2017), 2017 U.S. Dist. LEXIS 140309, at *1-9 (preliminary injunction against S.B. 4 granted). They argue that the law is unconstitutionally vague, is preempted, and violates federalism precepts. *Id.* at *13-14, *54.

²¹⁹ Alex Dobuzinskis, *Judge Voids Arizona Human Smuggling Law, Finding it Infringes on U.S. Government*, REUTERS (Nov. 8, 2014), <http://www.reuters.com/article/us-usa-immigration-arizona-idUSKBN0IT02Z20141109>.

²²⁰ *Cruz v. Abbott*, 849 F.3d 594, 597 (5th Cir. 2017) (reversing and dismissing two Texas landlords' challenge of H.B. 11—criminalizing harbor of undocumented immigrants—for lack of Article III standing).

²²¹ *Id.*

penalties.

Because of this outright hostility to, and diminished capacity of, local law enforcement agencies, the networking of private organizations and institutions has become vital. Within the last year, the Austin Sanctuary Network has grown from just a few churches to more than two-dozen multi-faith congregations. Although billed as a “religious organization” on Facebook,²²² media reports suggest that the ASN includes three labor unions and several non-profit groups as well.²²³ This array of non-governmental organizations, loosely coordinated and connected both by their shared policy outlook and the populations they serve, may be the only sanctuary sites remaining if municipal dissent is quashed.

More generally, however, in anti-sanctuary states, the long-term goal of the multitude of municipal and non-governmental institutions in the network might differ than that of similar institutions in places like the Bay Area or New York City. Ultimately, conspicuous municipal agency positions like Sheriff Hernandez’s, or the work of the Austin Sanctuary Network, raise the political and enforcement costs for the other sites of governance in their geographic network. The Sheriff’s reluctance to withdraw her non-cooperation policy forced the Governor, in a highly publicized move, to withhold state funds, and then prompted the legislature to enact a law with hard sanctions on the municipality. While these state-level actions have the potential to stifle local dissent, they also necessitate the expenditure of political capital, and require the state to use its prosecutorial and legal apparatuses to ensure compliance.

Meanwhile, even if the state is willing to expend its resources to force municipal agencies to get in line with its governance objectives, the other nodes in the immigration network can still raise the long-term political costs to state officials by using “soft” powers to undermine the moral and legal legitimacy of the state’s hard approach. Aside from the practical effect for the noncitizens in their midst, the organizations in ASN also serve the critical governance functions of norm-creation and swaying public perception. Indeed, if federal and state authorities are successful in eradicating the Austin Sheriff Department’s non-cooperation policy, these religious organization, non-profit groups, and labor unions still retain the power to mobilize local and national media, in essence standing in for, and reaffirming, the municipality’s voice on immigration enforcement.

²²² See Austin Sanctuary Network, FACEBOOK, <https://www.facebook.com/Austin-Sanctuary-Network-1739318732967795/> (last visited Aug. 31, 2017).

²²³ Claudia Lauer, *Immigrants Find Sanctuary in Growing Austin Church Network*, *U.S. News & World Report*, (Mar. 25, 2017), <https://www.usnews.com/news/best-states/texas/articles/2017-03-25/immigrants-find-sanctuary-in-growing-austin-church-network>.

This is especially true when well-respected institutions like prestigious private universities or large religious centers take their role as political actors seriously. These institutions have missions that are meant to serve their immediate community, but are also tied to broader responsibilities to the nation, the world, and to notions of social justice. Thus, their stances on hot-button political issues carry weight that other institutions and individuals may not have. For universities, that gravitas comes from long-established reputations as research and policy centers with expertise in the field; for churches, it is the moral heft of serving vulnerable populations. Moreover, these institutions can couple this heft with the ability – either because of how they finance themselves or their constitutional protections – to stand apart from the majoritarian politics of their municipality or state. In asserting dissenting views on sanctuary then, they become powerful reminders to community members that anti-sanctuary views are not consensus perspectives. Their reputations in the community enable them to question and undermine the legitimacy and desirability of the state’s hard sanctions.

