



SANCTUARY *OR* *SNARE?*

Sanctuary Policies in the District of Columbia

AMERICAN UNIVERSITY
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AMERICAN UNIVERSITY WASHINGTON COLLEGE OF LAW, IMMIGRANT JUSTICE CLINIC

The Washington College of Law Immigrant Justice Clinic provides representation on a broad range of cases and projects, serving migrants and their communities in the D.C. metropolitan area, the greater United States, and beyond. Student attorneys handle matters that develop core lawyering skills, such as interviewing, counseling, negotiation, and trial advocacy, while cultivating complementary skills in the areas of policy and legislative advocacy, community organizing, and working with the media.

JUST FUTURES LAW

Just Futures Law is a women of color-led immigration lawyering project that works to support the immigrant rights movement in partnership with grassroots organizations. JFL staff have decades of experience in providing technical assistance, written legal resources, litigation, and training for attorneys, advocates, and community groups in various areas of immigration law, particularly at the intersection of criminal and privacy law.

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The District of Columbia, the nation’s capital, has publicly stated to residents that it is a Sanctuary City. However, for the reasons discussed in this report, the District continues to carry out policies that support ICE in detaining noncitizens in the District.

PHOTO CREDIT: BRANDON WU, SANCTUARY DMV · JUNE 29, 2019

EXECUTIVE SUMMARY

The District of Columbia (“D.C.” or “the District”) professes itself to be a sanctuary for individuals without immigration status. District leadership has touted the city’s status as a safe-haven for immigrants since 2011 when Mayor Vincent Gray announced a prohibition against police inquiring about immigration status and reporting noncitizens to federal immigration authorities.¹ Mayor Muriel Bowser reaffirmed her commitment to the District’s sanctuary city status following the election of President Donald Trump in November 2016, stating that “our neighborhoods are safer and stronger when no one is afraid to call on our government for help.”²

However, a perilous dichotomy has emerged between the District’s proclaimed status as a sanctuary city and the policies carried out by the various actors involved in detaining and incarcerating noncitizens within its boundaries. Despite the seemingly strong sanctuary policies promulgated by District leadership, cooperation between local law enforcement agencies and federal immigration authorities persists. Affected communities and allies have observed that certain agencies regularly and willingly cooperate with U.S. Immigration and Customs Enforcement (“ICE”), thereby undermining the city’s expressed commitment to its noncitizen population.

This report relies on information and data obtained through Freedom of Information Act (“FOIA”) requests, public research, and interviews with professionals in the field. Our investigation on the current state of D.C. sanctuary policies exposes a bleak reality.

This report will highlight the way local agencies treat noncitizens who find themselves in the criminal legal system, such as collecting citizenship information and in some cases, reporting noncitizens to immigration authorities. Following this introduction, Part II will describe the larger federal landscape, demonstrating how D.C. sanctuary policies are thwarted by federal policy. Part III will highlight the local agencies involved in the D.C. criminal legal system and describes the sanctuary policies that are currently on the books. Yet this part also offers a critical take, offering accounts from interviews and news reports that expose significant gaps which allow noncitizens to be transferred to federal immigration authorities. Finally, this report provides a series of concrete local policy and legislative recommendations to ensure the letter and the spirit of the District’s sanctuary policies are fully realized.

¹ 58 D.C. Reg. 9083, 9084 (Oct. 21, 2011).

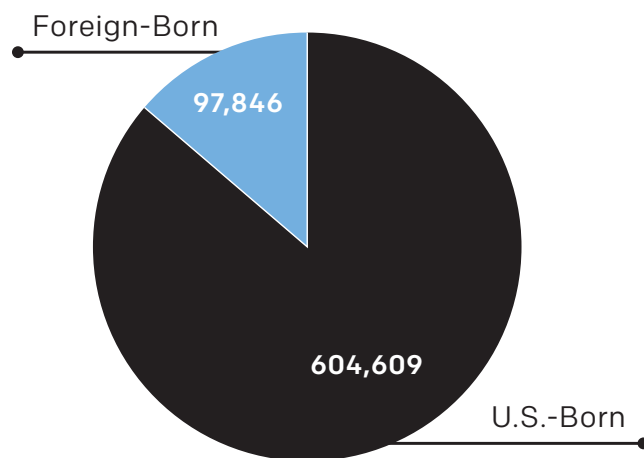
² Rachel Sadon, *Bowser Says D.C. Remains a Sanctuary City*, DCIST (Nov. 15, 2016), <https://dcist.com/story/16/11/15/bowser-says-dc-remains-a-sanctuary/>.

FOREIGN-BORN POPULATION OF D.C.

Sanctuary policies have a direct impact on immigrants in D.C., who make up about 14% of the population.³ The D.C. immigrant community includes substantial representation from countries such as El Salvador, Ethiopia, Mexico, Trinidad & Tobago, and China. While some foreign-born D.C. residents have naturalized, as of 2016, 28% of the immigrant population is undocumented.⁴

As of 2018, immigrants made up 17% of the workforce in D.C.⁵ As a whole, the immigrant population, made up of both noncitizens and naturalized citizens living and working in D.C., are key members of the D.C. community. As such, this critical mass of individuals inevitably interact with city agencies and spaces on a daily basis.

FOREIGN-BORN POPULATION IN THE DISTRICT OF COLUMBIA (2018)



Immigrants living in D.C. encounter the District's apparatus of federal and local government due to the over-policing of their communities.⁶ Recent data suggests that Black residents and other persons of color, including immigrants, are disproportionately subject to police stops, leaving them vulnerable to possible immigration consequences. In 2016, the D.C. Council unanimously passed the Neighborhood Engagement Achieves Results Amendment Act ("NEAR Act"), which in relevant part, required the Metropolitan Police Department ("MPD") to collect and release data related to their police stops.⁷ Subsequently, in September 2019, MPD released data pertaining to their police stop data for the first time. Of the approximately 11,600 stops made between July 22 to August 18, 77% of them were Black and Latinx people.⁸ More recent data from MPD revealed that 75% of the stops made in the first half of 2020 were of Black individuals.⁹ Yet recent census data puts the Black population at 50% of the district, with less than 10% Latinx.¹⁰ The study did not explicitly note immigration status, but 50% of D.C.'s immigrant population hails from Mexico, Central America, South America, and Africa.¹¹ The demonstrated targeting of Black and Latinx people by MPD carries particularly negative ramifications for the immigrant population. As we explain below, even one stop by MPD could lead a D.C. resident down a path which could ultimately lead to severe immigration consequences.

3 District of Columbia, Migration Policy Institute Data Hub, <https://www.migrationpolicy.org/data/state-profiles/state/demographics/DC> (last visited Feb. 27, 2021).

4 AMERICAN IMMIGRATION COUNCIL, IMMIGRANTS IN THE DISTRICT OF COLUMBIA 1-2 (2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigrants_in_the_district_of_columbia.pdf.

5 *Id.* at 2.

6 MIJENTE & NATIONAL IMMIGRATION PROJECT, THREE WAYS DC CAN IMPROVE "SANCTUARY CITY" POLICIES TO #ABOLISHICE FROM THE CITY 3 (2018), https://www.nationalimmigrationproject.org/PDFs/community/2018_01Nov_dc-improve-policies.pdf.

7 63 D.C. Reg. 4659, 4669 (Apr. 1, 2016).

8 METROPOLITAN POLICE DEPARTMENT, STOP DATA REPORT: SEPTEMBER 2019 12 (Sept. 9, 2019), https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20Stop%20Data%20Report_September%202019_lowres_0.pdf.

9 METROPOLITAN POLICE DEPARTMENT, POLICE STOPS 2 (Feb. 2021), https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/Stop%20Data%20Summary_JAN_JUNE2020.pdf.

10 D.C. OFFICE OF PLANNING, DEMOGRAPHIC CHARACTERISTICS OF THE DISTRICT AND METRO AREA 38 (2011), <https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/Chapter%25202.pdf>.

11 URBAN INSTITUTE, STATE OF IMMIGRANTS IN THE DISTRICT OF COLUMBIA 3 (2018), https://www.urban.org/sites/default/files/publication/99031/state_of_immigrants_in_dc_brief.pdf.

BACKGROUND

A. FUNDAMENTALS: ICE AND LOCAL LAW ENFORCEMENT

ICE deploys several programs to facilitate the enforcement of immigration laws through local law enforcement agencies (“LEAs”), including the 287(g) program, ICE detainers or notifications, and the Secure Communities initiative. This report covers three common ways ICE uses to become aware of and take custody of noncitizens who pass through the criminal legal system.

1. 287(g) Program

The 287(g) Program, which derives from section 287(g) of the Immigration and Nationality Act, allows ICE to enter into agreements with LEAs. These agreements call for the training of local officers, so that they may carry out certain immigration enforcement actions.¹² These actions include identifying, arresting, and serving warrants and detainers for locally detained foreign-born individuals who have criminal charges or convictions.¹³ Such agreements are not mandatory; local jurisdictions opt into 287(g) agreements via a signed memorandum of agreement (“MOA”).¹⁴ Moreover, the program has come under increasing scrutiny from oversight bodies: many 287(g) programs have been the subject of Department of Justice and Congressional investigations.¹⁵ In 2018, this program led to more than 7,000 deportations nationwide.¹⁶ The District of Columbia does not participate in the 287(g) Program, but a handful of nearby counties, such as Frederick County, MD, have opted in.¹⁷



Over the past few years, ICE raided multiple businesses and homes in the District and thereby created a climate of fear in the city’s immigrant population.

PHOTO CREDIT:
BRANDON WU, SANCTUARY
DMV · JUNE 29, 2019

12 IMMIGRANT LEGAL RESOURCE CENTER, GROWING THE RESISTANCE: HOW SANCTUARY LAWS AND POLICIES HAVE FLOURISHED DURING THE TRUMP ADMINISTRATION 16-17 (2019), <https://www.ilrc.org/growing-resistance-how-sanctuary-laws-and-policies-have-flourished-during-trump-administration>.

13 *Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act*, U.S. Immigration & Customs Enforcement, <https://www.ice.gov/287g#wcm-survey-target-id> (last updated Feb. 17, 2021).

14 *Id.*; IMMIGRANT LEGAL RESOURCE CENTER, ENDING 287(G) NATIONWIDE (2019), https://www.ilrc.org/sites/default/files/resources/2019.04_ilrc_287g_national_final.pdf.

15 AMERICAN IMMIGRATION COUNCIL, THE 287(G) PROGRAM: AN OVERVIEW 5 (2020), https://www.americanimmigrationcouncil.org/sites/default/files/research/the_287g_program_an_overview.pdf (describing DOJ investigations in Maricopa Co., AZ and Alamance Co., NC).

