

The Rationale Behind Sanctuary Cities



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Local and state governments are not primarily involved in the sensitive, complex and delicate matter of U.S. immigration. The Federal Government has the clear authority and responsibility over immigration and the enforcement of immigration laws. The challenge arises when it is time to enforce the laws passed by the Congress. The Federal Government does not have the resources to be omnipresent and ensure full enforcement. While local government depicts itself as the first line of defense, in plain truth—it lacks jurisdiction to act.

In a recent decision, *Muehler v. Mena*, the United States Supreme Court gave police officers full authority to request information pertaining to a person's immigration status. The Court explicitly equated that inquiry to the typical standard of questions, asked to determine a person's name, address and date of birth. By so characterizing the inquiry, the question about a person's immigration status is brought outside of the scope of the Fourth Amendment. A law enforcement agent can delve into immigration status without fear of violating constitutionally protected rights. Questions regarding immigration status do not require a separate and distinct cause which raises a reasonable suspicion. They are deemed appropriate even when a person cannot be legally searched or arrested.

Not all states and cities are eager to hit their ground running. There are laws which prohibit local and state governments from authorizing their employees and law enforcement agents from disclosing information about an individual's illegal immigration status. Communities pass these laws because it leads to greater health and safety for the entire community. For example, when immigration status is not questioned, illegal immigrants are more likely to report crimes or to bring a sick family member to the emergency room.

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Numerous large cities around the country, including New York City, prohibit local law enforcement from making inquiries into an individual's immigration status at the initial stages of arrest. They borrowed the "don't ask, don't tell" policy from the military and applied it to law enforcement. It presented a simple solution—the state/city cannot notify the feds of that of which it is not aware. They cannot report someone's immigration status, because they simply do not know. However, even in New York City, an illegal immigrant, once convicted of a crime, is reported to Immigration for possible deportation.

By creating a "safe haven" for undocumented aliens, cities which employ such practices came to be known as "sanctuary." "Sanctuary cities" present myriad legitimate reasons for their practices. Some believe that aggressive measures against illegal immigrants would bluntly challenge the political structure of the federation, shaped for our country



Englewood Mayor Michael Wildes (standing, right) was recently appointed by New Jersey Governor Jon Corzine to sit as a member of his Blue Ribbon Panel on Immigration.

many years ago by its founding fathers. Others do not wish to create an adverse environment for illegal immigrant workers, whose diligent and often inexpensive labor is an indispensable part of their economy.

It can be said that public policy is strongly in favor of "sanctuary cities" as well. Throughout our history, American citizens showed special sensitivity in matters regarding children. The laws passed to protect, educate or help kids, never discriminated against them based on the immigration status of their parents. Americans do not believe that children should suffer for the mistakes or immoralities of adults.

"Sanctuary cities" ensure that parents who entered the country illegally will send young children to elementary schools, and further education, without fear of deportation. They eliminate the moment of hesitation

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before calling a doctor for a sick child or taking an injured one to a hospital. That moment could be detrimental and in many instances life threatening. Finally, a sanctuary city helps to control and detect criminal activity, which affects our youth and adults alike. In such an environment individuals are not deterred from calling the police when witnessing criminal or suspicious activity.

New Jersey State Attorney General Anne Milgram issued Law-Enforcement Directive No. 2007-3 on August 22, 2007. This directive requires state, county and local law enforcement agencies to alert federal authorities after arresting an undocumented immigrant for a serious offense. Specifically all individuals arrested for indictable offenses under New Jersey State criminal law or for driving under the influence of alcohol will be questioned regarding their immigration status. This directive also indicates that

victims, as well as witnesses and other persons requesting police assistance, should not be discouraged from approaching police officers out of fear of inquiry into their immigration status. The directive prohibits immigration status inquiries of victims and witnesses. This directive also prohibits local, county and state law enforcement officials performing functions of a federal immigration officer under INA§287(g) from exercising their federal immigration authority on anyone other than individuals arrested for serious indictable offenses and DUI. Those officers working on immigration tasks forces under direct federal authority are exempt from this provision.

Many police chiefs in communities with significant immigrant and illegal immigrant populations do not wish to be deputized into enforcing federal immigration laws. Engaging in such enforcement erodes community policing efforts, uses up limited police

resources and opens up police departments to potential liability for unlawful arrests of documented immigrants and United States Citizens.

The United States Supreme Court allows local law enforcement to inquire into an individual's immigration status virtually at any given time. Most cities choose to prohibit such practices for public policy reasons: they do not wish to ask, and they do not wish to know. A vacuum has been created by Congressional inaction. Until Congress addresses this matter—the decision will be left in the hands of the immigrants themselves—they choose where to reside. ▲

Michael Wildes is a Former Federal Prosecutor; immigration lawyer; and the Mayor of Englewood, New Jersey. Mr. Wildes is also Chair of the Immigration Task Force of the New Jersey League of Municipalities and was recently appointed by New Jersey Governor Jon Corzine to sit as a member of his Blue Ribbon Panel on Immigration.

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