Finally, it is worth noting that while dissenting sanctuaries might be isolated within their state or municipality, they are not alone. Descriptively, a geography or region-centered account may not accurately portray how sub-federal immigration policy actually emerges in the first place.²²⁴ More broadly, it chafes against the reality that in the past few years, much immigration federalism – including decisions to litigate against federal prerogatives – are done through trans-state and trans-local collaborations that transcend hard sovereign lines.²²⁵ On the sanctuary front, there appears to be emerging a trans-local network of religious and non-profit organizations banded in common cause.²²⁶ In addition, consider the example of Jesuit universities. In response to expected federal enforcement efforts, it was the Association of Jesuit Universities, with campuses across the country issuing a joint statement about the commitment of those universities to undocumented students. Their commonality was not their geographic region or the particular demographic

²²⁴ See generally GULASEKARAM & RAMAKRISHAN, *THE NEW IMMIGRATION FEDERALISM*, 75-105, and Appendices A & B (2015) (showing, through quantitative and qualitative empirical data, that demographic factors and region-specific concerns do not explain the rise of subfederal immigration laws, and that partisanship, entrepreneurship, and political factors are salient).

²²⁵ For example, in the wake of the President Obama announcing his second deferred action plan, the coalition known as Cities United for Immigration Action met to consider policies that would help instantiate the President’s vision. At the same time, the Republican Governors Association met to discuss ways of resisting and stopping the President’s plan. The lawsuit filed by many of those states represented in that meeting eventually shut down the President’s plan.

²²⁶ Ruth McCambridge, *Sanctuary Network Rooted in Religious Tradition Reblooms Nationwide*, NONPROFIT Q. (Mar. 27, 2017), <https://nonprofitquarterly.org/2017/03/27/sanctuary-network-nationwide-charity/>.

makeup of their campuses; rather it was their shared institutional mission and ideological focus. In short, institutional and even governmental positions on immigration are just as, if not more, likely to track party affiliation and ideology more than they do jurisdictional lines and region-specific policy challenges. Thus, even the dissenting sanctuary is likely not as isolated as it might appear; it may be disconnected from the state in which it is located, but it is in conversation and conjunction with like-minded localities across the country, and non-governmental institutions in its own backyard.

IV. NETWORKED SANCTUARIES AND NATIONAL IMMIGRATION POLICY

Immigration remains one of the most divisive and contentious topics on the national agenda. It has significantly shaped the past four presidential contests,²²⁷ and has played a leading, if not decisive, role in several midterm elections for federal lawmakers.²²⁸ Yet, despite all this national attention and rhetorical focus by lawmakers, there have been no major comprehensive changes to federal immigration policy for over two decades. Indeed, apart from some post-9/11 changes, Congress has not passed any substantial immigration laws in that time period. Federal statutes determining who is potentially deportable, and the multitude of liminal legal statuses that noncitizens might inhabit, have not changed. Federal executive department deployment of resources and enforcement tactics have fluctuated, mostly producing a hyper-enforcement machine, with exceptions punctuated by relief programs and prioritized enforcement. In that legislative void, state and local governments have become notably active, implementing laws and policies that have generated significant litigation challenges and have radically changed the prominence and practical effect of immigration policing.

²²⁷ GULASKEARAM & RAMAKRISHNAN, *supra* note 227, at 90-111; Thomas B. Edsall, Opinion, The Democrat's Immigration Problem, *New York Times*, Feb. 16, 2017 (noting the salience of immigration attitudes and policy positions in the 2016 election); *President Exit Polls*, N.Y. TIMES, (2012), <http://elections.nytimes.com/212/results/president/exit-polls>); Asian American Justice Center, et. al., *Behind the Numbers: Post Election Survey of Asian American and Pacific Islander Voters in 2012* (Apr. 2013), http://www.apiavote.org/sites/apiavote/files/2012research/2012_12_EMBARGOED_Preliminary_Report_AAPI_Voting_FINAL.pdf.

²²⁸ GULASKEARAM & RAMAKRISHNAN, *supra* note 227, at 90-111; *see also e.g.*, Aaron Blake, *Make No Mistake: Immigration Reform Hurt Eric Cantor*, WASH. POST (June 11, 2014), https://www.washingtonpost.com/news/the-fix/wp/2014/06/11/yes-immigration-reform-hurt-eric-cantor/?utm_term=.5061a79d7b19 (discussing that the House Majority Leader, Eric Cantor, lost to his opponent in part because of his support for comprehensive immigration reform); Seun Min Kim, *The Race Where Immigration Matters*, POLITICO (May 6, 2014), <http://www.politico.com/story/2014/05/house-race-immigration-106372> (House of Representatives seat in North Carolina contested because incumbent support for amnesty).