16 IMMIGRANT LEGAL RESOURCE CENTER, ENDING 287(G) NATIONWIDE (2019), https://www.ilrc.org/sites/default/files/resources/2019.04_ilrc_287g_national_final.pdf.

17 *Id.*

2. ICE Detainers and Notifications

ICE issues detainers and requests for notification of release to LEAs in an effort to take custody of a detained person after their federal, state, or local charges have been resolved.¹⁸ Detainers are issued by either an immigration official or a local police officer who is authorized to act as an immigration official under a 287(g) agreement.¹⁹ ICE detainers request that LEAs hold noncitizens for up to forty-eight business hours past their initial release time for ICE to assume custody.²⁰ ICE requests for notification of a release provide a similar mechanism by requesting advanced notification of a noncitizen's release time from the LEA so ICE can be present and assume custody when an individual is released.²¹ Detainers are placed on noncitizens who have been arrested on criminal charges when ICE believes that they are removable from the United States, based on information received through the Secure Communities fingerprint matching system (explained more fully below) or a 287(g) program's jail interview process.²²

The adverse impact of detainers on families and communities has led numerous local jurisdictions to enact policies impeding the ability of their LEAs to cooperate with federal immigration authorities.²³ Furthermore, various federal courts have found that it is unlawful for local and state LEAs to hold individuals based on ICE detainers beyond when they are otherwise ordered released.²⁴ As discussed more fully below, jurisdictions are determining for themselves the degree of cooperation with ICE that is permissible within the law. Among the stated reasons to limit cooperation with ICE are concerns about further toxifying the relationship between immigrant communities and local police and liability due to potential constitutional violations.²⁵



The U.S. Department of Homeland Security created automatic biometric data-sharing pathways with local and federal agencies to identify deportable noncitizens through the Secure Communities program.

3. Secure Communities

Secure Communities is a program created by the U.S. Department of Homeland Security (“DHS”) in March of 2008.²⁶ It is used to identify suspected immigrants in U.S. jails using biometric information-sharing between local jails, the Federal Bureau of Investigation (“FBI”) and ICE.²⁷ The FBI automatically sends fingerprints it receives from arrests by local jurisdictions to DHS.²⁸ The FBI and DHS databases are interoperable. ICE is notified of any fingerprint matches to its own databases, which it calls a “hit,” and then sends out a detainer or notification request to the LEA.²⁹ The Secure Communities program has been plagued by error rates; a 2011 study, for example, showed that Secure Communities resulted in the targeting of thousands of U.S. citizens.³⁰

¹⁸ *Id.*

¹⁹ AMERICAN IMMIGRATION COUNCIL, IMMIGRATION DETAINERS: AN OVERVIEW 1 (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detainers_an_overview_0.pdf.

²⁰ *Id.*

²¹ IMMIGRANT LEGAL RESOURCE CENTER, ENDING LOCAL COLLABORATION WITH ICE: A TOOLKIT FOR IMMIGRANT ADVOCATES 3 (2015), https://www.ilrc.org/sites/default/files/resources/toolkit_final_compressed.pdf.

²² AMERICAN IMMIGRATION COUNCIL, IMMIGRATION DETAINERS: AN OVERVIEW 2 (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detainers_an_overview_0.pdf.

²³ *National Map of Local Entanglement with ICE*, Immigrant Legal Resource Center, <https://www.ilrc.org/local-enforcement-map> (last updated Nov. 13, 2019).

²⁴ *Id.*

²⁵ AMERICAN IMMIGRATION COUNCIL, IMMIGRATION DETAINERS: AN OVERVIEW 2 (2017), https://www.americanimmigrationcouncil.org/sites/default/files/research/immigration_detainers_an_overview_0.pdf.

²⁶ *Secure Communities: A Fact Sheet*, American Immigration Council, <https://www.americanimmigrationcouncil.org/research/secure-communities-fact-sheet> (last updated Nov. 29, 2011).

²⁷ *Secure Communities*, U.S. Immigration & Customs Enforcement, <https://www.ice.gov/secure-communities> (last updated Feb. 9, 2021).

²⁸ *Id.*

²⁹ NATIONAL IMMIGRATION LAW CENTER, UNTANGLING THE IMMIGRATION ENFORCEMENT WEB: BASIC INFORMATION FOR ADVOCATES ABOUT DATABASES AND INFORMATION-SHARING AMONG FEDERAL, STATE, AND LOCAL AGENCIES 3-4 (2017), <https://www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf>.

³⁰ BERKELEY LAW CENTER FOR RESEARCH AND ADMINISTRATION, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS 4-5 (2011), https://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf.

Local police also have access to federal databases such as the National Crime Information Center (“NCIC”) database when they are seeking background information on an individual.³¹ Although technically a criminal database, they can often find civil immigration information.³²

B. FIGHTING LOCAL POLICE COLLABORATION WITH ICE

ICE detainers and Secure Communities have devastated local communities and have led to skyrocketing numbers of removals. Of the 249,532 removals effectuated by ICE in the 2018 fiscal year, 77,858 resulted from Secure Communities.³³ ICE deported almost 267,000 noncitizens in 2019; 70% of these deportations were carried out with local police and city collaboration.³⁴ In the District of Columbia, ICE has issued more than 1,600 detainers since the early 2000s, indicating that a significant number of D.C. residents and their families have been impacted by collaborations between ICE and local agencies.³⁵

Over the past decade, several states enacted harsh anti-immigrant laws that criminalized immigrants and forced local government involvement in immigration processes. In 2010, Arizona passed the Support Our Law Enforcement and Safe Neighborhoods Act, commonly referred to as SB 1070.³⁶ The Arizona law made it a misdemeanor for any noncitizen to be in the state without documentation of their lawful presence on their person.³⁷ Arizona was not alone in these

efforts: between 2010 and 2012, 164 anti-immigrant laws were in state legislatures across the nation, many of them similar to Arizona’s SB 1070.³⁸ A particularly draconian piece of legislation enacted in Alabama, the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, empowered local law enforcement to determine an individual’s immigration status during any lawful stop and made it a crime to offer aid and assistance to undocumented individuals.³⁹

The devastation caused by ICE detainers, Secure Communities, and anti-immigrant laws led to responses from many jurisdictions, including the District of Columbia, which sought to counter the harms posed by deportations and make their communities safe and welcoming for noncitizens. More recently, many of the campaigns to stop local police and jail involvement with ICE have been inspired by and formed as part of a larger movement for police accountability, and have included organizers drawing inspiration and support from the Black Lives Matter movement.⁴⁰

As part of their response to restrictive immigration policies at the federal level, many cities and states began using the term “sanctuary” in their own policies, in solidarity with a movement from the 1980s.⁴¹ The term “sanctuary city” first emerged in the United States during the 1980s in the context of poor treatment of Central American refugees by the federal government.⁴²

31 National Immigration Law Center, *Untangling the Immigration Enforcement Web: Basic Information for Advocates About Databases and Information-Sharing Among Federal, State, and Local Agencies* 3-4 (2017), <https://www.nilc.org/wp-content/uploads/2017/09/Untangling-Immigration-Enforcement-Web-2017-09.pdf>.

32 *Id.*

33 *Latest Data: Immigration and Customs Enforcement Removals*, TRAC IMMIGRATION, <https://trac.syr.edu/phptools/immigration/remove/> (last visited Feb. 27, 2021); *Removals Under the Secure Communities Program*, TRAC IMMIGRATION, <https://trac.syr.edu/phptools/immigration/secure/> (last visited Feb. 27, 2021).

34 Seth Freed Wessler, *Cold as ICE: How Local Sheriffs Are Driving Trump’s Deportation Agenda*, MOTHER JONES (Sept.-Oct. 2020), <https://www.motherjones.com/politics/2020/08/sheriffs-ice-immigration-detention-gwinnett/>.

35 *Immigration and Customs Enforcement Detainers*, TRAC IMMIGRATION, <https://trac.syr.edu/phptools/immigration/detain/> (last updated June 2020).

36 Support Our Law Enforcement and Safe Neighborhoods Act, ch. 113, 2010 Ariz. Sess. Laws 450 (codified in scattered sections of ARIZ. REV. STAT. ANN. tits. 11, 13, 23, 28, 41), as amended by Act of Apr. 30, 2010, ch. 211, 2010 Ariz. Sess. Laws 1070.

37 ARIZ. REV. STAT. ANN. § 13-1509 (2020). In *Arizona v. U.S.*, the Supreme Court found the misdemeanor provision was preempted by federal immigration law. 567 U.S. 387 (2012).

38 Ian Gordon & Tasneem Raja, *164 Anti-Immigration Laws Passed Since 2010? A MoJo Analysis*, MOTHER JONES, (March-Apr. 2012), <https://www.motherjones.com/politics/2012/03/anti-immigration-law-database/>.

39 ALA. CODE §§ 31-13-7, -12, -33 (2020) (prohibiting receipt of public benefits, charging law enforcement with determining an individual’s immigration status, and prohibiting landlords from renting to undocumented individuals). The provision which banned landlords from renting to undocumented people was found to be preempted by federal law and the state was permanently enjoined from implementing it. *United States v. Alabama*, No. 11–CV–2746, 2013 WL 10799535, at *1 (N.D. Ala. Nov. 25, 2013); *United States v. Alabama*, 691 F.3d 1269, 1285 (11th Cir. 2012).

40 Tania Unzueta, Maru Mora Villalpando, & Angélica Cházaro, *We Fell in Love in a Hopeless Place: A Grassroots History from #Not1More to Abolish ICE*, MEDIUM.COM (Jun. 29, 2018), <https://medium.com/@LaTania/we-fell-in-love-in-a-hopeless-place-a-grassroots-history-from-not1more-to-abolish-ice-23089cf21711>; Theresa Vargas, *Behind ‘Defund the Police’ and ‘Abolish ICE’ is a shared hope: That more dads make it home*, WASHINGTON POST (June 20, 2020), https://www.washingtonpost.com/local/behind-defund-the-police-and-abolish-ice-is-a-shared-hope-that-more-dads-make-it-home/2020/06/20/a8c0969a-b28a-11ea-8f56-63f38c990077_story.html.

41 CATHOLIC LEGAL IMMIGRATION NETWORK, INC., CLINIC SANCTUARY CITIES TOOLKIT 1 (2016), <https://cliniclegal.org/file-download/download/public/1379>; Jennie Cottle, *Debate: How ‘Sanctuary Cities’ in the U.S. Stand up to Federal Immigration Enforcement*, THE CONVERSATION (Oct. 28, 2018), <https://theconversation.com/debate-how-sanctuary-cities-in-the-us-stand-up-to-federal-immigration-enforcement-105180>.

