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JEFF SESSIONS DEFINES 'SANCTUARY CITIES' NARROWLY, SIDESTEPPING FIGHT

Attorney general signals that Justice Department may, in the future, condition grants on compliance with other elements of enforcement agenda

By Laura Meckler
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WASHINGTON – Attorney General Jeff Sessions announced his agency's official definition of "sanctuary cities" on Monday, defining a largely political term in a narrow way that likely sidesteps big fights with local officials over immigration enforcement, at least for now.

In a memo released Monday, Mr. Sessions said "sanctuary cities" are local jurisdictions that bar officials from communicating with federal authorities over immigration. By that definition, big cities – even those that call themselves sanctuaries for undocumented immigrants – are currently in compliance.

Still, Mr. Sessions held out the possibility that the Justice Department might try, in the future, to condition grants on compliance with other elements of the administration's enforcement agenda.

"Over the years, the Department has tailored grants to focus on, among other things, homeland security, violent crime...and domestic violence," Mr. Sessions wrote. "Going forward, the Department, where authorized, may seek to tailor grants to promote a lawful system of immigration."

For now, though, he said that any jurisdiction that wishes to receive grants from the Justice Department must certify that it is in compliance with the statute known as section 1373, which requires open communication. He said the same rules could be applied to Homeland Security Department grants as well, but not to other agencies.

"The term 'sanctuary jurisdiction' will refer only to jurisdictions that 'willfully refuse to comply with 8 U.S.C. 1373,'" Mr. Sessions wrote.

The memo's narrow scope echoes arguments made by the administration in a court challenge to President Donald Trump's threat, via executive order, to cut funding to "sanctuary cities."

In a federal-district court in San Francisco, the administration argued that it was defining sanctuary cities as places that won't comply with section 1373. Judge William Orrick ruled in April that this requirement was permissible. Nonetheless, he issued a sweeping ruling calling Mr. Trump's executive order likely to be found unconstitutional, interpreting the administration's intentions as much broader than its attorneys asserted.

Mr. Trump reacted angrily to the decision, promising to meet opponents at the Supreme Court. But the Justice Department still hasn't decided whether to appeal the ruling. The

Sessions memo appeared to be an effort to bolster its case that it was in fact narrowly defining "sanctuary jurisdiction."

The Justice Department on Monday asked Judge Orrick to reconsider his ruling in light of the new guidance. Federal government lawyers said in a Monday filing in San Francisco federal court that the clarity given by Mr. Sessions "contravenes many of the bases underlying the court's conclusions."

The Sessions memo affirms that the executive order is only meant to apply to a subset of federal grants, the Justice Department filing argues, rather than a broader swath of federal money that Judge Orrick said appeared to be implicated. The Justice Department also argues that the Sessions memo resolves constitutional claims asserted by the plaintiffs in the case by providing clarity on which funds are affected and that certain aspects of the executive order don't apply retroactively.

James Williams, county counsel for Santa Clara, one of the plaintiffs in the case, said the county plans to oppose the motion for reconsideration and vigorously defend the preliminary injunction. The Sessions memo, he said, is vague and "doesn't save the executive order."

Resistance from some cities and counties is typically less about communication and more about "detainers." Detainers are requests issued by the Immigration and Customs Enforcement agency that ask local police and sheriffs to hold people who may be present in the U.S. illegally, to give ICE agents time to come and arrest them.

Many jurisdictions refuse to honor these detainers, partly citing court rulings that have held that it is unconstitutional to hold someone beyond their scheduled release date.

The Justice Department has made clear that detainers are voluntary. The Sessions memo suggested that the administration will continue to try to publicly shame these uncooperative jurisdictions rather than withhold federal grants, saying the department has the "ability to point out ways that state and local jurisdictions are undermining our lawful system of immigration."