Less noticed has been the emergence and potency of other sites of immigration policymaking and political voice on the issue: Places of worship, colleges and universities, school districts, employers, and affinity groups of varying degrees of formal structure. The story we tell about the variegated sites and sources of sanctuary requires expanding our understanding of who actually governs and defines immigration enforcement policy. Of course, the federal government, and in some cases, state governments, command massive resources and maintain a monopoly on coercive force and hard law. But, as we have argued, they are not the only institutions that deal with the on-the-ground realities of the communities they serve, or who have chosen to take stances in the national debate on immigration.

This decentralized and distributed governance network over immigration enforcement has long-term practical, political, and theoretical implications. Here, we suggest three ways in which sanctuaries are molding the national agenda on immigration, changing the terms of national immigration policy, and nudging us towards more nuanced understandings of governance and legal doctrine in immigration enforcement. These changes, we argue, are for the better. As a prescriptive matter, this paper concludes by suggesting that in immigration enforcement, the proliferation of multiple forms of sanctuary across a distributed and decentralized network of actors is a useful and desirable trend for democratizing immigration enforcement. In adopting the label or implementing immigrant-protective policies, these public and private entities transform themselves into important political actors, leveraging the real power they possess as nodes of governance over immigration enforcement.

First, focusing attention on local government agencies and non-governmental institutions and organizations recalibrates the position of the federal government, and in some cases, state governments, in immigration enforcement. While the role of these actors is important, the potential for governance from a multitude of sanctuaries helps us get beyond sovereignty as the sole focus of sanctuary debates. The use of sanctuary policies at both the state and local levels, and beyond, as both practical response and political statement functions in many ways as, Dean Heather Gerken suggests, “Federalism All the Way Down.”²²⁹ In her conception, too much attention has been focused on sovereignty as the source of federalist dissent and interaction. Relatively too little academic focus has centered on institutions and agencies, devoid of sovereignty, where dissenting views can be expressed and instantiated.²³⁰ As per her framework, getting beyond sovereignty allows for reconceiving the relationship between the national government and loci where people might participate in government and policymaking. Gerken’s discussion is mostly limited to the role of special purpose public institutions - school

²²⁹ Heather K. Gerken, *Foreward: Federalism All the Way Down*, 124 HARV. L. REV. 4 (2011).

²³⁰ *Id.* at 8, 24-33.

districts, juries, zoning commissions, and the like – and their importance in federalism.

Our discussion of sanctuaries comprehends those sites of potential resistance, but also includes private institutions and organizations. Places of worship or universities (whether public or private) or community organizations do not typically administer federal programs²³¹ and are not institutions in which all attendees might participate or elect leaders. While these private organizations are not the typical places where citizens might engage the democratic process or participate in democratic institutions, it is clear that community residents are using those institutions to articulate dissenting views on immigration. As we show in Part II, that power, when operationalized, can have a real effect on the functioning of federal enforcement. As such, these non-sovereign and non-governmental sites are also, as a practical matter, norm-creators and influencers in immigration policy.

For our purposes, the main takeaway from Gerken’s framework is that resistance and dissent to federal policies might benefit from de-emphasizing sovereignty and separateness from the federal government. In immigration, it is clear that sovereignty can be a double-edged sword. Relying on thick notions of state sovereignty to shield state and local sanctuary policies from attack might reify thick notions of sovereignty generally;²³² the same thick notions that form the basis of the plenary power doctrine and unconstrained federal power over immigration.²³³ More to the point, muscular state sovereignty arguments might help justify state anti-sanctuary laws or other heavy-handed state-level enforcement schemes.²³⁴ For those articulating minority or

²³¹ One notable exception in the immigration field is refugee resettlement. *See* 8 U.S.C. § 1522 (1996). In that area, the Office of Refugee Resettlement and State Department rely on the participation of several NGOs, even religiously-based ones, to aid in resettling refugees in the U.S. These NGOs are funded by the U.S. government for that purpose, and their relationship to the federal government is statutorily enshrined. 8 U.S.C. § 1522(a)(4) (1996). Without their help, the federal government currently has no governmentally-run resettlement process that works in the actual communities where refugees might be sent.