42 Cottle, *supra* note 40. Advocates and activists began to mobilize after public reports revealed the harsh conditions at detention facilities as well as the number of deportees who were killed after deportation back to Central America. *Id.* This sparked the first Sanctuary Movement, originally led by a group of religious organizations in California and Arizona. *Id.*

Although there is not a formal definition of “sanctuary city” and policies vary depending on the jurisdiction,⁴³ sanctuary policies have become a way for communities in the United States to demonstrate that they reject the federal immigration agenda. D.C. was one of the first cities in the country to enact policies limiting local police collaboration with ICE on detainees. Back in 2011, after communities applied significant public pressure, then-Mayor of D.C. Vincent Gray enacted an order entitled “Disclosure of Status of Individuals.” The mayor’s order prohibited D.C. law enforcement agencies from making arrests based solely on administrative warrants of removal in the National Crime Information Center (“NCIC”) database and required all law enforcement agencies in the District to adopt policies to ensure detained individuals are not made available for immigration interviews without a criminal nexus to the interview.⁴⁴ In 2012, the D.C. Council backed up this order with D.C. Code § 24-211.07, which codified protections for noncitizens detained in the District by D.C. agencies.⁴⁵ However, as discussed below, D.C. agencies eventually created loopholes in the law to allow for continued collaboration with ICE.



The wave of anti-immigrant laws in the 2010s spurred large-scale protests and community-led activism across the nation, including in the District of Columbia.

PHOTO CREDIT: BRANDON WU, SANCTUARY DMV · JUNE 29, 2019

Other city governments have followed suit. In April 2019, the Immigrant Legal Resource Center reported that at least 635 U.S. counties—meaning more than one in five—refuse to keep people in jail on federal detainer requests, while at least 53 counties refuse to allow the use of local resources to assist federal immigration enforcement.⁴⁶

43 Some elements of a sanctuary city policy include: limiting the extent to which local law enforcement and other local government employees will assist the federal government on immigration enforcement matters; disregarding requests from ICE to indefinitely hold immigrant individuals beyond the 24-hour detention period; and barring local police from asking for proof of citizenship and from transferring immigrants to ICE. See CATHOLIC LEGAL IMMIGRATION NETWORK, INC., *supra* note 41, at 2. Moreover, the term “sanctuary city” is misleading as it might suggest that immigrants in these communities are fully insulated from any immigration enforcement action brought against them; in reality, sanctuary policies are rarely able to prevent all federal enforcement actions. *Id.* at 1.

44 58 D.C. Reg. 9083, 9084–85 (Oct. 21, 2011) (clarifying that criminal nexus refers to questions posed in relation to a criminal investigation).

45 D.C. Code § 24-211.07(a) (2020).

46 Jordan Yadoo, *Your Questions about Sanctuary Cities Answered*, BLOOMBERG (Apr. 16, 2019), <https://www.bloomberg.com/news/articles/2019-04-16/what-are-sanctuary-cities-and-why-do-they-bug-trump-quicktake>.



In the current political moment, there remains frustration and uncertainty regarding the District’s commitment to both its sanctuary policies and its noncitizen population.

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More than 300 jurisdictions across the United States are considered sanctuaries on some level.⁴⁷ There are at least eight states considered sanctuary states, including New Jersey, Illinois, and California.⁴⁸

In recent years, the federal response to sanctuary cities took a sharp retaliatory turn. For example, the Trump Administration threatened to impose funding restrictions on cities who do not collaborate with ICE. On January 25, 2017, former President Trump issued the “Enhancing Public Safety and Interior of the United States” Executive Order, with directives to withhold funds from sanctuary cities, bolster the 287(g) program, and renew the Secure Communities initiative.⁴⁹ He also threatened to send all individuals seeking refuge at the United States-Mexico border to sanctuary cities,⁵⁰ and targeted sanctuary cities for immigration enforcement action.⁵¹

However, Trump’s efforts to restrict funding to sanctuary jurisdictions was halted by multiple federal courts which found that the Department of Justice does not have the authority to add stringent restrictions to grants based on immigration enforcement.⁵² Regardless of the benefit that municipal level protections have for noncitizens, there remains some uncertainty around their future, even under a new administration.

47 Deirdre Shesgreen & Alan Gomez, *Sanctuary cities for illegal immigrants? Here’s what you need to know*, USA TODAY (Apr. 12, 2019), <https://www.usatoday.com/story/news/world/2019/04/12/sanctuary-cities-illegal-immigrants-can-carry-many-definitions/3449063002/>.

48 *Id.*

49 See Exec. Order No. 13768, 82 Fed. Reg. 8799 (Jan. 30, 2017).

50 Mark Niquette & Alan Levin, *Sarah Sanders Says Moving Migrants to Sanctuary Cities under Review*, BLOOMBERG (Apr. 14, 2019), <https://www.bloomberg.com/news/articles/2019-04-14/sanders-says-moving-migrants-to-sanctuary-cities-under-review>.

51 Nick Miroff & Devlin Barrett, *ICE Preparing Targeted Arrests in ‘Sanctuary Cities,’ Amplifying President’s Campaign Theme*, WASHINGTON POST (Sept. 29, 2020), https://www.washingtonpost.com/immigration/trump-ice-raids-sanctuary-cities/2020/09/29/99aa17f0-0274-11eb-8879-7663b816bfa5_story.html.

52 IMMIGRANT LEGAL RESOURCE CENTER, DOJ LOSES COURT BATTLE OVER GRANTS CONDITIONED ON IMMIGRATION ENFORCEMENT 2-3 (Aug. 2020), https://www.ilrc.org/sites/default/files/resources/doj_grants_and_sanctuary_cities_08.2020.pdf.

SANCTUARY OR SNARE?

Over the last decade, community groups have organized and advocated for the D.C. government to pass policies limiting local police collaboration with ICE. For example, in 2011, then-Mayor Vincent Gray published an order entitled “Disclosure of Status of Individuals,” which applied to the Metropolitan Police Department (“MPD”), D.C. Department of Corrections (“DOC”), and all other agencies that fall under the umbrella of public safety agencies.⁵³ The order directed public safety agencies to refrain from inquiring about a person’s immigration status or from contacting ICE to initiate civil immigration enforcement unless there was a “nexus” to a criminal investigation.⁵⁴ It also prohibited detention based on the belief that a person is not present in the United States legally or because of a civil immigration violation.⁵⁵

The following year, in response to significant community organizing, D.C. Council passed a 2012 ordinance which declared that the jail should not submit to ICE detainees and had the discretion to decline to detain someone at the request of immigration authorities.⁵⁶ As one of the first detainer

compliance policies in the country, it mandated that the District would only hold individuals for ICE for an additional twenty-four hours beyond the time they otherwise would be held.⁵⁷ Notably, the original law further provided that even this 24-hour hold would be permissible only if a written agreement exists between ICE and the D.C. government, reimbursing D.C. for the costs of complying with the detainer.⁵⁸ Since no such agreements existed, the drafters of the law hoped the law would effectively prohibit DOC from collaborating with ICE.

Despite these sanctuary policies on the books, agencies in the District continue to fail their immigrant constituents. In the following sections, we illustrate this problem first by outlining the role that various state and federal agencies play in the criminal legal process in the District. The report then highlights existing sanctuary policies in D.C., followed by a detailed description of significant gaps that allow collaboration with ICE to persist. This report will then conclude with a list of recommendations to enhance protections for noncitizens in the District.

A. D.C. CRIMINAL LEGAL SYSTEM AND ACTORS

In order to properly understand the existing sanctuary policies in Washington, D.C., it is important to first understand the various actors within the city’s labyrinthine criminal legal system. D.C.’s criminal legal system is an amalgamation of local and federal agencies that work separately and together throughout different parts of the process. This report will discuss the process chronologically, detailing the different agencies that are involved at each step.

There are three local agencies within the D.C. criminal legal system. These agencies are the D.C. Metropolitan Police Department (“MPD”), the D.C. Department of Corrections (“DOC”), and the D.C. Office of the Attorney General (“OAG”). These three agencies in tandem are the local agencies responsible for arresting, processing, holding, and prosecuting individuals accused of certain crimes in the District of Columbia. In part as a result of the passage of the National Capital Revitalization and Self-Government Improvement Act by Congress in 1997, federal actors also operate in the D.C. criminal legal system. Those federal agencies include Pretrial Services Agency (“PSA”) working under the Court Services & Offender Supervision Agency (“CSOSA”), the U.S. Attorney’s Office, the U.S. Marshals Service, and the Bureau of Prisons (“BOP”). As a noncitizen moves through the criminal legal system in the District, they interact with many of these agencies which make up the hydra’s heads of the criminal legal landscape. The specific role of each of these agencies is explained below in the order that a noncitizen would typically encounter them.

⁵³ 58 D.C. Reg. 9083, 9084 (Oct. 21, 2011).

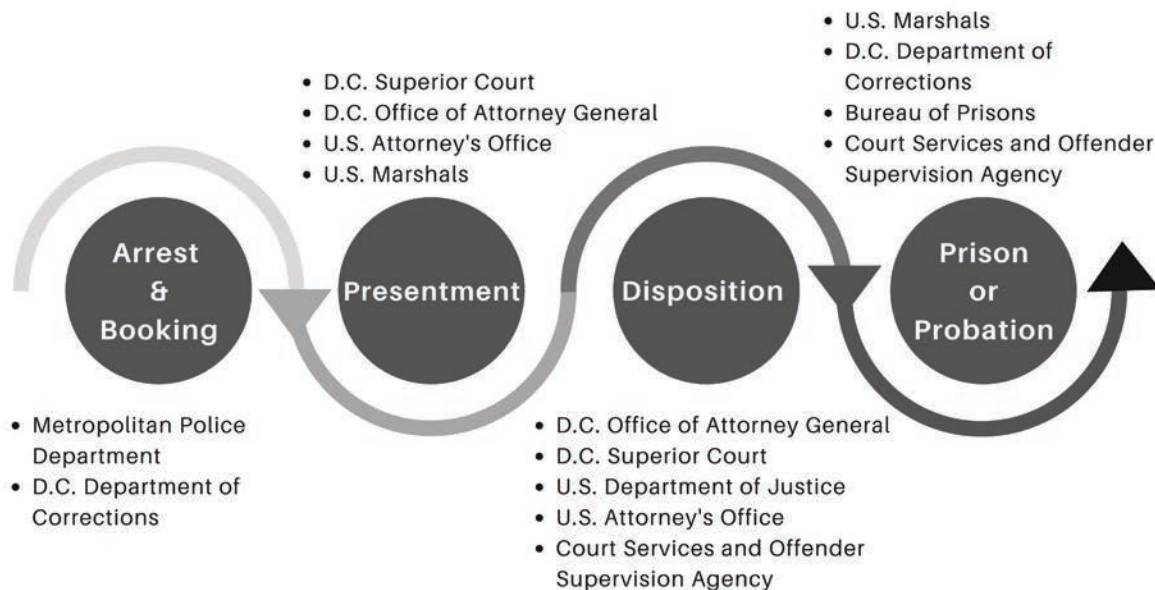
⁵⁴ *Id.* at 9084.

