

Sanctuary cities and federal aid



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Attorney General Pam Bondi directed the Department of Justice (DOJ)—which provides grants for law enforcement and community safety programs—to pause all federal funding to jurisdictions that do not cooperate with federal immigration enforcement. These metropolises are colloquially known as “sanctuary cities” although the jurisdiction can encompass any level of municipal government. Bondi’s actions target 220 locales identified as sanctuaries that in total received \$1.6 billion in DOJ aid in fiscal 2023.

While the definition of a “sanctuary city” is vague, it generally means local law enforcement does not establish a suspect’s immigration status in the course of their duties. Allegedly, sanctuary cities do not want to bear the cost of holding inmates for federal immigration investigations, believe that enforcement would weaken community and police ties, and/or could be a constitutional violation if the person is held longer than 48 hours without being charged with a crime.

The latest withholding of federal aid closely mirrors executive action President Donald Trump took in 2017 that tried to block law enforcement grants to sanctuary cities but was stayed pending court rulings.

The legal controversy was never fully resolved during Trump’s first term. Several states sued at the time, and lower courts were divided on the move’s legality, although three of the four Appellate Courts ruled in the states’ favor. The Supreme Court was expected to hear the case in early 2021, but the case was dismissed after President Joe Biden took office and changed policies.

New twist

The Department of Transportation recently issued an order threatening to withhold funds from sanctuary cities, potentially impacting mass transportation, roads, and highways. The new warning materially raises the

stakes for municipalities because unlike law enforcement grants that are millions of dollars for a municipality, federal transportation funds can be billions of dollars. There is legal precedent from a 1987 Supreme Court case ruling that the federal government can attach conditions to grants that were reasonable but not so large as to effectively force states to adopt the federal government’s preferred policy. In another 2012 Supreme Court case, Chief Justice John Roberts opined that in effect the federal government cannot coerce states through federal funding. Based on the ruling in both cases, it appears the federal government cannot withhold federal aid to coerce/force states to adopt the federal government’s preferred policy. But every situation is unique.

Bondholder impact

We believe this issue will be a non-event from a municipal bondholder’s perspective. Ultimately, we believe sanctuary cities either will prevail in their court cases and not experience a reduction in federal aid or, if the federal government succeeds, sanctuary cities will half-heartedly comply assuming the loss of federal aid is material.

Of note, besides the cases mentioned above, there is also U.S. Supreme Court precedent that federal funding can only be withheld if it is relevant to “the federal interest in the project.” Since local governments receive federal money from various federal sources, most federal monies will not have an “interest” tied to immigration and, therefore, should not be impacted.

Also, our federalism form of government gives police departments in the U.S. unique independence. As such, the federal government can’t dictate how local governments do their work, including requiring local police to collect immigration status. If the sanctuary cities continue to communicate with the Immigration and Naturalization Service, local governments cannot be coerced to provide information they do not have.

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Moreover, if the Trump administration can overcome the challenges outlined above, which we believe appear formidable, and if sanctuary cities remain recalcitrant, will the Trump administration willfully financially kneecap its most iconic U.S. cities to enforce what appears to be an unpopular policy to at least a meaningful minority of U.S. citizens? In the end, we believe both parties will compromise and not risk financial decay because both parties ultimately would lose.

We note that all federal aid accounts for a meaningful portion of the sanctuary cities' revenues, but not overwhelmingly so. Importantly, most federal funds are restricted to specific programs, such as Temporary Assistance for Needy Families and school lunch subsidies, and do not support general operations.

Furthermore, we find it notable that transportation aid was merely threatened whereas law enforcement grants were cut off. We think the Trump administration is using threats to extract change but recognizes it cannot withhold federal aid unless it meets certain court ruling

parameters. That may be why the administration is pausing law enforcement and community safety grants and not a wholesale withholding of all federal aid.

Compromise

We believe the risk of sanctuary cities becoming materially financially weakened because of a potential loss of certain federal funding is remote.

From our vantage point, court precedent appears to protect most if not all federal aid from being withheld (although we acknowledge litigation is inherently unpredictable), and our federalist form of government limits federal mandates over how local law enforcement does its job.

Furthermore, we believe the Trump administration and/or sanctuary cities will not risk financially harming major U.S. cities over this issue and, therefore, we believe a middle ground will ultimately be found if the sanctuary cities lose their inevitable court battles.

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