²³² David S. Rubenstein & Pratheepan Gulasekaram, *Immigration Exceptionalism*, 111 NW U. L. REV. 583, 638-39 (2017).

²³³ *See* *Arizona v. United States*, 567 U.S. 387, 394 (2012) (“The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.”); *Toll v. Moreno*, 458 U.S. 1, 10 (1982) (citing Commerce Clause (U.S. CONST. art. I, § 8, cl. 3), Naturalization Clause (U.S. CONST. art. I, § 8, cl. 4), and federal power over foreign affairs as sources of plenary authority); *Hines v. Davidowitz*, 312 U.S. 52, 62-63 (1941) (citing Supremacy Clause (U.S. CONST. art. VI, para. 2)).

²³⁴ Defendants’ Response to Applications for Preliminary Injunction at 29-39, *City of El Cenizo v. Texas*, No. SA-17-CV-404-OLG (W.D. Tex. June 23, 2017), Doc. 91 (arguing that the State of Texas can enforce immigration law in collaboration with the federal government); *Arizona v. United States*, 567 U.S. at 402-03, 410 (Arizona argued that it could implement criminal sanctions for immigration law violations because it furthered federal goals. The state also argued that it could arrest individuals with probable cause that he or she committed a

dissenting positions then, it may very well payoff in the long run to consider other forms of resistance to federal policies and enforcement programs. This is especially true if one believes that long-term changes in attitudes and policies towards immigrants are more likely to gain steam at the local and institutional level, rather than at statehouses and the Whitehouse.

Our explication of multiple types of sanctuaries and varied forms of resistance sheds light on the way organizations, institutions, and governmental actors might change and influence federal policymaking without having to rely solely on constitutional allocations of power and domains of authority. Sovereignty and federalism arguments in large part determine the fate of state-level sanctuary policies; so too with local and law enforcement agency policies as well, assuming state-level laws do not preempt those local expressions. However, those principles play no role in the viability of other types of sanctuary.

What mostly links these multi-faceted sanctuaries – from states to localities and agencies to schools to churches - is not legal justification, but rather the reality that all of them are registering dissent against the current federal administration's immigration policy, and more nebulously, with the harshness of federal laws that permit this type of enforcement. Most sanctuaries – but especially those without sovereign status, like municipalities, universities, school districts, and private organizations – have no real “exit” from federal laws and schemes.²³⁵ Thus, their resistance is a direct challenge to the legitimacy and value of the Administration's immigration enforcement plan. As such, it packs more normative heft than claiming that a jurisdiction is exempt from federal policies and control.

Even when the sanctuary policy is superfluous, as it might be for a local school district in the Bay Area, or symbolic, as it might be for a private employer who is unlikely to have any unauthorized workers, it is nevertheless a muscular use of voice that registers conspicuous disagreement with the direction of federal immigration policy. Together then, these atomized sanctuary inputs move us beyond the hard dividing lines of sovereignty, and refocus the debate on the role that each of these private and public agencies and institutions might play in immigration enforcement through control over their private property or their soft power over norm-proliferation and consumer attitudes.

Second, and relatedly, by enacting or articulating “laws”, “policies”, “standards”, or “mission statements,” these public and private sanctuaries are not just disagreeing, they are instantiating an alternative policy vision that

removable offense).

²³⁵ See, e.g., ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES (1970); see also Jessica Bulman-Pozen & Heather K. Gerken, *Uncooperative Federalism*, 118 YALE L.J. 1256, 1259 (2009).

trades on competing values and goals to the federal vision. While doing so, they perpetuate norms and attitudes towards undocumented persons. By actually articulating a sanctuary policy – by “dissenting by deciding” in Gerken’s formulation²³⁶ – these multiple points of sanctuary allow their specific constituencies, as well as broader local, state, and national ones, to weigh competing conceptions of rule of law, moral legitimacy, public safety outcomes, and social justice embodied by the administration’s approach in contrast with the sanctuaries’ approach.