⁵⁵ *Id.*

⁵⁶ D.C. Code § 24-211.07(b) (temporarily amended by Sanctuary Values Temporary Amendment Act of 2020).

⁵⁷ *Id.* § 24-211.07(a).

⁵⁸ D.C. Act 19-442, Immigration Detainer Compliance Amendment Act of 2012, sec. 2, § 7(b)(1).



1. Arrest & Booking

A D.C. resident first comes into contact with MPD during the arrest phase. The MPD is the primary law enforcement agency for the District of Columbia and is divided into seven police districts, each of which is further subdivided into seven or more Police Service Areas.⁵⁹ When an arrestee is booked by MPD, their fingerprints are taken and then shared automatically with FBI databases and, in turn, with various immigration-related databases. In this way, noncitizens who have had prior encounters with Border Patrol or ICE may be flagged for DHS.

Once the person is arrested, the person is transported from the police station to the Central Cell Block located next to the D.C. Superior Courthouse to await a papering decision by the appropriate prosecutorial agency.

2. Presentment & Pretrial Detention

In the District of Columbia, prosecutorial responsibilities are split between the D.C. Office of the Attorney General (“OAG”) and the United States Attorney’s Office (“USAO”). The OAG prosecutes traffic, juvenile, and certain misdemeanors, while the USAO prosecutes felony proceedings and all other misdemeanors.⁶⁰ OAG is currently led by an elected attorney general, Karl Racine.⁶¹

The first court appearance in D.C. is commonly known as “presentment.” At presentment, which typically occurs within no more than 24 hours after an arrest, the prosecutor explains the nature of the charges to the judge and the accused may request release at that time.⁶² As there is no court on Sunday, an individual arrested on Saturday may not see a judge until Monday.

Prior to presentment, individuals held in Central Cell Block are typically transferred to the U.S. Marshals Cell Block adjacent to courtroom C-10 in the basement of D.C. Superior Court. Pretrial Services agents interview the individuals in the U.S. Marshals Cell Block, asking questions about their education, family, residence, and employment history, among other questions.⁶³ Based upon the information provided, PSA makes a recommendation in relation to release eligibility. Importantly for noncitizens, PSA also asks about individuals’ country of origin and citizenship.⁶⁴ If an individual responds that they are not a U.S. citizen or were born outside the U.S., PSA typically does an automated inquiry with DHS.⁶⁵ This automated inquiry can trigger as an additional notification to ICE that the individual is present in the U.S. and has been arrested.

59 MPD: *Who We Are*, Metropolitan Police Department, <https://mpdc.dc.gov/page/mpd-who-we-are> (last visited Feb. 24, 2021).

60 D.C. Code §§ 23–101(a), (c) (2020); *What We Do*, Office of the Attorney General for D.C., www.oag.dc.gov/about-oag/what-we-do (last visited Feb. 24, 2021).

61 *About the Attorney General*, Office of the Attorney General for D.C., www.oag.dc.gov/about-oag/our-structure-divisions/about-attorney-general (last visited Feb. 24, 2021).

62 D.C. Code § 23-1321 (2012); Arraignment, Dist. of Columbia Courts, <https://www.dccourts.gov/services/criminal-matters/arraignment> (last visited Feb. 24, 2021).

63 *Court Support*, Pretrial Services Agency for the Dist. of Columbia, https://www.psa.gov/?q=programs/court_support (last visited Feb. 24, 2021).

64 FOIA Response dated Dec. 14, 2019 from the Court Supervision and Offender Services Agency for the Dist. of Columbia to the AUWCL Immigrant Justice Clinic (on file with authors).

65 FOIA Response dated Jan. 14, 2019 from the Court Supervision and Offender Services Agency for the Dist. of Columbia to the AUWCL Immigrant Justice Clinic (on file with authors).

PSA officers have also called ICE agents directly to verify immigration status. As a result of the automatic notification to ICE by virtue of the fingerprinting at arrest, PSA's automated DHS inquiry, or a PSA agent reaching out to ICE directly, ICE may lodge a detainer request for the individual with the U.S. Marshals. ICE agents may also independently reach out to the U.S. Marshals Service, and vice-versa, when they are notified that a deportable individual has been arrested in order to lodge a detainer.

As a general matter, the U.S. Marshals are responsible for overseeing all detention management matters for individuals remanded to the custody of the Attorney General, that is, in federal custody.⁶⁶ In D.C. Superior Court, the Marshals are responsible for transporting individuals between the cellblock and courtrooms, guarding detained individuals during court proceedings, and managing security in the courthouse.

If an arrestee is ordered held at presentment in C-10, that individual is transferred into the custody of DOC for pretrial detention. The arrestee may either be held at the Central Detention Facility ("CDF") or the Correctional Treatment Facility ("CTF"), located beside one another next to the former RFK Stadium in Southeast D.C. CDF, also known as the D.C. Jail, opened in 1976 and incarcerates male individuals, the majority of whom are awaiting adjudication of cases or are sentenced for misdemeanor offenses.⁶⁷ CTF houses both male and female individuals and serves as a specialized medium-security institution.⁶⁸ Both facilities also house individuals facing federal charges. DOC also operates halfway houses for pretrial offenders and sentenced misdemeanants as an alternative to incarceration.⁶⁹

3. Disposition

At D.C. Superior Court, the accused eventually receives a case disposition, typically either a dismissal, an acquittal, or a conviction as a result of a plea or trial.

As noted above, most individuals sentenced to jail time for misdemeanor charges serve their sentences at D.C. Jail, under the auspices of DOC. Individuals convicted and sentenced for felony charges, however, are typically transferred to the Federal Bureau of Prisons if they have at least six months to serve at the time of sentencing.⁷⁰

CSOSA conducts probation and supervised release supervision for adults in the District of Columbia.⁷¹ In addition to any conditions of release that may be imposed by the D.C. Superior Court (for individuals on probation) or the United States Parole Commission (for individuals on parole or supervised release), CSOSA develops an individualized supervision plan for each supervisee.⁷² CSOSA also conducts a presentence investigation for felony cases and makes recommendations to the judge regarding sentencing.⁷³ Notably, CSOSA also has access to PSA reports, and according to CSOSA's own manual and internal policies, the agency contacts ICE if the individual is a noncitizen or born outside of the United States.⁷⁴

66 U.S. MARSHALS SERVICE, FACT SHEET: U.S. MARSHALS SERVICE 2020 (Feb. 25, 2020) www.usmarshals.gov/duties/factsheets/overview.pdf.

67 *Correctional Facilities*, D.C. Department of Corrections, www.doc.dc.gov/page/correctional-facilities (last visited Feb. 24, 2021).

68 *Id.*

69 *Id.*

70 *Id.*; *Housing D.C. Felons Far Away from Home: Effects on Crime, Recidivism and Reentry: Hearing Before the Subcomm. on Fed. Workforce, Postal Serv., & D.C. of the H. Comm. on Oversight & Gov't Reform*, 111th Cong. 25 (2010) (Harley Lappin, Director, Federal Bureau of Prisons, noting that persons sentenced to six months or less are not typically transferred to BOP).

71 *What We Do*, Court Services and Offender Supervision Agency for the Dist. of Columbia, www.csosa.gov/community-supervision/ (last visited Feb. 24, 2021).

72 *Id.*

73 COURT SERVICES AND OFFENDER SUPERVISION AGENCY, GUIDANCE FOR INDIVIDUALS ON COMMUNITY SUPERVISION 7 (Feb. 2020), <https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2020/02/guidance-for-individuals-on-community-supervision-20200228.pdf>.

74 COURT SERVICES AND OFFENDER SUPERVISION AGENCY, COMMUNITY SUPERVISION SERVICES OPERATIONS MANUAL, Chapter VIII, pp. 29-30, <https://www.csosa.gov/wp-content/uploads/bsk-pdf-manager/2018/08/CSS-Operations-Manual.pdf>; see also FOIA Response dated Jan. 14, 2019 from the Court Supervision and Offender Services Agency for the Dist. of Columbia to the AUWCL Immigrant Justice Clinic (on file with authors).

B. D.C. SANCTUARY LAW AND POLICIES

D.C.'s sanctuary law is enshrined in the Immigration Detainer Compliance Amendment Act of 2012, which was most recently amended by the Sanctuary Values Amendment Act of 2020.⁷⁵ As mentioned previously, this D.C. detainer law was one of the first laws in the nation to limit a local jurisdiction's submission to ICE detainer requests.⁷⁶ The passage of these laws have involved multi-year advocacy and organizing efforts from D.C.'s immigrant residents, labor, faith, and other community organizations including the ICE Out of DC Coalition.

The original law prohibited D.C. from holding individuals on ICE detainer requests unless the federal government agrees to pay for the additional incarceration.⁷⁷ Absent such an agreement on reimbursement, DOC is effectively prohibited from holding noncitizens beyond their DOC release date and time. Subsequent versions of the law eliminated the reimbursement exception and strengthened the law by prohibiting the sharing of release time, location, address, and other types of personal information about D.C. residents with ICE and expanding the law to cover other District agencies. However, as discussed in the next section, the official DOC policy does not fully implement this law; there are multiple instances of D.C. agencies failing to comply with the letter and spirit of the law.

Prior to this legislation, individual law enforcement agencies within the District of Columbia had already enacted supposed sanctuary policies. For example, it had been MPD policy since 1984 to prohibit D.C. police officers from inquiring about immigration status and to limit cooperation with immigration authorities.⁷⁸

In 2011 then-Mayor Vincent Gray enacted a policy entitled "Disclosure of Status of Individuals."⁷⁹ The order aimed to establish "District-wide policy and procedure regarding the disclosure of immigration status," and sought to ensure that D.C.'s resources are not used for immigration enforcement activity.⁸⁰ It applied to DOC, MPD, and all other agencies that fall under the umbrella of public safety agencies.⁸¹ The order directed such public safety agencies to refrain from inquiring about a person's immigration status or from contacting ICE to initiate civil immigration enforcement, unless there is a nexus to a criminal investigation, though this criminal nexus has been loosely applied.⁸² It also prohibited detention based on the belief that a person is not present in the United States legally or on the basis of a civil immigration violation.

