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JUSTICE DEPARTMENT EXPLORES COURT CHALLENGES TO 'SANCTUARY CITIES'

Legal avenues would be aimed at forcing municipalities to aid Trump's deportation effort

By Laura Meckler
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WASHINGTON – The Justice Department is quietly exploring new legal theories to take on so-called sanctuary cities in court, working to force them to aid the Trump administration's aggressive deportation effort, people familiar with the discussion said.

Such a case, if filed, would significantly escalate the Trump administration's pressure campaign against recalcitrant cities and counties.

The administration has already [threatened to cut off federal funding](#) to cities and counties that refuse to facilitate deportations, and it has sought to "shame" jurisdictions that don't cooperate. If successful, the new court efforts would compel local authorities to assist federal immigration officers whether they want to or not.

Separately, on Friday the Justice Department filed papers in support of the state of Texas' defense in federal court of [one of the toughest anti-illegal immigration laws](#) in the nation. The statute, which is set to take effect in September, [prohibits Texas cities and police departments](#) from limiting their cooperation with federal immigration authorities.

Under that law, local Texas law-enforcement officials and sheriffs can face criminal penalties – including jail sentences – if they don't comply with requests from federal authorities to detain suspected illegal immigrants until they can be transferred to Immigration and Customs Enforcement custody.

Many cities and counties in Texas and across the country have adopted policies of not honoring these requests, called detainers. Several Texas cities, including Houston, Dallas, Austin, San Antonio and El Paso, challenged the law, saying it unconstitutionally infringes on the rights of local governments to police their own residents.

The Justice Department argues the Texas statute doesn't improperly pre-empt federal law or violate the Constitution. It plans to make those points in oral arguments in federal court in San Antonio Monday.

"The Department of Justice fully supports Texas' effort and is participating in this lawsuit because of the strong federal interest in facilitating the state and local cooperation that is critical in enforcing our nation's immigration laws," Attorney General Jeff Sessions said in a statement.

Next week, Republicans will work to advance a similar goal via legislation. The House plans a vote on a measure that would deny certain federal grants from jurisdictions that don't honor detainers, among other provisions.

In April, [a federal judge in San Francisco ruled](#) that Mr. Trump's executive order threatening to pull funding from so-called sanctuary cities is likely unconstitutional.

Separately, the Justice Department is developing legal strategies to invalidate sanctuary-city policies across the nation, according to several people familiar with the work under way.

The goal, officials said, would be to win court rulings clarifying local jurisdictions' requirements under federal law, effectively forcing them to abandon policies of not cooperating with federal officials.

That strategy is complicated by the fact that the Justice Department has already said that detainers are requests of local authorities, not requirements.

But the Justice Department is weighing a range of legal theories.

A senior Justice Department attorney laid out the options under discussion. One possibility is to argue that local policies prohibiting cooperation with ICE wrongly pre-empt federal immigration law. Under another option, the department would argue that local authorities are discriminating against ICE because they are willing to honor detainers issued by other federal agencies such as the Federal Bureau of Investigation or the Drug Enforcement Administration. A third theory would argue that local governments are obstructing the federal government's ability to do its job.

The Justice Department attorney said a straightforward case arguing that local governments are required to honor detainers would likely succeed in front of some federal judges but not others. The official said the department is considering which circuits present the friendliest terrain. He added that as President Donald Trump puts more people onto the federal bench, the department's chances may improve in certain circuits.

Still, the official said, the Justice Department wants to ensure that any case its lawyers file could pass muster with the Supreme Court.

A more limited option, the official said, would be to argue that a federal statute requiring open communication between local and federal officials, known as Section 1373, requires that local officials inform ICE when a suspected illegal immigrant is about to be released. Alternatively, the official said, the Justice Department could file a suit aimed at forcing local jails to let ICE officers into their facilities to investigate whether foreign-born suspects are citizens.

Immigrant activists are skeptical that these suits would succeed. Greg Chen, director of government relations for the American Immigration Lawyers Association, says Section 1373 is narrowly written merely to bar localities from prohibiting their personnel from sharing information about citizenship or immigration status with the federal authorities.

"The language is specific and limited," he said.

Mr. Chen said he would need to know more about other legal theories under consideration to comment on how those suits might be defended. But he said most places that decline to honor detainers do so because of court decisions that have found localities can be held liable for wrongly detaining someone without probable cause to believe the person should be kept.

In addition, he said, many communities have concluded that they don't want their law-enforcement officials seen as agents of federal immigration law, for fear that crime victims and witnesses would not come forward.

"By trying to force localities to honor these detainers, the federal government is putting localities between a rock and a hard place," he said.

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- Dan Frosch contributed to this article.