To take one of those measures, the existence of sanctuary jurisdictions has allowed researchers to test the public safety rationale proffered by the current administration for its attempted crackdown on such policies.²³⁷ These analysts conclude that the existence of sanctuary policies do not create more criminality or more dangerous communities; indeed, their research confirms just the opposite.²³⁸ And, unlike other situations in which a local policy might result in the exporting of externalities to other places, a sanctuary policy, if anything, should import those burdens to the enacting jurisdiction.²³⁹ Yet, apart from isolated and tragic instances, sanctuary jurisdictions still remain amongst the safest places in the country. To be clear, our argument does not rely on this particular empirical result. Adamantly, our position is not that sanctuary jurisdictions are necessarily safer than those that cooperate with federal policies. While that result comports with our perspective on the normative value of sanctuaries, our broader claim is only that these real life policies provide a real time comparison along the criteria that the public and public officials might evaluate competing policy visions.

Even without empirical studies regarding criminality and public safety

²³⁶ Bulman-Pozen & Gerken, *supra* note 238, at 1293-94; *see also* Heather K. Gerken, *Dissenting by Deciding*, 57 STAN. L. REV. 1745 (2005).

²³⁷ TOM K. WONG, CTR. FOR AM. PROGRESS, NAT’L IMMIG. L. CTR, THE EFFECTS OF SANCTUARY POLICIES ON CRIME AND THE ECONOMY (Jan. 26, 2017), <https://www.nilc.org/wp-content/uploads/2017/02/Effects-Sanctuary-Policies-Crime-and-Economy-2017-01-26.pdf>; Benjamin Gonzales et al., *The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration*, URB. AFF. REV. (May 7, 2017).

²³⁸ Wong, *supra* note 240, at 1 (finding that communities with sanctuary policies have lower rates of crime and unemployment compared to communities that do not); Gonzales et al., *supra* note 240, at 24 (finding that sanctuary policies have no discernible impact on local crime rates).

²³⁹ Christopher Ingraham, *Trump Says Sanctuary Cities are Hotbeds of Crime. Data Say the Opposite.*, WASH. POST (Jan. 27, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/01/27/trump-says-sanctuary-cities-are-hotbeds-of-crime-data-say-the-opposite/?utm_term=.4034a2dc668d; Michelle Yee He Lee, *Attorney General Jeff Sessions’s Claim that ‘Criminals Take Notice’ of Cities with Sanctuary Policies*, WASH. POST (July 17, 2017), https://www.washingtonpost.com/news/fact-checker/wp/2017/07/17/attorney-general-jeff-sessions-claim-that-criminals-take-notice-of-cities-with-sanctuary-policies/?utm_term=.0530e5bfebeb (quoting Jeff Sessions who stated that ‘criminals take notice’ of sanctuary city policies and increase crime rates).

concerns, multitudinous sanctuaries carry norm-creating power. This is especially true in jurisdictions where institutional and private policies complement governmental ones. Resistance to what is perceived as unjust federal enforcement schemes comes from a multitude of diverse sources. Each of these sources is differently motivated and justified, and likely serves different constituencies. The result is an echoing reification of the notion that the particular locality or community represents a specific point of view vis-à-vis undocumented status; that within that locality or community, lacking formal immigration status is not the grave legal violation the federal executive branch believes it to be. To paraphrase Hiroshi Motomura's formulation, the norm in areas of overlapping sanctuaries is that unlawful status is the beginning of the conversation, not the end.²⁴⁰ By changing the starting point of the conversation, places with abundant sanctuaries can anchor and frame the national policy debate in ways that legislative debate amongst federal lawmakers alone cannot.