MPD reaffirmed their policies in 2011 after the issuance of Mayor Gray's order. Pursuant to these updated policies, MPD prohibits its officers from questioning any person about residency or immigration status.⁸³ MPD claims to go a step further and distances itself from the enforcement of any civil immigration laws.⁸⁴ Despite this stated commitment, however, the MPD has been accused on at least two recent occasions of sharing information with ICE about a noncitizen's arrest.⁸⁵

75 Sanctuary Values Amendment Act of 2020, D.C. Act 23-573 (Jan. 13, 2021), https://lms.dccouncil.us/downloads/LIMS/43389/Signed_Act/B23-0501-Signed_Act.pdf.

76 Elise Foley, *Secure Communities Immigration Checks Resisted In District Of Columbia*, HUFFINGTON POST (June 4, 2012), https://www.huffpost.com/entry/secure-communities-immigration-district-of-columbia_n_1569327.

77 Mihir Zaveri, *D.C. City Council Votes to Limit Reach of Federal Effort Aimed at Illegal Immigration*, WASHINGTON POST (Jun. 5, 2012), https://www.washingtonpost.com/local/dc-council-votes-to-limit-reach-of-federal-effort-aimed-at-illegal-immigration/2012/06/05/gJQAVgm5GV_story.html; D.C. Act 19-442 (Aug. 2, 2012).

78 See *Statement Clarifying MPD Policy with Respect to Collaboration with Federal Immigration Authorities*, Metropolitan Police Department (July 6, 2005), <https://mpdc.dc.gov/release/statement-clarifying-mpd-policy-respect-collaboration-federal-immigration-authorities>; see also Metropolitan Police Department, *Administrative Warrants in NCIC and Immigration Enforcement*, EO-19-004 (June 28, 2019), https://go.mpdconline.com/GO/EO_19_004.pdf.

79 58 D.C. Reg. 9083 (Oct. 21, 2011).

80 *Id.*

81 See *id.* (describing the Department of Fire and Emergency Medical Services, The Office of Returning Citizen Affairs, the Office of Victim Services, and the Department of Youth Rehabilitation Services as public safety agencies under the direction of the Mayor).

82 *Id.* at 9084.

83 Metropolitan Police Department, General Order 308.12, para. VI(C)(2) (Aug. 6, 2013); *Immigration Policy Flyers*, Metropolitan Police Department, <https://mpdc.dc.gov/page/immigration-policy-flyers> (last visited Feb. 23, 2021).

84 *Statement Clarifying MPD Policy with Respect to Collaboration with Federal Immigration Authorities*, Metropolitan Police Department (July 6, 2005), <https://mpdc.dc.gov/release/statement-clarifying-mpd-policy-respect-collaboration-federal-immigration-authorities> ("Thus, when MPD and immigration officials work collaboratively on criminal law enforcement operations that result in searches, arrests or other similar actions, taken within the jurisdiction of Washington, DC, MPD will take all necessary precautions to ensure that MPD does not become involved in the enforcement of civil immigration laws.").

85 Will Lennon, *Court Documents Describe MPD Sharing Information with ICE*, WASHINGTON CITY PAPER (Sept. 3, 2020), <https://washingtoncitypaper.com/article/308837/dc-sanctuary-city-mpd-ice/>.

C. THE UNFULFILLED PROMISE OF D.C.'S SANCTUARY POLICY

While various agencies in D.C.'s criminal legal system have paid public lip service to not working with ICE, their policies and practices often fall short of fully protecting noncitizens. Local media, attorneys, and activists have all reported that failures in D.C.'s sanctuary policies arise from a convergence of the following factors: cracks in sanctuary policies linked to MPD and the D.C. Department of Corrections, federal agency involvement in local affairs, and a lack of leadership and accountability from the Mayor's office.



Cracks in MPD and DOC policies and practices allow ICE to access noncitizens, undermining the District's push to be a sanctuary jurisdiction.

PHOTO CREDIT: ELLY YU, WAMU 88.5 AMERICAN UNIVERSITY RADIO

1. D.C. Department of Corrections: Cracks in Local Sanctuary Policies

While DOC has publicly expressed commitment to not collaborate with ICE, in reality, DOC's seemingly protective procedures are made porous by loopholes, exceptions, and noncompliance.

One major loophole is that the DOC still does not have a written policy that fully implements the D.C. Sanctuary Values Amendment Act. DOC has revised its policies and procedures relating to noncitizens several times, with the most recent iteration issued on December 30, 2019.⁸⁶ DOC policy states that its employees “shall not inquire about a person's immigration status” nor “send lists of foreign-born inmates” to the Department of Homeland Security.⁸⁷ The policy does not, however, explicitly prohibit the main form of collaboration and information-sharing with ICE: facilitating transfers of D.C. residents to ICE or sharing release times or other location information with ICE. Regarding ICE detainers, the revised DOC policy states that “DOC will not hold the inmate after he or she is otherwise eligible for release.”⁸⁸ While the language of the policy suggests that DOC will not honor ICE detainers, it is silent on whether DOC will comply with ICE requests for notification or other requests for information. While the revised policy removed a sentence which previously stated that inmates could be released to ICE if ICE picked them up prior to their departure,⁸⁹ the revised policy still does not explicitly prohibit releasing an inmate to ICE under these circumstances.

⁸⁶ District of Columbia Department of Corrections, Change Notice No. CN.19-003, Policy and Procedure No. 4356.5 (Dec. 30, 2019).

⁸⁷ *Id.* at para. 2(a), 2(e). Note that ICE has an alternative way of collecting information about an individual's immigration status: through cross-checking fingerprint data shared during booking (via the Secure Communities program) with its own database. See *infra* Section III.A.3.

⁸⁸ *Id.* at para. 2(f).

⁸⁹ Compare District of Columbia Department of Corrections, Policy and Procedure No. 4356.5, para. 8(f) (Oct. 7, 2019) with District of Columbia Department of Corrections, Change Notice No. CN.19-003, Policy and Procedure No. 4356.5, para 2(f) (Dec. 30, 2019).

According to documents obtained by journalists at the *Washington City Paper* through a FOIA request of the D.C. Department of Corrections, DOC turned 43 allegedly deportable noncitizens over to ICE between January 2016 and June 2019.⁹⁰ This number likely does not encompass the full scale of individuals that DOC hands over to ICE. DOC has stated to community members and attorneys that it tracks only the number of individuals released to ICE within the secure release area of D.C. Jail. It does not track the number of individuals that are detained by ICE right outside the jail release door after DOC staff notifies ICE of their precise release time. As affirmed by the *Washington City Paper*, community members and attorneys believe that ICE has detained far more immigrants through the latter method of DOC notifying ICE of the exact release time so that ICE can pick up the person right outside the release door.⁹¹

Claudia Quinonez, an organizer with United We Dream who has worked predominantly with undocumented Black and brown high schoolers in D.C. for the past few years, pointed out that “prior to passing legislation, [DOC] was collaborating with ICE and their argument was that it was how things were done at DOC.” According to Quinonez, the passage of immigrant-protective legislation did not cure all of the loopholes that allow for collaboration. Quinonez stressed the harmful impact of D.C. agency collaboration with ICE on D.C. youth. She pointed out that during the 2018-2019 school year, three undocumented Cardozo High School students were racially profiled and picked up by MPD officers. All three youth ended up in ICE detention, with one student’s fate ending in deportation from the U.S.

Additionally, during a public hearing on the Sanctuary Values Act held on October 1, 2020 by the D.C. Council Committee on the Judiciary & Public Safety, a public witness testified to a similar story.⁹² In January 2020, an individual was transferred to ICE from D.C. Jail after ending up in jail on misdemeanor charges. The release date was shortened due to good behavior. The witness believes unless the DOC provided the release date information to ICE, there was no way that ICE could have known of the individual’s release date given the shortened sentence.⁹³ Moreover, the transfer happened inside the D.C. Jail, likely violating a ban (contained in temporary legislation) on ICE agents entering DOC facilities to detain detainees held on D.C. charges.⁹⁴ This story, and those like it, exemplify the cracks in DOC and MPD’s compliance with D.C.’s sanctuary law.

2. MPD: Additional Cracks that Allow Collaboration with ICE

On the whole, MPD has sought to convey that it is “strongly committed” to building trust with and protecting the immigrant community.⁹⁵ However, a closer examination of MPD’s official policies, as well as recent reports from media and community members, have revealed additional cracks in D.C.’s sanctuary policies.

The 2011 order from then-Mayor Gray provides a baseline set of instructions for MPD as it relates to noncitizens and cooperation with ICE. The order clarifies that MPD “officials and employees shall not inquire about a person’s immigration status” nor shall they contact ICE to initiate a civil immigration proceeding, absent a nexus to a criminal investigation.⁹⁶ The order further states that persons should not be detained solely because they are believed to be unlawfully present in the U.S., and that MPD should not make arrests simply because an ICE administrative warrant appears in the NCIC or FBI database.⁹⁷ These directives align with policies that MPD had issued several years prior -- policies that affirm that the agency will not inquire about immigration or citizenship status, but will permit collaboration with ICE when it relates to a criminal investigation.⁹⁸ These policies also confirm that MPD will provide traffic and crowd control services upon request if ICE is conducting a civil immigration enforcement action in the District.⁹⁹

90 Will Lennon, *D.C.’s Department of Corrections Has Processed Over 40 ‘ICE Pick-Ups’ From Its Facilities Since 2016*, WASHINGTON CITY PAPER (Aug. 23, 2019), <https://washingtoncitypaper.com/article/178824/dcs-department-of-corrections-has-processed-over-40-ice-pickups-from-its-facilities-since-2016/>.

91 *Id.*; see also Interviews with Claudia Quinonez & Katie D’Adamo.

92 D.C. Council Committee on the Judiciary & Public Safety, Report on B23-0501, the “Sanctuary Values Amendment Act of 2020” 16 (Nov. 23, 2020), https://lims.dccouncil.us/downloads/LIMS/43389/Committee_Report/B23-0501-Committee_Report1.pdf.

93 *Id.*

94 *Id.*

95 *Immigration Policy Flyers*, Metropolitan Police Department, <https://mpdc.dc.gov/page/immigration-policy-flyers> (last visited Feb. 23, 2021).

96 58 D.C. Reg. 9083, 9084 (Oct. 21, 2011).

97 *Id.* at 9084-85.

98 *MPD Policy on Immigration Enforcement*, Metropolitan Police Department (Apr. 20, 2007), <https://mpdc.dc.gov/release/mpd-policy-immigration-enforcement>.

99 *Id.*

Despite the agency’s public assurances, the existing policies contain fissures that allow for problematic cooperation with ICE. For example, as stated above, the policies permit coordination when there is a “nexus to a criminal investigation.” Although the MPD policy provides an example of such an investigation, the guidance as a whole is too vague to provide meaningful direction to MPD officers. This is particularly true given that the mere act of having entered without authorization could be framed as a criminal act under federal immigration law. Moreover, the policy concerningly allows MPD to assist in “traffic and crowd control” during an ICE raid or other civil enforcement activity. Lastly, MPD does not have a policy that reflects the Sanctuary Values Amendment Act’s prohibitions on sharing personal and location information about D.C. residents with ICE. Therefore, the existing policies cut too broadly and could justify a range of investigative and policing support that could undermine relations with the immigrant community.

To remedy the existing policy deficits, MPD would need to issue specific operating instructions for its officers that speak to different immigration-related scenarios. Currently, specific MPD guidance addresses how MPD officers should proceed if they receive a “hit” for an ICE warrant in the NCIC database.¹⁰⁰ But this guidance document does not address the broad swath of concerns relating to police-ICE collaboration. Consistent with the Sanctuary Values Amendment Act, MPD should issue specific guidance for its personnel requiring a judicial order or warrant from a federal judge before MPD personnel take any action to assist ICE, such as transferring individuals into ICE’s custody or sharing location information with ICE.

Such steps are urgently needed, as recent reporting from the *Washington City Paper* confirms cracks in MPD practices that have allowed collaboration with ICE. The paper obtained sworn affidavits from ICE deportation officers in a criminal case that stated that MPD had contacted ICE directly about an immigrant’s arrest and release time in effort to assist in ICE arrest and deportation.¹⁰¹ Along these lines, Alex Taliadoros, a core organizer with Sanctuary DMV, also noted circumstances where MPD had turned people over to ICE. Taliadoros recounted that MPD acted as facilitators during a major ICE raid of D.C. in 2018. He said in one instance that MPD officers stopped two D.C. residents on the street, called ICE, and held them there until ICE agents arrived to detain them. He also noted that people witnessed MPD vehicles facilitating the ICE raids. These suspicions and fears are also shared by members of the public at large.¹⁰²

Jesse Franzblau has been an organizer with Sanctuary DMV since 2017. In his capacity as an organizer, Mr. Franzblau focuses on solidarity defense with individuals who are targeted and often picked up by ICE. He works to build support to get individuals out of detention, and this work often leads him to an intersection with various actors in the criminal justice system, including the MPD. Mr. Franzblau believes there is a case for complete independence from ICE. In his words, “any collaboration with ICE is very harmful to the community.”

3. Critical Failures Resulting from Federal Agency Involvement

One of the main obstacles that prevents the D.C. government from effectively protecting its immigrant population is the federal government’s involvement in DC’s criminal legal system. In large part because of the National Capital Revitalization and Self-Government Improvement Act of 1997,¹⁰³ the criminal legal system is a hybrid of D.C. government and federal agencies.

For example, the U.S. Marshals handle courthouse security at the D.C. Superior Court. Because the U.S. Marshals are a federal agency, they are not subject to D.C. sanctuary laws which apply only to District agencies. Unfortunately, the U.S. Marshals also handle out-processing of individuals released by a judge at presentment or at other stages in the proceeding.¹⁰⁴ This procedure, initially intended to shorten the length of detention for arrested individuals, has become a major funnel to ICE because the U.S. Marshals proactively transfer individuals to ICE during release processing after presentment.

100 METROPOLITAN POLICE DEPARTMENT, ADMINISTRATIVE WARRANTS IN NCIC AND IMMIGRATION ENFORCEMENT REMINDER, EO-19-004 (June 28, 2019), https://go.mpdconline.com/GO/EO_19_004.pdf.

101 Will Lennon, *Court Documents Describe MPD Sharing Information With ICE*, WASHINGTON CITY PAPER (Sept. 3, 2020), <https://washingtoncitypaper.com/article/308837/dc-sanctuary-city-mpd-ice/>.

102 D.C. Council Committee on the Judiciary & Public Safety, Report on B23-0501, the “Sanctuary Values Amendment Act of 2020” 19 (Nov. 23, 2020), https://lims.dccouncil.us/downloads/LIMS/43389/Committee_Report/B23-0501-Committee_Report1.pdf.

103 Public Law No. 105-33, 111 Stat. 251 (Aug. 5, 1997).

104 See, e.g., *D.C. Superior Court and D.C. Department of Corrections Announce a Pilot ‘Courthouse Release’ Program*, District of Columbia Courts Newsroom (May 28, 2008), <https://newsroom.dccourts.gov/press-releases/d-c-superior-court-and-d-c-department-of-corrections-announce-a-pilot-courthouse-release-program>.



A federal district judge has enjoined the U.S. Marshals from seizing noncitizens for ICE in the course of their work in the D.C. courts.

For example, the *Washington Post* and other outlets have reported on the U.S. Marshals' practice of handing over noncitizens to ICE, including the case of Benjamin Ordonez, a 15-year D.C. resident who was taken from D.C. Superior Court and handed over to ICE.¹⁰⁵ As of May 2020, the Marshals are subject to a preliminary injunction preventing them from arresting individuals for ICE, as a federal court has determined that the agency does not have the authority to do so.¹⁰⁶ However, the Marshals continue to cooperate with ICE detainers by communicating with ICE regarding individuals in their custody, and as of publication, continue to maintain custody of released individuals for immediate transfer to ICE when ICE is physically present in the courthouse.

Elizabeth Schmelzel, a staff attorney at Capital Area Immigrant Rights (“CAIR”) Coalition, has a client who was taken into ICE custody by the U.S. Marshals after this injunction was put into place. Her client, now in removal proceedings, was arraigned on a misdemeanor charge in criminal court in D.C. At the end of her client's arraignment, after the judge ordered the client released, the Marshals maintained his shackles and took him back to the locked cellblock instead of releasing him as they normally would with defendants. The Marshals then transferred him to ICE custody.

The Court found that the Marshals' practice of maintaining shackles and handing someone over to ICE when ICE was physically present at the time of release did not violate the injunction, and instead modified the language in the injunction to prohibit “arrests” rather than “seizures,” as originally worded.¹⁰⁷ The Court's ruling weakens that injunction and creates a loophole so the Marshals can continue collaborating with ICE.

Taliadoros noted that PSA and CSOSA also cooperate with ICE. He said that a D.C. resident who was participating in an addiction program as a condition of his release was targeted by ICE. An ICE officer came to the front desk of the health clinic, holding the man's release order that said when and where to report for an addiction program, and asked the front desk person where the man was. Had the front desk person and the clinic not protected the man's personal information, ICE would have detained him. Taliadoros said he could not know for sure that PSA or CSOSA specifically provided that information, but that it was certainly one way that ICE may have received that information. It is also possible that ICE obtained the document from the court file.

¹⁰⁵ Peter Hermann, *Detention of immigrant after arrest in D.C. points to holes in sanctuary city status*, WASHINGTON POST (Sept. 23, 2018), https://www.washingtonpost.com/local/public-safety/detention-of-immigrant-after-arrest-in-dc-points-to-holes-in-sanctuary-city-status/2018/09/23/b02e00a8-b5bf-11e8-94eb-3bd52dfe917b_story.html.

¹⁰⁶ Alyssa Aquino, *Marshals Barred From Making ICE Arrests At DC Courthouse*, LAW360 (May 7, 2020), <https://www.law360.com/articles/1271411/marshals-barred-from-making-ice-arrests-at-dc-courthouse>.

¹⁰⁷ Memorandum Opinion, *N.S. et al. v. Hughes*, No. 20-CV-101 (D.D.C. Nov. 13, 2021).

Furthermore, once individuals are transferred to the U.S. Marshal cellblock in the courthouse from the Central Cell Block, individuals are subjected to questions from Pretrial Services. The questions include whether the individual is a U.S. citizen, born outside of the U.S., and length of time in the District.¹⁰⁸ This questioning often happens before a noncitizen can meet with their attorney, so the attorney cannot advise them that they have the option to decline to answer (though failure to answer questions may impact a judge's release determination).¹⁰⁹

If PSA learns that someone is not born in the United States, they will typically do an automated search in a database that interfaces with DHS databases and will note any responses in the pretrial report provided to the court. D'Adamo said that occasionally PSA or CSOSA will contact ICE to speak to an ICE agent about the individual in question in order to obtain information on the particular posture of the individual's immigration status and how the criminal case may impact the same. According to D'Adamo, CSOSA's conversations with ICE agents often occur in the context of putting together a pre-sentence report when an individual has been found guilty of a felony. CSOSA has also been known to include information in their report about whether the offense the person has plead guilty to carries any immigration consequences, or if it renders them deportable. This practice is consistent with the CSOSA manual, which lists categories of offenses that trigger removability, and which encourages officers to document in their reports "the notification to ICE and the defendant's ICE status" and to "recommend that an ICE investigation be completed."¹¹⁰

4. Insufficient Leadership from the D.C. Mayor

An ongoing concern for the immigrant community and their advocates is the disconnect between the statements of D.C. leaders, on the one hand, and the actual policies and actions taken by D.C. officials, on the other. Despite repeated assertions by Mayor Bowser that D.C. is a sanctuary city, critical gaps in sanctuary protections persist.

Mayor Bowser has publicly proclaimed, on numerous occasions, that D.C. is a sanctuary city. Just days after the 2016 election, Mayor Bowser issued a statement along these lines, noting that "We celebrate our diversity and respect all DC residents no matter their immigration status."¹¹¹ After the White House issued an executive order targeting sanctuary jurisdictions, Bowser again reiterated that D.C. is a sanctuary city.¹¹² Bowser made a similar statement in August 2018, in the context of ICE raids that targeted D.C. residents.¹¹³ A centerpiece of the Mayor's pro-immigrant policies has been the establishment of the Immigrant Justice Legal Services Grant Program, which has awarded several million dollars to organizations that provide direct legal services to the District's immigrant population.¹¹⁴

Yet, at critical moments for the immigrant community, the Mayor's office has failed to take decisive action or to implement needed policies. For example, community members criticized Mayor Bowser for failing to speak out after 14 D.C. residents were arrested in 2017 as part of an ICE raid.¹¹⁵ And when community members asked the mayor's office why they had not called for the release of 12 D.C. residents arrested by ICE in 2018, the head counsel of the mayor's office asked, "What if they're murderers?" instead of committing to call for the release of D.C. residents detained by ICE.¹¹⁶ Advocates argued that Mayor Bowser and MPD could have done more to denounce and prevent the arrests.¹¹⁷

108 COURT SERVICES AND OFFENDER SUPERVISION AGENCY, COMMUNITY SUPERVISION SERVICES OPERATIONS MANUAL, Chapter VIII, p. 31 (2018), <https://www.csosa.gov/wp-content/uploads/bk-pdf-manager/2018/08/CSS-Operations-Manual.pdf> ("in the course of completing the Pre-Sentencing Investigation (PSI), the defendant will be asked to state his/her nationality and citizenship.")