Third, reconceptualizing sanctuaries as emergent from various public and private spaces allows a broader and more accurate rendering of the costs of overriding these types of policies. Undoubtedly, traditional notions of sanctuary states and cities also help calibrate enforcement costs. Because sovereignty based defenses aim to make sanctuary sites the final decisionmakers for their geographic area, it's no surprise that litigation over President Trump's attempted crackdown on sanctuary cities has emphasized Tenth Amendment boundaries, relying heavily on cases like *Printz v. United States*.²⁴¹ In response, Congress could simply bypass state and local resistance and enforce immigration law with federal agents, resources, and facilities; or it might use conditional spending levers to bribe or cajole cooperation with federal authorities. Either way, the sanctuary site forces the federal government to deal with the actual costs of a hyper-enforcement policy. Direct enforcement requires the appropriation of funds for personnel and facilities. Meanwhile, bribes and financial coercion require the federal government to put another type of price tag on the value of state and local cooperation. Additionally, because those federal penalties are likely to affect other federal and state policy goals, the federal government is, in some cases, forced to announce which policy goal it values more.²⁴²

²⁴⁰ HIROSHI MOTOMURA, IMMIGRATION OUTSIDE THE LAW 21 (2014).

²⁴¹ Amicus Brief of 34 Cities and Counties in Support of County of Santa Clara's Motion for Preliminary Injunction at 9-11, *Cty. of Santa Clara v. Trump*, No. 17-cv-00574-WHO, (N.D. Cal. Mar. 22, 2017), Doc. 61-1; Complaint for Declaratory and Injunctive Relief at 17, 21, *City & Cty. of S.F. v. Trump et al.*, No. 3:17-cv-00485 (N.D. Cal. Jan. 31, 2017), Doc. 1; *see also Printz v. United States*, 521 U.S. 898 (1997)

²⁴² For example, the Department of Justice recently announced a new policy that leverages JAG/Byrne grants—grants that are meant to help local law enforcement do a variety of things for public safety—on the condition that they comply with immigration enforcement policies

While state and local governmental sanctuaries can help lay bare the actual fiscal costs of federal enforcement policies, all sanctuaries require the federal government or anti-sanctuary state governments to calculate the long-term political costs of hyper-enforcement policies. Perhaps the most important leverage that counties like Santa Clara and San Francisco is the degree the federal government relies on state and local law enforcement and agencies. Without sovereignty (and, in the case of private organizations and institutions without control over public funds or officials), many sanctuary sites are not the final or even semi-final decision makers with regards to their ability to dissent on immigration policy. That is to say, whether or not sovereignty ends up shielding municipal and local law enforcement policies from federal commandeering, it is likely that both the federal government and the municipal ones would prefer a mutually agreed upon and non-contentious relationship. The more the federal government forces local cooperation through mandates and commands, likely the more contentious and friction-filled that relationship will be in the long term. Because of the interconnectedness and integration required for immigration enforcement (and several other federal program), the federal government risks losing over time by winning right now.

In our recasting of sanctuary sites and sources, these points of Ainterconnectedness multiply. Of course, the federal government does not rely on universities, school districts, or religious institutions for immigration enforcement the way it relies on local law enforcement agencies. But, if these institutions were wholly useless or meaningless in immigration enforcement efforts, then recent federal and state anti-sanctuary proposals and laws would be unlikely to cover them.²⁴³ Certain college campuses, for example, might house a non-trivial number of undocumented youth, and maintain information about the immigration status and location of those students and their families. A sufficiently motivated ICE official might attempt to leverage university

such as providing access to detained individuals, notifying of a detained person's release, and otherwise complying with 8 U.S.C. § 1373 (2012). Press Release, U.S. DEPT. OF JUSTICE, OFFICE OF PUB. AFFAIRS, Attorney General Sessions Announces Immigration Compliance Requirements for Edward Byrne Memorial Justice Assistance Grant Programs (July 25, 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-immigration-compliance-requirements-edward-byrne-memorial>; U.S. DEPT. OF JUSTICE, BYRNE JAG GRANT POLICY BACKGROUNDER (July 25, 2017), <https://www.justice.gov/opa/press-release/file/984346/download>. The federal government is prioritizing immigration enforcement over other more generally applicable and widespread policy goals by using JAG/Byrne grants to entice local jurisdictions to enforce immigration law.