109 Interview with Katie D'Adamo (Jan. 22, 2021).

110 *Id.* at 29-31.

111 Government of the District of Columbia, Office of the Mayor, *Mayor Bowser Issues Statement Reaffirming that DC is a Sanctuary City* (Nov. 14, 2016), <https://mayor.dc.gov/release/mayor-bowser-issues-statement-reaffirming-dc-sanctuary-city>.

112 Rachel Kurzius, *D.C. Is Still A Sanctuary City, Mayor Bowser Says, Regardless Of Trump's Threats*, DCIST (Jan. 25, 2017), <https://dcist.com/story/17/01/25/mayor-bowser-1/>.

113 Marissa J. Lang & Fenit Nirappil, 'Where is Bowser?: Activists demand action from Bowser after recent ICE raids', WASHINGTON POST (Aug. 7, 2018), https://www.washingtonpost.com/local/where-is-bowser-activists-demand-action-from-bowser-after-recent-ice-raids/2018/08/06/2a1c225e-99bf-11e8-843b-36e177f3081c_story.html.

114 See, e.g., Government of the District of Columbia, Office of the Mayor, *Mayor Bowser Announces \$2.5 Million Available for FY 2020 Immigrant Justice Legal Services Grant Program* (July 12, 2019), <https://mayor.dc.gov/release/mayor-bowser-announces-25-million-available-fy-2020-immigrant-justice-legal-services-grant>.

115 Matt Cohen, *After ICE Raids in D.C., Activists Call For Bowser To Speak Out*, WASHINGTON CITY PAPER (Oct. 5, 2017), <https://washingtoncitypaper.com/article/325440/after-ice-raids-in-dc-activists-call-for-bowser-to-speak-out/> (reporting on activists' criticisms of Mayor Bowser).

116 Gaurav Madan, *D.C. Fails As a Sanctuary City*, WASHINGTON POST (Aug. 16, 2018), <https://www.washingtonpost.com/blogs/all-opinions-are-local/wp/2018/08/16/d-c-fails-as-a-sanctuary-city/> (opinion piece arguing that the mayor must strengthen D.C.'s sanctuary policies).

117 Marissa J. Lang & Fenit Nirappil, 'Where is Bowser?: Activists demand action from Bowser after recent ICE raids', WASHINGTON POST (Aug. 7, 2018), https://www.washingtonpost.com/local/where-is-bowser-activists-demand-action-from-bowser-after-recent-ice-raids/2018/08/06/2a1c225e-99bf-11e8-843b-36e177f3081c_story.html.

Moreover, Mayor Bowser has not championed legislation or exerted oversight over D.C. agencies such as DOC or MPD that would fill critical gaps in the city's sanctuary policies. Accordingly, she has faced protestors asking her to strengthen the city's sanctuary policies.¹¹⁸ As Claudia Quinonez put it, the D.C. government has run "a great PR campaign" because "for many years they have constantly stated they welcome immigrants." She also observed that prior to passing the Emergency Sanctuary Values Act in October 2019, D.C. did not have an effective sanctuary city legislation in place.

Quinonez was particularly critical of the Mayor's Office for claiming D.C. was a sanctuary city but refusing to elaborate on what that meant practically. She noted, "Even the night before [the D.C. Council vote on the emergency Sanctuary Cities Values Act], we got pushback from the mayor's office. . . . We haven't been able to set up meetings to talk to her. . . . She refuses to answer what it means and pushed back against us. That makes immigrant communities feel that we are not a priority for her."

According to Franzblau, the focus should be on the Office of the Mayor and also the D.C. Council, who are responsible for passing legislation. There are loopholes in the city's sanctuary policies, which, among other shortcomings, have an exception for the U.S. Marshals and those in federal custody. "The D.C. council legislators and the mayor need to do more to protect D.C. residents," Franzblau said.

5. Policing Tactics that Undermine Community Relations

Although the Metropolitan Police Department has sought to strengthen its relationship with the community and to build trust with D.C. residents, incidents over the span of many decades have undermined public confidence in the agency.

In somewhat recent memory, questions of police violence were at the heart of the Mount Pleasant Riots of 1991. An MPD officer critically wounded 30-year-old Daniel Enrique Gomez, and while the details of the encounter are contested, bystanders alleged that Gomez was shot after already being handcuffed.¹¹⁹ The result was several days of community outrage, fueled by long-standing distrust between Mount Pleasant's Latinx residents and MPD.¹²⁰ According to some reports, the Immigration and Naturalization Service joined MPD in its post-uprising investigations, further heightening tensions with the community.¹²¹ In the early 2000s, then-MPD Chief Charles Ramsey acknowledged ongoing tensions in the Latinx community over use of force incidents.¹²²

Regrettably, the harsh use of force by MPD has been a documented concern over several decades. Investigative reporting by the *Washington Post* described the MPD's use of deadly force in the 1990s, which exceeded that of any other city.¹²³ From 2015 to 2019, reported use of force incidents by MPD increased 84 percent.¹²⁴ During the Black Lives Matter protests in 2020, MPD received criticism for its use of rubber bullets, chemical irritants such as tear gas and pepper spray, and mass kettling of protesters—tactics which resulted in numerous injuries and lasting trauma for protesters.¹²⁵ In the face of these serious concerns, police accountability remains elusive. More recently, community outrage erupted at the death of Candido Lopez-Sales, a Latino resident who was fatally struck on his bicycle by an unmarked MPD car.¹²⁶ At the time of the publication of this report, MPD still refused to release the name of the officer who killed Mr. Lopez-Sales. An October 2020 report released by the D.C. Police Complaints Board found that the majority of validated complaints of police misconduct resulted

118 Liz Garrigan, *How Could Mayor Bowser Have Fumbled This*, WASHINGTON CITY PAPER (Nov. 16, 2016), <https://washingtoncitypaper.com/article/193683/how-could-mayor-bowser-have-fumbled-this/> (stating that Mayor Bowser, when "facing a group with whom she shares a conviction, . . . managed to reassure no one and become almost hostile by the end of the confrontation.").

119 Mark Jones, *Mount Pleasant Boils Over, 1991*, BOUNDARY STONES: WETA'S LOCAL HISTORY BLOG (Apr. 28, 2015), <https://boundarystones.weta.org/2015/04/28/mount-pleasant-boils-over-1991>.

120 *Id.*

121 *The Legacy of the 1991 Riots*, HOLA CULTURA (Sept. 10, 2013), <https://www.holacultura.com/the-legacy-of-the-1991-riots/>.

122 Metropolitan Police Department, *Statement of Chief of Police Charles Ramsey, Hearing on Civil Rights Issues Affecting DC's Latino Communities* (Mar. 21, 2003), <https://mpdc.dc.gov/release/hearing-civil-rights-issues-affecting-dcs-latino-communities>.

123 Jeff Leen et al., *D.C. Police Lead Nation in Shootings*, WASHINGTON POST (Nov. 15, 1998), <https://www.washingtonpost.com/wp-srv/local/longterm/dcpolice/deadlyforce/police1page1.htm>.

124 DISTRICT OF COLUMBIA OFFICE OF POLICE COMPLAINTS, REPORT ON USE OF FORCE BY THE WASHINGTON, D.C. METROPOLITAN POLICE DEPARTMENT: 2019 (2020).

125 Jenny Gathright & Margaret Barthel, *Black Lives Matter Protests Came With A Price For These Local Activists*, NPR (Dec. 1, 2020), <https://www.npr.org/local/305/2020/12/01/940676267/black-lives-matter-protests-came-with-a-price-for-these-local-activists>.

126 Justin Moyer, *Bicyclist fatally struck in Prince George's as D.C. officer sought murder suspect*, WASHINGTON POST (Oct. 29, 2020), https://www.washingtonpost.com/local/public-safety/bicyclist-killed-in-prince-georges-by-dc-police-vehicle-is-identified/2020/10/29/ed564c30-1a24-11eb-bb35-2dcfdab0a345_story.html.

in non-serious punishment, such as low-level reprimands or additional training.¹²⁷

In this context, it is unsurprising that there is lingering distrust in the community about MPD. At an October 2020 hearing, the D.C. Committee on the Judiciary and Public Safety heard testimony on proposed legislation to strengthen sanctuary protections, and its committee report summarizes the fear that continues to pervade the District's immigrant communities:

A consistent theme throughout the testimony was the constant fear that immigrant residents experience in the District when in proximity to public safety officials, particularly police officers. Witness after witness, both documented and undocumented, spoke about the fear they feel about being detained and deported when they interact with the police in the District. . . . A witness submitted testimony that she was afraid to speak Spanish near police officers, even though she is documented, for fear they would think she was undocumented and transfer her to ICE. . . . A teenage witness testified that she will “never trust the police” as a result of the fear her community experiences. She stated that she lives in constant fear that the police will hurt her parents, who are not citizens. And one spoke about her experience as the victim of a crime, stating that she was too scared to call the police because she thought they would ask her for her immigration status.¹²⁸

Several public witnesses spoke about the mistreatment of immigrant street vendors by MPD officers, and the fear that vendors experience at the mere sight of the police.¹²⁹ Claudia Quinonez similarly provided examples of MPD officers harassing street vendors who worked with Vendedores Unidos and Many Languages One Voice, an immigrant-based organization, and telling vendors that they could arrest them and hand them off to ICE. As Quinonez explained,

It is a harassment tactic. A fellow organizer who works with street vendors said that the police use the threat of ICE custody to intimidate the immigrant street vendors. They say, ‘You are committing a crime. If I arrest you and you try to fight this, ICE will be waiting outside and we will call ICE.’

This harassment and association with deportation breaks the fragile trust between noncitizens and the police.¹³⁰ Another public witness at the October 2020 hearing, a DACA recipient and UDC graduate, offered that she “knows the feeling of not feeling safe in your own home and fear when you see the police” and of going “to school with fear for your family.”¹³¹ A different witness noted that immigrants “tolerate inhumane housing conditions” and do not report them out of fear of deportation.¹³² Religious leaders further testified that constant fear of one's own government is a mental and spiritual challenge.¹³³ Noncitizens and their children carry this weighty burden indefinitely.¹³⁴ As yet another public witness put it “no District resident should live with the fear that a traffic stop could lead to their deportation.”¹³⁵

127 Nathan Diller, *Report: Most Validated Complaints Of D.C. Police Misconduct Don't Result In Serious Discipline*, WAMU (Oct.16, 2020), <https://wamu.org/story/20/10/16/report-most-validated-complaints-of-d-c-police-misconduct-dont-result-in-serious-discipline/>.