²⁴³ See e.g., S.B. 4, 85th Leg., Reg. Sess. (Tex. 2017) (prohibiting university campus police from preventing enforcement of immigration law by other officials); H.B. 37, 2017-18 Leg., Reg. Sess., (Ga. 2017) (same at private postsecondary institutions); see also Bezdek, *supra* note 88, at 902-03, 947-48 (discussing that during the early times of church sanctuary, the federal government said they were irrelevant, only to later realize their importance and prosecute them).

administrators in the same way they would attempt to conscript local law enforcement officers.²⁴⁴ Even though universities might have some constitutional and statutory rights to resist such heavy-handed enforcement,²⁴⁵ it seems also likely that federal officials would in many instances be able to overcome that resistance.²⁴⁶ Yet, the federal government uses universities to implement many federal policy objectives unrelated to immigration enforcement,²⁴⁷ which might counsel for a less antagonistic relationship over the long term.

Accordingly, the long-term and political of overriding these different forms of sanctuary might be more accurately understood by focusing on the interconnectedness and mutual reliance between the federal government and the sanctuary sites. The federal government might very well be able to use direct regulation or spending penalties to induce compliance by local law enforcement agencies, religious institutions, campuses, and employers. And, prior to the proliferation of sanctuary sites, perhaps such heavy-handed schemes would have slipped under the radar. The federal government might have plausibly framed its use of authority as reigning in a few rogue jurisdictions like California or New York City, whose values may not reflect the national population and electorate at large. Now, with sanctuaries expanding into variegated institutions and sectors, across all states, any such federal override necessarily must overcome the expressed policy preference of high-profile institutions, places of worship, and powerful firms. It would not be a quiet exercise of federal power.

Thus far, our articulation of the doctrinal, theoretical, and practical implications of multifarious and networked sanctuaries has been non-

²⁴⁴ See Gabrielle Russon, *Florida Colleges Take Middle Ground on Immigration Battle*, Orlando Sentinel (Feb. 10, 2017), <http://www.orlandosentinel.com/features/education/school-zone/os-campus-sanctuary-20170207-story.html> (discussing how “the federal government could strip schools of their right to issue I-20 forms, documentation that international students need” to study in the United States).

²⁴⁵ See *supra* Part II (discussing property rights and FERPA).

²⁴⁶ For example, many of the federal proposals and state bills would mandate cooperation with immigration enforcement or heavily penalize non-cooperation. In addition, even with current statutory and constitutional protections (see *supra* n. [prior footnote]), federal officials might be able to get warrants and other necessary documentation to overcome initial resistance by school administrators.

²⁴⁷ See generally John E. Tyler III, *Advancing University Innovation: More Must Be Expected - More Must Be Done*, 10 MINN. J.L. SCI. & TECH. 143 (2009) (discussing federal interest in universities as research facilities); UNIV. OF CAL., OFFICE OF SCHOLARLY COMM’N, US Federal Funder Public Access Policies (May 30, 2017), <http://osc.universityofcalifornia.edu/scholarly-publishing/policies-legislation/us-federal-funder-public-access-policies/index.html> (mentioning that the National Institutes of Health is the largest federal supporter of basic research); UNIV. OF COLO., BOULDER, *Federal & Industry Research Projects*, <http://www.colorado.edu/research/federal-industry-research-partnerships> (providing list of partnerships between university and various federal agencies) (last visited Sep. 12, 2017).

prescriptive. We conclude by suggesting that this phenomenon is desirable. For purposes of this article, we defend that prescription with regards to immigration enforcement, but recognize the possibility of decentralized and distributed governance networks influencing many regulatory regimes. We also note – like any claim about atomized and democratized inputs – that such networks might be used by political forces from all parts of the spectrum. Applied to immigration, that means that distributed networks might just as easily accelerate hyper-enforcement agendas as they can mitigate them. Given the historical and current reality of the federal government’s enforcement policies, however, we predict that sanctuary networks are much more likely than anti-sanctuary networks.

Fundamentally, our encouragement of the phenomenon is based on the effect that taking public stances on immigration enforcement is likely to have on public and private actors who take them. By adopting non-cooperation policies, sanctuary institutions have cemented their identity as political actors in the immigration field. Incorporating their authority into debates over the proper level of federal immigration enforcement helps these organizations actualize own civic identities and untapped power within this network. This reorientation might prove to be important going forward in galvanizing proactive (as opposed to reactive) immigration enforcement policies, and producing collaborative and complementary ties among like-minded agencies and institutions. This reorientation is especially important in the immigration, a field dominated by talismanic incantations by courts, commentators, and media of the federal government’s “sole” or “exclusive” control over immigration policy.