128 D.C. Council Committee on the Judiciary & Public Safety, *Committee Report on B23-0501*, the “Sanctuary Values Amendment Act of 2020” 4 (Nov. 23, 2020), https://lms.dccouncil.us/downloads/LIMS/43389/Committee_Report/B23-0501-Committee_Report1.pdf.

129 *Id.* at 18.

130 *Id.*

131 *Id.* at 20.

132 *Id.*

133 *Id.* at 19.

134 *Id.* at 20.

135 *Id.* at 22.

D. POLICY RECOMMENDATIONS

A fundamental problem with the District of Columbia’s current approach towards sanctuary policies is passivity and complacency with norms that exist in writing, but which often fail to offer meaningful protection. By not taking affirmative steps against ICE practices, the District is allowing its residents to become targets and its families to become victims. A more robust approach involves ensuring that information does not get into the hands of ICE, and that residents have information about instances of cooperation, and can file complaints when sanctuary policies are violated.



D.C. residents have repeatedly shown support for the District’s noncitizen population, and have called for strengthened sanctuary policies.

PHOTO CREDIT: COURTESY OF THE GEORGETOWN VOICE

1. Enforce Compliance with the Sanctuary Values Amendment Act of 2020

On December 15, 2020, the D.C. Council unanimously passed a permanent version of the Sanctuary Values Act, and Mayor Bowser signed the bill on January 13, 2021.¹³⁶ Originally introduced in October of 2019, B23-0501, the Sanctuary Values Amendment Act of 2020 is a strong step forward in the protection of immigrant rights in the District.¹³⁷ The Act specifically prevents the District from submitting to ICE notification requests and sharing information with ICE to assist in raids. The Act also closes off District resources from usage by ICE with respect to detention space or interview space, and creates due process protections and wrap around services at D.C. Superior Court. We urge the D.C. Council and Mayor to ensure that D.C. agencies fully comply with the Act. As discussed below, this should include creating policies and compliance mechanisms that operationalize the information-sharing prohibitions and reporting requirements in the law.

¹³⁶ Sanctuary Values Amendment Act of 2020, D.C. Act 23-573 (Jan. 13, 2021), https://lms.dccouncil.us/downloads/LIMS/43389/Signed_Act/B23-0501-Signed_Act.pdf.

¹³⁷ D.C. Council Committee on the Judiciary and Public Safety, Public Hearing on B23-0501, the “Sanctuary Values Amendment Act of 2020” (Oct. 1, 2020), https://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=5706.

2. Eliminate All Cooperation by DOC and MPD with ICE, and Create an Enforcement and Oversight Mechanism to Promote Agency Accountability

The D.C. MPD's policy and practice falls short of the requirements of the Sanctuary Values Amendment Act around limiting information sharing with federal immigration agencies. Despite law to the contrary, D.C. MPD has shared information with ICE about noncitizen arrests on at least two separate occasions in recent years. Creation of a clear policy as well as an enforcement mechanism is needed, to penalize officers who run afoul of existing sanctuary policies with this kind of information sharing. This should take the form of a complaint mechanism that allows residents to report officers who ask for citizenship information or who have shared information with ICE, and further transparency into the frequency with which citizenship disclosures to ICE have been made.

Similarly, DOC has been a source of information from the District to ICE. Facilities under the stewardship of the DOC have been penetrated by ICE agents, leaving noncitizens vulnerable to ICE contact. Clear policy guidelines on the limits to ICE's authority in DOC facilities should be reiterated to DOC personnel via trainings and written directives. Violating the guidelines by cooperating with ICE should result in penalties that directly affect the personnel or facility. Doing so will ensure accountability from those in the position to protect the information of noncitizens.

3. Implement Robust Reporting Requirements and Clear Complaint Procedures

D.C. government agencies should release to the public anonymized data regarding release and transfer to ICE, broken down by people charged locally and people charged federally. Per the Sanctuary Values Amendment Act of 2020, DOC, MPD, the Department of Youth Services, and the Department of Behavioral Health are already required to report such information to D.C. Council and Mayor.¹³⁸ Additionally, these reports should track D.C. agency responses to ICE inquiries for information, and could include details regarding the type of information requested from and shared by the D.C. agency (e.g., location data, address, driver's license data, utility data, criminal records) and whether the subject of inquiry was facing local or federal charges. To better serve D.C. residents, the public should also have easy access to a formal complaint procedure that allows concerned locals to blow the whistle and report abusive actions by immigration agents in the District of Columbia.

4. Restructure Criminal Legal Processes to Minimize the Role of the U.S. Marshals

As reflected in the interviews for this report and the litigation pending before the D.C. District Court, actions of the U.S. Marshals significantly undermine the safety of immigrants and the due process rights of those seeking redress at the Courthouse. Because of the role they play in the courts and in transporting prisoners, there is necessarily interaction between the federal agency and noncitizens. Though the U.S. Marshals are not an immigration agency, the service collaborates with ICE by facilitating detainer requests. Ideally, the very presence of the U.S. Marshals in D.C. courts could be revisited, especially as D.C. moves towards a more independent criminal legal system.

At a minimum, however, certain steps in the criminal justice process can be reformed to minimize contact between the U.S. Marshals and noncitizens. For example, the Office of the Attorney General could adopt a practice of advanced no-papering so that individuals whose charges would get dropped anyway prior to arraignment could get released from police precincts and avoid being transported to the D.C. Superior Court in the first place. Second, arraignment in D.C. could be restructured so that the Marshals are not involved in transporting individuals to arraignment or facilitating release. This could include holding arraignments over video so individuals do not need to be transported to D.C. Superior Court as D.C. Superior Court has done during the COVID-19 pandemic.¹³⁹ Alternatively, individuals could be transported by MPD instead of the U.S. Marshals, as MPD is covered by the city's policies. Out-processing after a judge has determined whether an individual should be released pre-trial and releases from the precinct should also be reformed so that the U.S. Marshals are not involved.

Either of these two processes could occur without the use of the U.S. Marshals. Placing an individual who is ordered released back into the custody of the U.S. Marshals needlessly exposes them to ICE and circumvents the sanctuary policies the D.C. has enacted.

¹³⁸ Sanctuary Values Amendment Act of 2020, D.C. Act 23-573 (Jan. 13, 2021), https://lms.dccouncil.us/downloads/LIMS/43389/Signed_Act/B23-0501-Signed_Act.pdf.

¹³⁹ D.C. Superior Court Adds New Remote Courtrooms, Increases Number and Types of Cases Being Heard, District of Columbia Courts (June 22, 2020), <https://newsroom.dccourts.gov/press-releases/dc-superior-court-adds-new-remote-courtrooms-increases-number-and-types-of-cases-being-heard> (announcing remote hearings for arraignment).

The need for these changes is further evidenced by the aforementioned injunction against enforcement of civil immigration warrants by the U.S. Marshals. Codification of the injunction, along with other important steps, will protect D.C. noncitizen residents from the predatory tactics of ICE, which are facilitated by the U.S. Marshals.

5. Promote Community-Centered Safety Practices and Decriminalization

The United States currently finds itself in an important national dialogue about policing and the reallocation of functions (and accompanying resources) traditionally assigned to law enforcement agencies. The District of Columbia should embrace a leadership role in this dialogue, and promote community-centered safety practices that de-center the role of MPD and DOC, and instead assign safety and dispute-resolution functions to trained community members. Instead of continuing to heap resources upon MPD and DOC, there are numerous and invaluable opportunities for D.C. to invest in the local community in a way that is inclusive of immigrants. Funding for schools, medical care, housing, and mental health services that is accessible to both citizens and noncitizens alike will promote stability and well-being in local communities and in the District at large. The District of Columbia should also thoughtfully pursue decriminalization efforts, with an eye towards statutes that disproportionately affect noncitizens and communities of color. In order to further shield noncitizens from law enforcement practices that could result in apprehension by ICE, the District of Columbia should consider overhauling its citation process to limit the use of biometric fingerprinting, which DHS can access via the Secure Communities program.

6. Encourage Federal Agency Practices Consistent with Sanctuary Policy

As noted above, the Pretrial Services Agency does not have a formal sanctuary policy nor does it follow one. Because it works closely with the U.S. Marshals and is the agency that collects citizenship information from the incarcerated individuals and conducts an automated inquiry with ICE, Pretrial Services catalyzes the ultimate transfer of noncitizens to ICE. Along these lines, the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA), which houses Pretrial Services, encourages its employees to communicate with ICE when a defendant awaiting sentencing is a noncitizen and has charges that may trigger removability. Although Pretrial Services and CSOSA are federal entities, the D.C. Mayor and D.C. Council should urge CSOSA and Pretrial Services to create and enforce a comprehensive sanctuary policy, including a stop to the practices of collecting citizenship information and information-sharing with ICE. With such changes, noncitizens will be better protected in the District.

7. Restructure Intergovernmental Agreement No. 16-00-0016

A little known intergovernmental agreement (IGA No. 16-00-0016) between the DOC and federal agencies allows ICE to obtain noncitizen's records and provides ICE access to DOC facilities. Although the Sanctuary Values Amendment Act of 2020 curtails much of ICE's access, it includes an exception for individuals charged with or sentenced for federal crimes. Notably, more than 50% of all federal criminal charges are immigration related offenses, including the crimes of unlawful entry or unlawful reentry. ICE can obtain release information about a noncitizen charged with a federal crime, and can pick the individual up before release. Moreover, access to the DOC facility places noncitizens at an increased and immediate risk of transfer to federal custody. In this regard, IGA No. 16-00-0016 continues to undermine the spirit of the newly strengthened sanctuary policy in the District of Columbia. To ensure the promise of the Sanctuary Values Act, IGA No. 16-00-0016 should be revised and clarified to limit the incarceration of individuals on federal immigration-related offenses.



With the passage of a permanent version of the Sanctuary Values Act, noncitizens can live in the District without the constant fear of ICE.

PHOTO CREDIT: BRANDON WU, SANCTUARY DMV · JULY 17, 2018

CONCLUSION

It has become evident that although D.C. is by no means the nadir amongst sanctuary cities, it remains marked by serious shortcomings. In some respects, this is a feature of the unique hybrid of federal and local jurisdiction that characterizes D.C. But, the particular hold that federal influence has on D.C. is not the sole reason. There is unwillingness on the part of some in city leadership to truly deliver on the promise of D.C.'s sanctuary policies. D.C. must continue to implement policies that protect the dignity of individuals living within its borders. Fortunately, there is currently an immediate avenue to do this, thanks to local advocates who have led the charge for immigrant justice. D.C. Council must enforce compliance with its permanent laws and policies to mend the broken promises of the past.



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