Looking to the future, the variegated sanctuary movement’s primary contributions to immigration politics might be its galvanization of a new and engaged set of political actors on enforcement policy. Some major players in the sanctuary movement, especially large, prominent jurisdictions like San Francisco and New York City, have long battled with the federal government over immigration enforcement and are likely to continue to do so into the future.²⁴⁸ Federal lawmakers representing those areas have been sensitive to these constituent interests. But now, as a diverse group of religious institutions are claiming to provide sanctuaries, a new crop of powerful community institutions has been galvanized.²⁴⁹ Some are the same denominations and

²⁴⁸ See S.F., Cal. Ordinance 375-89 (Oct. 24, 1989) (amended and current version at S.F., CAL., ADMIN. CODE §§ 12H.1-12H.6 (2016)); *City of N.Y. v. United States*, 179 F.3d 29 (2d Cir. 1999).

²⁴⁹ See Nathan Guttman, *Synagogue And Church Unite To Offer Sanctuary To Immigrant Mom*, FORWARD (Aug. 23, 2017), <http://forward.com/fast-forward/380818/synagogue-and-church-unite-to-offer-sanctuary-to-immigrant-mom/> (synagogue and Methodist church united to offer sanctuary to undocumented family); Claudia Torrens, *Guatemalan Immigrant Seeks Sanctuary in Manhattan Church*, SFGATE (Aug. 17, 2017),

churches that provided sanctuary in the 1980s; others, however, are places of worship from other faiths, which cater to a variety of ethnicities and races not represented in that original sanctuary push.²⁵⁰ The same can be said of groups of high-tech and social media oriented individuals who have created phone applications, and joined coding campaigns and enforcement-alert networks to warn of federal enforcement efforts. Indeed, restaurants and colleges that perhaps never thought they needed to be clear on where they stand on ICE enforcement have been forced, either by constituent request or by federal demands, to clarify their protective positions.

These individuals and organizations are likely to see themselves as political actors, specifically on the issue of immigration enforcement, in a way that may not have occurred but for the expanded sanctuary movement. Joining the sanctuary movement, even in ways that are mostly symbolic, reifies their civic identity in the eyes of those they serve and those federal and state officials who might oppose their stances. In the coming years, as federal officials seek funding for a border wall, or greater enforcement resources, these groups are likely to maintain the vocal positions they assumed as part of the sanctuary movement. Thus, even if the federal government can leverage, coerce, bribe or otherwise override sanctuaries and compel participation in immigration enforcement, it might be doing so at the cost of further antagonizing a now-mobilized and entrenched constituency that shares a clearly defined ideological orientation on such actions. Any short-term wins for the federal administration on undermining sanctuary, in other words, may ensure long-term political losses for enforcement-heavy immigration policies.

CONCLUSION

This article brings necessary attention to the variety of ways in which the label “sanctuary” has expanded. Going beyond the traditional categories of sanctuary cities, rooted in public law, and sanctuary churches, rooted in property law and free exercise rights, a myriad of institutions and organizations have chosen to adopt policies that mitigate federal enforcement efforts. These new sanctuaries, in several jurisdictions, have the ability to work together in a network to effectively recalibrate federal enforcement and provide de facto governance over immigration enforcement. More broadly, this distributed

<http://www.sfgate.com/news/article/Guatemalan-immigrant-seeks-sanctuary-in-Manhattan-11882521.php> (Episcopal church offers sanctuary and is part of interfaith network of churches that offer sanctuary); Kimberly Winston, *Ohio Mosque is First to Join Sanctuary Movement*, RELIGION NEWS SERV. (Jan. 23, 2017), <http://religionnews.com/2017/01/23/ohio-mosque-is-first-to-join-sanctuary-movement/>.

²⁵⁰ Samuel, *supra* note 49, at 1 (discussing the Cincinnati Clifton Mosque’s attempt at becoming a sanctuary congregation).

network decenters federal and state administrative officials, including the President, as the sole locus of enforcement policy. In addition, they bring to the fore the political power and governance authority of several previously ignored institutions and actors. Thus reimagined, our project emboldens such institutions and associations as critical actors in the project of norm creation and actual governance, in ways that are likely to influence immigration policymaking both now and into the future.